

Minutes of:	LICENSING AND SAFETY PANEL
Date of Meeting:	28 November 2017
Present:	Councillor D Jones (in the Chair), Councillors: P Adams, N Bayley, I Bevan, R Hodgkinson, A McKay, Sarah Southworth, J Walker and S Wright
Apologies for absence:	Councillors: J Grimshaw, O Kersh
Public Attendance:	There were no members of the public in attendance

LSP. XXX DECLARATIONS OF INTEREST

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

LSP. XXX MINUTES

Delegated decision:

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

LSP. XXX PUBLIC QUESTION TIME

There were no questions raised under this item.

LSP. XXX 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 29 September 2017 until 10 November 2017 there have been 22 assessments carried out, of which 19 passed, 3 failed and none failed to attend.
- In relation to two separate Licensing Hearings Panels convened on 31 October 2017, the Licensing Unit Manager explained that the first for Polka, Parkhills Road, Bury, had presented an application to transfer the surrendered premises licence. Greater Manchester Police gave notice that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective. After considering the transfer application, the Licensing Hearings Panel resolved to reject the application.

The second application was for Grape to Grain, Bridge Street, Ramsbottom, for the grant of a new premises licence and a representation was received from an interested party in respect of the application. After considering the application, the Licensing Hearings Panel resolved to grant the application.

- In respect of the Equality Act 2010, a complaint was made to the Licensing Service from a member of the public who is blind. Following an investigation it was decided to instigate prosecution proceedings and on 1 November 2017, a private hire driver attended Manchester Magistrates Court and pleaded guilty to an offence under section 170 (3) of the Equality Act 2010, which states 'the driver of a private hire vehicle commits an offence by failing or refusing to carry out a booking accepted by the operator – if the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog'. The driver was fined £250.00 with costs of £250.00 and a victim surcharge of £30.00.
- An innovative partnership programme has been developed, 'Communities in Charge of Alcohol' (CICA) between the Greater Manchester Combined Authority, Greater Manchester Health and Social Care Partnership, all 10 Greater Manchester Local Authorities, the Royal Society for Public Health, the University of Salford and Public Health England, North West. The programme aims to kick-start the development of a network of community alcohol champions across Greater Manchester, built on the principle that local communities should be empowered to take charge of their own health and people in communities are best placed to influence their friends, families and colleagues.

Radcliffe and the Darnhill area of Rochdale have been selected, due to the infrastructure already available, with the aim to provide community members with knowledge, skills and key contacts to support people to reduce drinking, attend local community events in relation to alcohol and health and provide support for communities to get involved with licensing decisions by helping raise issues with the local authority about venues selling alcohol.

The Licensing Unit Manager of Bury along with the Service Manager from Rochdale attended a presentation on the Licensing Act in order to give guidance on the processes that can be used by local communities if they have issues relating to problem premises that hold a premises licence/Club Premises Certificate under the licensing Act 2003.

It was agreed:

That the report be noted.

LSP.XXX URGENT BUSINESS

There was no urgent business reported.

LSP.XXX 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.XXX CONSIDERATION OF A PSV DRIVER TO BE APPROVED TO WORK ON A HOME TO SCHOOL CONTRACT

(E) The 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 consideration of a driver's suitability to work on the Home to School and College transport contract. The Council currently provides home to school transport to approximately 400 children attending 45 schools within the borough of Bury and neighbouring authorities.

Passengers using the Service have a range of additional needs including learning, behavioural, sensory, hearing, visual, autistic disorders 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 this application, as part of the process to be accepted as a PSV driver on the Home to School transport contract, a DBS status check was undertaken on an enhanced certificate that had been applied for by Wigan Council, which showed a caution dated 11 November 2016, in relation to a common assault (criminal justice act 1998 S.39) and the Applicant was cautioned on the same date by Greater Manchester Police.

The Applicant attended the meeting, unaccompanied and explained to the Members of the Licensing and Safety Panel that he had accepted the caution at the Police Station as he thought it was a formal procedure. He had been kept for 20 hours and just wanted to get home. He had asked if the caution would show on any records and had been told that it

would not appear on a DBS check. The Applicant stated that he would not have signed and accepted the caution if he had known and he was unaware that he should have declared this to the Licensing Service.

