

Minutes of:	LICENSING AND SAFETY PANEL
Date of Meeting:	27 July 2017
Present:	Councillor D Jones (in the Chair), Councillors: P Adams, N Bayley, R Hodgkinson, O Kersh, A McKay and Sarah Southworth, J Walker and S Wright
Apologies for absence:	Councillors I Bevan, M Connolly, J Grimshaw and G Keeley
Public Attendance:	There were 15 members of the public in attendance

LSP.113 DECLARATIONS OF INTEREST

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

LSP.114 MINUTES

Delegated decision:

That the Minutes of the Licensing and Safety Panel meeting held on 15 June 2017, be approved as a correct record and signed by the Chair.

LSP.115 PUBLIC QUESTION TIME

There were no questions raised under this item, albeit the Chair agreed that comments and questions on the item relating to the Review of the Hackney Carriage Policy, could be made or asked when that item is dealt with.

LSP.116 OPERATIONAL REPORT

The Assistant Director (Localities) submitted a report advising Members on operational issues within the Licensing Service. Information was presented on the number of assessments that had taken place between 26 May and 7 July 2017.

It was agreed:

That the report be noted.

LSP.117 URGENT BUSINESS

There was no urgent business reported.

LSP.118 EXCLUSION OF THE 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.119
(E) SUSPENSION/REVOCATION OF HACKNEY CARRIAGE/PRIVATE
HIRE DRIVERS' LICENCE**

The Licence Holders were invited to attend the meeting for separate hearings. They were invited to address the Panel separately and any matters referred to in the Officer's report.

1. Licence Holder 18/2017 was invited into the meeting room and confirmed that he would be representing himself.

The Chair outlined the procedure to be followed and the Licensing Unit Manager presented the report submitted by the Assistant Director (Localities) which was accepted by the Licence Holder. This set out the reasons for the Licence Holder being before the Panel.

The report explained that the Licence Holder had been convicted of an offence of fraud by failing to disclose to the Department of Work and Pensions information that he was working as a self employed private hire driver in receipt of earnings which he was under a legal duty to disclose intending by that failure to make a gain namely £2500 in Employment Support Allowance. The Licence Holder had been convicted in March 2017 and sentenced to a curfew with electronic monitoring as well as being ordered to repay the sum.

The Licence Holder who had been licensed as a Private Hire Driver since December 2013, acknowledged the conviction. He explained that he had been unable to work for 3-4 weeks due to a medical condition in January 2015. After returning to work as a private hire driver he had not informed the Department of Work and Pensions. The Licence Holder reported that he had also been involved in a motor vehicle accident in January 2017 and was still suffering from the injuries he had sustained. He apologised for his actions and explained that at the time his wife was pregnant and was suffering from complications. The Licence Holder also has to provide and care for three children and he stated that the family are suffering as a result of financial pressures. The Licence Holder stated that he had forgotten to notify the Licensing Office of his conviction in March.

The Chair invited members of the Panel to ask the Licence Holder questions.

Delegated decision:

After carefully considering the written report, oral statements from the Licence Holder and taking into account the Council's Convictions Policy and Guidelines, pursuant to the Local Government (Miscellaneous

Provisions) Act 1976, the Panel resolved, unanimously, **to admonish Licence Holder 18/2017 as to his conduct but to take no further action.**

The Panel noted;

- That the offence was of a serious nature
- That the Licence Holder had expressed genuine regret and apologised for his actions
- That the Licence Holder also acknowledged the severity of his actions and the consequences of not reporting his convictions.
- The Panel also noted the mitigating factors presented by the Licence Holder.

2. Licence Holder 17/2017 was invited into the meeting room and confirmed that he would be representing himself.

The Chair outlined the procedure to be followed and the Licensing Unit Manager presented a report submitted by the Assistant Director (Localities) which was accepted by the Licence Holder. This set out the reasons for the Licence Holder being before the Panel.

The report explained that the Licence Holder had appeared before the Panel for the reason that he had received a caution from the Police on 25 June 2014 and had failed to disclose this after the original grant of his Private Hire Drivers Licence on 23 June 2016 and on its subsequent on renewal applications in 2015 and 2016. The caution had been issued for the offence of assault occasioning actual bodily harm (Offences against the person Act 1861 s.47).

