

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on Monday 4 July 2022.

PRESENT: Councillors E Polano (Vice-Chair, in the Chair), A Bell, C Cooke, S Dean, T Higgins, S Hill, D Jones, L Lewis and M Smiles

OFFICERS: S Bonner, J Dixon, C Cunningham and T Hodgkinson

APOLOGIES FOR ABSENCE: Councillors R Arundale, D McCabe, J Walker and S Walker

22/10 **DECLARATIONS OF INTEREST**

There were no Declarations of Interest made by Members at this point in the meeting.

22/11 **MINUTES - LICENSING COMMITTEE - 13 JUNE 2022**

The Minutes of the previous Licensing Committee held on 13 June 2022 were submitted and approved as a correct record.

22/12 **LICENSING COMMITTEE CODE OF PRACTICE**

The Head of Democratic Services submitted a report seeking approval for the Licensing Committee Codes of Practice which had been updated to reflect the most up to date good governance and best practice requirements for Members. The Codes of Practice set out the practices and procedures Councillors and Officers of the Council were required to follow when involved in licensing matters - such as the consideration of applications, the preparation of policy and the enforcement of licensing law – to ensure the Licensing Committee discharged its functions in accordance with its statutory requirements and the principles of good governance, in line with the Council's governance improvement programme.

It was highlighted that failure to follow the Codes of Practice without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual Elected Members and Officers. Breaches of the Code may also amount to breaches of the Members' Code of Conduct.

Approval was also sought to place the Codes of Practice within the Members' Handbook as a source of guidance for Elected Members.

The submitted report provided background information in relation to the Codes of Practice and explained that the Licensing Committee had a dual role. Firstly, it was responsible for general licensing functions delegated to it under the Constitution by virtue of Section 101 of the Local Government Act 1972. Secondly, it was the Statutory Committee created under Sections 6 and 7 of the Licensing Act 2003 to deal with all licensing functions under that Act and Section 154 of the Gambling Act 2005 to deal with functions relating to premises licenses and permits used for gambling.

The licensing functions under the Licensing Act 2003 and Gambling Act 2005 were delegated to Licensing Sub Committees comprising of three Members of the main Licensing Committee. Consideration of applications for licenses and reviews of licenses under the Scrap Metal Dealers Act 2013 were also delegated to Licensing Sub Committees.

There was a separate Code of Practice for the conduct of Licensing Sub Committee Hearings, the decision-making process and the rules of probity specifically for Licensing Sub Committee functions which should be referred to when Members attended those hearings.

The Codes of Practice – Licensing Committee Code of Practice and Licensing Sub Committees Code of Practice - were attached at Appendices 1 and 2 respectively.

ORDERED that both the Licensing Committee Code of Practice and the Licensing Sub Committees Code of Practice be approved and included within the Members' Handbook as a

source of guidance for Elected Members.

22/13 **EXCLUSION OF PRESS AND PUBLIC**

ORDERED that the press and public be excluded from the meeting for the following items on the grounds that, if present, there would be disclosure to them of exempt information as defined in Paragraphs 1, 2, 3 and 7 of Part 1 of Schedule 12A of the Local Government Act 1972 and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

22/14 **APPLICATION FOR REVIEW OF PRIVATE HIRE VEHICLE DRIVER LICENCE REF: 07/22**

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with the review of Private Hire Vehicle Driver Licence, Ref: 07/22, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The driver, who was in attendance at the meeting accompanied by his wife and son, verified his name and address and confirmed that he had received a copy of the report and understood its contents.

The Licensing Manager highlighted that the driver's legal representative had provided a letter in response to the review and this was provided to Members prior to the meeting. It was also confirmed that the driver's name was correct as detailed in the Committee report and not as detailed within his legal representative's letter – although the letter did refer to the driver.

The Licensing Manager presented a summary of the report. The driver was first licensed with Middlesbrough Council in August 2017 and now appeared before Members for review of his licence following a number of road traffic collisions and complaints regarding his driving standards.

The driver was interviewed by a Licensing Enforcement Officer on 18 May 2022 when he provided explanations in relation to the incidents; the offence detailed at 1) and the complaints detailed in the report.

It was highlighted that the incidents detailed in the report all related to road traffic collisions that had occurred in May 2018, January 2019, December 2021 and February 2022. In addition, in August 2020, the driver had been convicted of a speeding offence which was discovered when Officers carried out a routine check of his DVLA licence. He had failed to report the conviction to the Licensing Office as required by condition on his licence and was issued with a warning - a copy of which was attached at Appendix 2.