The Applicant explained the circumstances behind the caution, in that it was following a domestic incident with his then wife, with whom he has two children, after finding out that she had been having an affair. He explained he had only pushed her and that they were now divorced and he now has a platonic relationship with her. This was a one off incident which wouldn't be repeated and he felt it unfair that the caution would affect any future job prospects, under the circumstances.

The Applicant explained that for 10 years he has been running his own business on the Home to School and College transport framework and has previously worked for Bury Council, amongst other Local Authorities. He is currently employed with Schools Direct.

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, on a majority decision, that **the Applicant was not suitable to work as a PSV driver on the Home to School and College transport contract and therefore the application was refused.**

The Licensing and Safety Panel noted the following;

- the incident was a serious matter
- the caution was just 12 months ago
- the Applicant did not show remorse for the incident in question or apologise for his behaviour
- the Applicant was not a fit and proper person to be accepted as a PSV driver.

LSP.XXX SUSPENSION/REVOICATION OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS' LICENCES

1. Licence Holder 24/2017 attended the meeting and was accompanied by his wife and brother.

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, in most part, by the Licence holder.

The report explained that on 6 July 2017 a Licensing advisor took a complaint regarding the Licence Holder, from the Manager at a home health care service in Bury, on behalf of her client. The care service have a contract with a private hire operator who the Licence Holder driver is employed by. The complaint alleged that the Licence Holder had failed to strap the client's wheelchair correctly into the private hire vehicle, allowing the wheelchair to move and banging the client's

foot, causing severe bruising. A photograph of the patient's foot and a written witness statement made by the client's support worker were distributed to the members of the Licensing and Safety Panel prior to this hearing.

The background of the complaint was that the care service client was attending her 70th birthday party in Bury on Sunday 2 July and a member of staff had ordered her a taxi at 5 pm to be returned to her home address. The member of staff stated that she had seen the driver before and he had previously driven the client but was not one of her regular drivers. The Licence Holder asked if anyone would be travelling with the client and was told no as she was capable of travelling alone. On this occasion the client was using her electric wheel chair, not her manual one and the Licence Holder pushed her into the taxi and the member of staff left him to strap her in. The member of staff went back to collect presents and then followed with another client in her car who lives with the client.

The member of staff states that she saw the taxi pulled over in a layby just before the Town Hall in Bury on the way to the client's home and saw the Licence Holder go into the back of the taxi with the client. As the member of staff had another client in her vehicle she could not pull in behind.

The client cannot speak properly but communicates through her Social Worker and with spell cards and on Tuesday 4 July, she told a member of staff that her foot was sore and that the Licence Holder had not strapped her in properly and when he had pulled over he had asked her if she was ok and adjusted the straps. The member of staff reported to her manager that she had seen the vehicle pull over on the return journey home.

The Licence Holder addressed the Panel and explained that he believed he had strapped the client in properly and that the member of staff had witnessed him do so. He stated that he couldn't understand why if they had thought he had pulled over, why they hadn't also stopped and also questioned why the incident had not been reported for 4 days. He stated that when he had dropped off the client he hadn't seen any signs of injury or pain.

The Licence Holder stated that he regularly transports people in wheelchairs and knows how to strap in these passengers. He referred to the fact the client was using an electric wheelchair on that day and he acknowledged that she was a vulnerable person and he needed to take care as electric wheelchairs could sometimes go too fast into the vehicle. He accepted that the bruising was very bad but she had not given any indication that anything was wrong. The Licence Holder had worked for his current operator for 4 years and was genuinely confused about the complaint against him. He provided a number of character references and training assessments he had carried out, for the Panel to consider.

The Licence Holder explained that an electric wheelchair is not easy to move when they are not turned on but would be easy enough to turn on when in the taxi. A manual chair could be pushed easier by the drivers and it was a complaint that a number of drivers had with the electric wheelchairs.

Various questions were asked by the members of the Licensing and Safety Panel, including how the patient had been positioned in the vehicle, what kind of vehicle the taxi was, whether the electric chair could have 'come adrift' in the vehicle and how she had been strapped into the vehicle.

The Licence Holder stated that he had felt that the journey had gone smoothly when he dropped her off at home. There was nothing in the journey to bring to his attention that anything was wrong and he was confused by the serious injury that the patient had sustained.