The Licence Holder had completed a Disclosure and Barring Service (DBS) check with the Authority on 12 June 2017, at which time the caution was revealed.

The Licence Holder acknowledged that he had received a caution from the Police and explained that this had been the first time he had been in trouble with the law. The Licence Holder stated that the incident leading to the issue caution related to an argument between the Licence Holder and a friend. The Licence Holder had requested his friend to stop smoking cannabis outside of his property in view of the children close by. After refusing to stop smoking an argument ensued which escalated into a physical fight. The Police were called and the friend alleged an assault against the Licence Holder.

The Licence Holder stated that he had not disclosed the caution on his renewal form as he did not understand the question on the form and thought a caution was not serious enough to include because it had not resulted in his attendance at court. He also stated that he did not realise this would show on his DBS.

The Licence Holder explained that as result of his action his family were suffering financially. His wife was pregnant and he had four children to care for and support. The Licence Holder stated that he has a disabled

brother that he can no longer take out on trips. The Licence Holder accepted that he had made a mistake and was sorry for his actions.

The Chair invited members of the Panel to ask the Licence Holder questions.

Delegated decision:

After carefully considering the written report, oral statements from the Licence Holder, the written reference from the Licence Holder's employer and taking into account the Council's Convictions Policy and Guidelines, pursuant to the Local Government (Miscellaneous Provisions) Act 1976, the Panel resolved, unanimously, that **the application for renewal of a Private Hire Driver's Licence by Applicant 17/2017 be granted.**

The Panel noted that;

- The offence was of a serious nature
 - That the Licence Holder had expressed genuine regret and was sorry for his actions
 - The Licence Holder had no other convictions.
 - The Panel also noted the mitigating factors presented by the Licence Holder.
3. Licence Holder 19/2017 was invited into the meeting room and confirmed that he would be representing himself. The Panel noted that the Licence Holder had requested an adjournment prior to the hearing in order to obtain legal representation but had decided to proceed without it.

The Chair outlined the procedure to be followed and the Licensing Unit Manager presented a report submitted by the Assistant Director (Localities) which was accepted by the Licence Holder. This set out the reasons for the Licence Holder being before the Panel.

The report explained that the Licence Holder had appeared before the Panel on the basis that he was not a fit and proper person to hold a licence as he had failed to maintain his vehicle appropriately between periodic vehicle inspections. This had resulted in 102 faults/observations being identified during the last five periodic inspections, of which 49 were MOT defined faults, between the period June 2015 and June 2017. Due to the vehicle failing two consecutive vehicle inspections during 2015 the vehicle is currently subject to the maximum of 3 inspections during its current 12 month licence period.

The report went on to explain that the Licence Holder had appeared before the Licensing and Safety Panel on 12 December 2016 for failing to maintain his vehicle and had been admonished as to his future conduct. At that meeting, the Chair had stressed the importance of maintaining his vehicle to a high standard to guarantee the safety of the public. The Licence Holder had given the Panel at that time an assurance that he would purchase a newer vehicle. The Licence Holder explained that the purchase of a new vehicle did not take place as the Licence Holder had carried out renovation work on his home and because of this

he no longer had adequate finances to purchase a vehicle. The Licence holder stated that he intended to purchase a new vehicle in November 2017.

The Licence Holder presented a folder containing receipts for work carried out on the vehicle and for the purchase of replacement parts. He stated that he had taken the vehicle for a pre-inspection check and could provide no explanation for the faults found. On questioning, the Licence Holder explained that he had work done to the vehicle carried at garages recommended to him by other taxi drivers, although the garages used did not carry out MOT inspections. He accepted that he needed a new vehicle and was aware that the vehicle needed work doing to it.

The Chair invited members of the Panel to ask the Licence Holder questions.