With regard to the complaints against the driver from members of the public, the first was received on 3 May 2021 when the complainant stated she had undertaken a journey in the driver's private hire vehicle and had been asked for her mobile phone at the start of the journey as a deposit for payment. The complainant alleged that the driver had read her personal notifications whilst he was driving. The driver explained that he had taken the phone as a deposit as the complainant had stated she had no money to pay for the journey. The driver was subsequently issued with a warning, a copy of which was attached at Appendix 1.

In April 2022 a further complaint was received from a member of the public following a journey undertaken by the complainant in the driver's vehicle, regarding the driver's driving standards.

Appendix 3 to the submitted report provided an image of the position of the vehicles involved in the incident on 2 December 2021 when the driver reported that he had been involved in a collision. Appendix 4 to the submitted report also showed an image of the position of the vehicles involved in the incident on 16 February 2022 when the driver reported minor damage to his vehicle.

The driver confirmed that the report was an accurate representation of the facts and was invited to address the Committee. The driver presented his case and responded to questions from Members, the Licensing Manager and the Council's Legal Representative.

It was confirmed that there were no further questions and the driver, his wife and son, and Officers of the Council, other than representatives of the Council's Legal and Democratic Services, withdrew from the meeting whilst the Committee determined the review.

Subsequently, all parties returned and the Chair announced a summary of the Committee's decision and highlighted that the driver would receive the full decision and reasons within five working days.

ORDERED that Private Hire Vehicle Driver Licence, Ref No: 07/22, be retained but that the driver be issued with a warning and be required to complete the Driver Improvement Scheme, at his own expense, as follows:-

Authority to act

1. Under Section 61 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may revoke or suspend a private hire/hackney carriage vehicle driver's licence on the grounds that:
 - Since the grant of the licence the driver has been convicted of an offence involving dishonesty, indecency or violence;
 - Since the grant of the licence the driver has committed an offence or breached the Act or the Town Police Clauses Act 1847;
 - For any other reasonable cause.
2. The Committee considered Section 61 of the Act, Policy Guidance to Applicants, Licensed Drivers and Members of the Licensing Committee which came into force on 1 November 2019 ("the Policy"), the report and the representations made by the driver and his representative.

Decision

3. After carefully considering all of the information and considering the review on its own merits, the Committee decided to issue a formal warning in relation to the driver's driving standards, for his driving standards to improve and that a further driving incident may risk his licence being revoked. The Committee decided to require the driver to attend a driver improvement scheme approved by the Council, at his own expense, as soon as possible but not later than three months from the date of the decision notice. Should the driver fail to attend the driver improvement scheme within the time required or, if after completing the improvement training, the driver scored a majority of "needs improvement" or "poor", his licence should be further reviewed and brought back to Committee.

The reasons for the decision are set out below:-

Reasons

4. The driver had been granted a licence on 29 August 2017. Since that time, the driver has had four collisions whilst driving a private hire vehicle. The driver claimed each time it was the other driver's or person's fault, however, the Committee considered that to have so many collisions indicated that the driver was not taking sufficient care or paying sufficient attention to other drivers or people on the road.
5. The driver was convicted of speeding on 20 August 2020 and currently had three points on his licence. However, the Committee noted that from the data provided by his employer he was speeding whilst carrying a passenger in his private hire vehicle on 15 April 2022. That passenger also made a complaint that the driver was driving erratically and his standard of driving was poor.
6. The Committee considered that the driver had received a previous warning on 15 July 2021 for failing to report the speeding conviction on 20 August 2020. The Committee considered it was imperative that Licensees complied with the conditions on their licence and report any arrest, charge, caution or conviction for any offence to the licensing team for officers to assess whether that licensee remained safe and suitable.
7. The Committee, after considering the collisions, speeding and complaint, decided that it must warn the driver that his driving standards must improve immediately and any further

driving incident may risk his licence being revoked.

8. The driver was required to attend a Council approved driver improvement scheme as soon as possible but within three months at his own expense. This should refresh and re-train the driver to ensure his driving standards improved and he was a safer driver in order to protect the public. However after completing the training, if the driver scored a majority of "needs improvement" or "poor" in his assessment, his licence should be further reviewed and brought back to Committee to assess whether he was risk to the travelling public.
9. This was accordance with the Policy which stated a licensee with a history of poor driving should be referred to Committee and at the very least the licensee should be required to attend a driver improvement scheme and a warning be given that further driving incidents may result in a revocation of his licence.

The Committee's decision was final and there was no internal or statutory route of appeal, however, the driver had the option of judicially reviewing the lawfulness of the decision to the high court if grounds had been made out. If the driver decided to challenge the decision by way of judicial review he may wish to seek independent legal advice as to the grounds and time limits that may apply. Please note if the driver decided to take this course of action the Council would apply for any costs it incurred in defending its decision.