Delegated decision:

The Panel carefully considered the report, the oral representations and the additional documentation provided by the Licence Holder 24/2017 and taking into account the Council's Conviction Policy and Guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976, **resolved unanimously to take no further action against the licensee.**

The Panel noted that an incident had occurred that had caused severe bruising to the patient's foot but where unclear as to whether this was due to the fault of the Licence Holder. There was no definite evidence to suggest it was his wrong doing. There was also no written statement from the client to explain exactly what had happened and it was also unclear why she was alone in the vehicle.

The Chair reiterated to the Licence Holder his legal obligation to care for all passengers especially those using any type of wheelchair and it was his duty to ensure that these passengers are strapped in accordingly on any future journeys.

2. Licence holder 26/2017 attended the meeting and was unaccompanied.

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.

The report explained that a complaint had been received from a member of the public on 21 April 2017 that the Licence Holder refused to take a registered blind couple with their assistance guide dog.

The complainant, who is also registered blind and therefore reliable on assistance from others reported that, on 20 April 2017, he, his

friend and his friend's wife were attending Bury Blind Society on Tenterden Street, Bury and his friend phoned the Licence Holder's operator at approximately 3 pm to take them home. His friend is familiar with booking taxis and made the request clearly to the booking clerk, explaining it would be the three of them and his assistance dog in the taxi. The complainant's friends left the building first with their dog and when he arrived at the vehicle, he was surprised to see that they were not in the car. His friend explained they had to book another taxi as the Licence Holder had informed them that he would not take the dog as he was allergic to them and would not reconsider their request.

When the Licence Holder was interviewed by the Licensing Service he stated he was aware of the conditions in relation to taking guide dogs and had never refused to take one and would receive information from his operator if a guide dog was to be picked up. He further stated that if he had to take one he would put a sheet on the seat or the dog could go in the boot. He also stated that he was not allergic to dogs.

The Licence Holder was subsequently prosecuted by the Council and on 1 November 2017, attended Manchester Magistrates' Court and pleaded guilty to an offence under section 170 (3) of the Equality Act 2010, which states the driver of a private hire vehicle commits an offence by; failing or refusing to carry out a booking accepted by the operator if the booking is made by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person and; the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog.

The Licence Holder was fined £250.00 with costs of £250.00 and victim surcharge of £30.00.

The Licence Holder addressed the Panel and stated that he had been attacked by a dog when he was younger was now afraid of dogs and won't go near them. The Licensing Service explained to the Panel that drivers could apply for an exemption certificate for medical reasons but fear or phobia would not apply. This Licence Holder had not applied for such a certificate.

The Licence Holder explained that he no longer worked for the original operator as he felt they had not been fair to him and was currently working for another. He provided a reference from this company and a GP's letter which had also been produced in Court, regarding his phobia of dogs.

The report further noted that the Licence Holder had previously been given a strong verbal warning following a complaint received on 5 July 2016 from a member of public about a journey he undertook with the Licence Holder during which he was alarmed by sudden acceleration, hard braking and squeezing through small gaps whilst

talking on his mobile phone, without using hands free. When questioned about this, the Licence Holder stated he had not been using his phone at that time and had requested the complainant to go into the operators office to discuss this but the complainant hadn't.

Delegated decision:

The Panel carefully considered the report, the oral representations and documentation provided by the Licence Holder 26/2017 and taking into account the Council's Conviction Policy and Guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976, **resolved, on a majority decision, to suspend the Licence Holder for a duration of 4 months.**

The Panel noted;

- The Licence Holder had breached the Equality Act 2010 by refusing to take the passenger and his assistance dog, with no rational reasoning as to why
- The Licence Holder had pleaded guilty to the offence and he had been sentenced and fined.
- The offence and the Licence Holder's behaviour were of a serious nature
- The incident had happened very recently.
- The Licence Holder provided no apology and showed no remorse for his behaviour.
- The Licence Holder had a complaint against him for erratic driving in July 2016, whilst this complaint was in April 2017 and the Panel felt that he needed time to reflect and prove he was a fit and proper person to be a private hire driver in Bury.

The Licence Holder was informed of their right of appeal to the Magistrates' Court within 21 days.

COUNCILLOR D JONES

CHAIR

Please note: The meeting started at 7.00 pm and finished at 9.10 pm