Delegated decision:

After carefully considering the written report, oral statements from the Licence Holder, the documentation provided and taking into account the Council's Convictions Policy and Guidelines, pursuant to the Local Government (Miscellaneous Provisions) Act 1976, the Panel resolved, unanimously, that **the Private Hire Driver's Licence held by Licence Holder 19/2017 be revoked with immediate effect.**

The Panel noted the following:

- There were a large number of faults affecting the vehicle
- Many of the faults were MOT failure faults.
- Many of the faults could affect the roadworthiness and safety of the vehicle.
- The vehicle in question had been left in a condition where it was unsafe to the Licence Holder and other members of the public on at least the last two occasions it was tested.
- The Licence Holder appeared to take no responsibility for the condition of his vehicle and blamed others.
- The Licence Holder had appeared before the Panel in December 2016 for a failure to maintain his vehicle.
- The Licence Holder had given the Panel assurances in December 2016 regarding both maintenance of his vehicle and his plan to purchase a new vehicle and he had failed to carry those out.
- The condition of the vehicle had resulted in the Licence Holder being brought before the Panel again.
- There was no or no adequate explanation for the failures to maintain the vehicle and certain of the faults should have been obvious to a professional driver.
- The Panel was not satisfied the Licence Holder was fit and proper to hold a licence.

The Licence Holder was advised of their right of appeal to the Magistrates Court within 21 days of receiving the decision.

**LSP.120 APPLICATION FOR PRIVATE HIRE DRIVERS' LICENCE
(E)**

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

Applicant 16/2017 attended the meeting and was represented by Mr Oakes (The Hackney Drivers Association Ltd). The Chair outlined the procedure to be followed and the Licensing Unit Manager read the report which was accepted by the Applicant.

The report explained that the Applicant had been granted a Private Hire Driver's Licence on 23 September 2013. The Applicant had then appeared before the Panel on 13 February 2014 when the licence had been revoked. On that occasion the Panel heard an allegation that the Applicant had approached a female Civil Enforcement Officer who was on duty at 8.22am and had affixed a fixed penalty notice to the his vehicle for parking in a suspended parking bay on Wellington Road, Bury. The Applicant had approached the Civil Enforcement Officer in an angry manner and used foul language to demand the ticket be taken off his vehicle. The Civil Enforcement Officer had tried to explain the situation but had decided to walk away due to the language being used against her. As she walked away she received a blow to the side of her head causing her hat to fall to the ground. Following this the Civil Enforcement Officer felt a push causing her to stumble forward. Assistance was immediately requested and the Applicant removed his vehicle from the parking bay and left.

The Licensing and Safety Panel had therefore revoked the Applicant's licence. The Licence Holder then appealed against this decision to the Bury and Rochdale Magistrates Court in July 2014. The Applicant did not appear at the hearing and the appeal was dismissed. The court ordered the Applicant to pay costs of £2050.00 to the Council. The Applicant has since been making periodic repayments with £970 still outstanding.

The Applicant applied for a new Private Hire Licence and appeared before the Licensing and Safety Panel on 19 January 2017. At that time the Panel refused the licence and in particular noted that this was a serious matter and the Applicant at that time had only been driving as a Licensed Private Hire Driver in Bury for 2 months when the incident occurred. The Panel further noted he had shown little remorse for his actions and provided no reassurances to the Panel as to his future conduct. It therefore did not feel confident as to his future conduct, despite the passage of time. The Panel determined the Applicant not to be a fit and proper person.

In line with the Council's Convictions Policy and Guidelines, the Applicant was advised by the Licensing Unit to wait until 12 months had expired since the revocation before applying for a private hire car drivers' licence again.

The Applicant and his representative Mr Oakes both addressed the Panel and explained that when the incident that took place incident on 19

November 2013 occurred, the Applicant had been in a great deal of pain due to a medical problem caused by a trapped nerve in his leg. The Applicant admitted being involved in the confrontation with the Civil Enforcement Officer and stated he had lost his temper and hit the Civil Enforcement Officer. He denied pushing or using foul language. Mr Oakes stated that this was not an excuse but a reason why the offence had taken place. The Applicant had been taking pain killers at the time.

Mr Oakes stated that the offence had occurred over 3 years ago. The Applicant stated he did not realise that where he had parked was a suspended parking bay. He took full responsibility for his actions and regretted his behaviour and hoped he could now be given another chance as a Private Hire Driver. He stated that he sincerely regretted what had happened and wanted to apologise to the Officer concerned and that in future he would behave in an appropriate manner to individuals carrying out their duties.

The Chair asked why the Applicant had decided to make his application before the end of the period of 12 months since the revocation in January 2017 as the guidance clearly advises that the Panel would normally refuse any subsequent application made within 12 months unless there are substantial material changes in the individual's circumstances. Mr Oakes stated that the Applicant had moved on and as a result of the incident and the subsequent revocation and court decision, the Applicant and his family had suffered financially and he was unable to obtain regular employment. Mr Oakes stated that the incident had not resulted in a criminal conviction but that a charge of common assault could have been made against the Applicant. He also stated that there were no pending convictions against the Applicant and that there had been a substantial time that had elapsed since the incident took place, namely 3 and a half years. He went on to state that if acceptable, the Applicant would accept a short term licence with regular checks being made on his conduct and he gave an undertaking there would be no repeat.

The Chair invited members of the Panel to ask the applicant questions.

Delegated decision:

That after carefully considering the written report, the oral representations made by the Licence Holder and his representative, the Panel determined the Applicant not to be a fit and proper person in accordance with the Local government (Miscellaneous Provisions) Act 1976 and therefore resolved that **the application for a Private Hire Driver's Licence by applicant 16/2017 be refused.**

The Panel noted the Applicants personal circumstances but found against the Applicant for the following reasons:

- The offence was of a very serious nature.
- The Applicant's licence had been revoked in January 2017 and no evidence was presented to show any substantial material change in circumstances since that decision.

- The incident had not resulted in a court case for the reason that the Civil Enforcement Officer had not wished to pursue that course of action.

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

The meeting then returned to a public session.

LSP.121 REVIEW OF CURRENT POLICIES RELATING TO THE LICENSING AND TESTING OF HACKNEY CARRIAGES

The Assistant Director (Localities) submitted a report regarding the Review of the Hackney Carriage Age Policy. The report which was summarised by the Licensing Unit Manager, reminded members of the decision of the Licensing and Safety Panel on 8 May 2014:

1. That the "exceptional condition" criteria be re-introduced for Hackney Carriages at 10 years and as an incentive to encourage proactive maintenance and provide for additional testing requirements where vehicles fall below acceptable standards, as set out in 5.0 of the report.
2. That further to (1) above, existing licence holders be allowed a 3 year transitional period should they have made financial plans in respect of their vehicle to allow them to be licensed subject to the "5 fault rule"

The transitional period of three years ended on 1 June 2017. A notification letter was sent to all Hackney Carriage vehicle proprietors with Bury licences to advise them of the situation. The letter also referred to the reintroduction of the exceptional condition criteria for vehicles over 10 years old and the requirement that vehicles that are tested must meet the criteria in order to be re-licensed.

On 15 June 2017 the Licensing and Safety Panel had resolved to defer implementation of the "exceptional condition" criteria until a further report was considered.

The Chair invited questions and comments upon the report and its recommended options from the members of the public present and in particular Mr Oakes (The Hackney Drivers Association Ltd), Mr Bridge (of A2Z Licensing) and thirteen Hackney Carriage licence holders.

Mr Bridge representing the Hackney Drivers Association addressed the meeting and explained the current state of the Hackney Carriage trade in Bury and the issues licence holders have with the current arrangements for testing vehicles. He stated that the 10 year policy proposed would apply to half of the vehicles operating within Bury and that the exceptional condition criteria may limit the number of Hackney Carriage vehicles that are wheelchair accessible in line with the Council policy. He went on to say that Hackney Carriage drivers also worked on private hire operator systems and may decide to not continue with their

Hackney Carriage licence for financial reasons. Also, the exceptional condition policy did not allow for fair wear and tear as part of vehicle daily use by the public on the vehicle upholstery. Other considerations not referred to in the policy were acts of vandalism and accidents resulting in damage to vehicles. In view of the use of larger more robust vehicles as Hackney Carriages that also provide wheelchair accessibility, the Licensing and Safety Panel were requested to introduce a 15 year age policy.

The Chair invited comments and questions from the other members of the public present and then invited input from members of the Panel.

Delegated decision:

That after carefully considering the written report and the comments made by and on behalf of the Hackney Carriage Drivers **It was resolved unanimously:**

That approval be given to continue with the current licensing and testing policy in relation to Hackney Carriage vehicles up to 10 years and then require the vehicle to be subject to the five fault rule.

COUNCILLOR D JONES
CHAIR

(Note: The meeting started at 7.00 pm and finished at 10.00 pm)