

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on Monday 29 November 2021.

PRESENT: Councillors R Arundale (Chair), C Cooke, S Dean, T Higgins, C Hobson, L Lewis, M Smiles and B Cooper

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

APOLOGIES FOR ABSENCE: Councillors E Polano, A Bell, S Hill, D Jones, D McCabe, J Walker and S Walker

21/34 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

21/35 **MINUTES - LICENSING COMMITTEE - 8 NOVEMBER 2021**

The minutes of the Licensing Committee held on 8 November 2021 were submitted and approved as a correct record.

21/36 **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.

**** SUSPENSION OF COUNCIL PROCEDURE RULE NO. 5 - ORDER OF BUSINESS**

At 1.00pm, neither applicant or driver was in attendance, therefore, the Committee re-ordered the agenda to provide the applicant and driver additional time in which to arrive.

ORDERED: that in accordance with Council Procedure Rule No. 5, the Committee agreed to vary the order of business to consider the agenda items in the following order: 7, 6, 5.

21/37 **ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.**

Potential Policy Change

The Licensing Manager wished to bring to Members' attention a formal request received from a large private hire operator in relation to potentially streamlining requirements and processes for new private hire vehicle applicants.

It was explained that, since the start of the Covid pandemic, there was a national shortage of private hire vehicle drivers as many had left the trade to take up other occupations and had not returned. This had resulted in customers waiting longer for taxis and a subsequent increase in complaints regarding taxi availability. It had also resulted in many private hire vehicle operators having large numbers of vehicles not being driven.

The request from the taxi Company for the Council's consideration was to:-

1. Abolish the topographical section of the knowledge test (in line with Newcastle, North Tyneside, Sunderland, Wolverhampton and other local authorities across the country).
2. Consider delivering comprehensive training to help applicants achieve the knowledge required to pass all other sections of the test.
3. Abolish the requirement for the independent driving assessment as the Council had the ability to refer a driver for training should they consider it necessary.

The Licensing Manager highlighted that the topographical part of the knowledge test was abolished in Sunderland recently without public consultation and that some local authorities had only removed that part of the knowledge test for private hire drivers as private hire operators now tended to have sophisticated booking systems with Sat Nav which was not always the case for Hackney Carriages.

In relation to considering delivery of bespoke training for applicants, it was explained that driver testing was previously delivered by Officers and undertaken face to face, however, this testing had moved on-line in Middlesbrough some time ago.

The independent driver assessments were previously delivered by the Driver Standards Agency who delivered a bespoke driver test across the Tees Valley Local Authorities up until four years ago when the Government abolished the test without consultation. From that point the Tees Valley Local Authorities decided to keep the test which was delivered by Hartlepool Council Road Safety Team on behalf of the Tees Valley authorities. Those authorities that did not maintain the independent test tightened up on the rules around the number of penalty points a driver was able to accrue before being required to complete a Driver Improvement Scheme.

Should a decision be made to abolish the independent driver assessment, Officers would propose that any driver accruing six penalty points on their licence should be required to undertake the driver improvement scheme and that any driver accruing seven to nine points should expect their licence to be revoked.

Officers had been working on reviewing the current Taxi Licensing Policy as a result of new National Minimum Standards being introduced and this was open to a full consultation process across all local authorities. Middlesbrough was also proposing amendments in two areas of the Policy – Proposed Changes to Vehicle Age Policy and Proposed Changes to Window Tint Policy.

Following a lengthy discussion in relation to all of the issues raised, the Council's legal representative summarised that:-

- The full Taxi Licensing Policy was currently being reviewed due to National Minimum Standards intended to uplift safety and this was required to be subject to a full consultation process.
- The Committee needed to provide a view as to whether the three proposals referred to during the meeting should also be subject to a full consultation or whether they should be subject to a short consultation.

In response to a suggestion that a Members' briefing be arranged to advise all Members of the proposals, it was confirmed that all Members were consulted on changes to the Licensing Policy as a matter of course.

ORDERED as follows:-

1. That relevant Officers from Legal Services and Licensing consider the three proposals raised and that the proposals be subject to a short consultation period.
2. That relevant Officers from Legal Services and Licensing determine who should be consulted on the proposals and to update the Chair of the Licensing Committee.

21/38

REVIEW OF A PRIVATE HIRE VEHICLE DRIVER LICENCE REF 11/21

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: 11/21, 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, verified his name and address and confirmed that he had received a copy of the report and understood its contents.

The Licensing Manager presented a summary of the report. It was highlighted that the driver was first licensed with Middlesbrough Council in May 2019 and had no previous convictions.

The driver now appeared before Members following a complaint made by a member of the public on 11 October 2021 in relation to an incident involving the driver on 9 October 2021.

The complaint related to a journey booked by the female passenger using a taxi booking app with the driver's operator prior to taking the journey. The passenger pre-paid the fare stated on the app and, whilst she considered it to be on the low side, she did not question it as she had not travelled that journey before.

During the actual journey, the passenger alleged that the driver had become aggressive towards her, stating that the fare was wrong and was too low and that she needed to pay more. He initially checked with his operator who told him that the fare was correct and that he did not have to undertake the job if he did not want to. The driver had continued to complain to the passenger about the fare and had shouted at her and told her to get out of the vehicle if she was not willing to pay more. The passenger refused as they were travelling on a dark country road and she believed the fare to be correct and had already paid using the app. She had explained to the driver that she did not carry cash with her to which he responded he would drive her to a cashpoint. The passenger had again refused and asked to be taken home but stated she felt scared. The driver stated he would 'sort it out' and kept looking at his phone.

The complainant stated that once they arrived at her home, the driver informed her that the operator had added £4.50 to her fare. The complainant stated that she checked her bank account and the amount of £11.70 had been taken by the taxi firm (an additional £4.50 to the original fare).

The complainant had telephoned her father when she got home as she felt frightened and upset. Her father had subsequently contacted the taxi operator who advised that the additional money was charged due to two extra drop offs made on the journey. A copy of the complaint was attached at Appendix 1 and a copy of an email to the Licensing Officer from the complainant's father was attached at Appendix 2.

The driver was interviewed by a Licensing Enforcement Officer on 5 November 2021 when he provided an explanation in relation to the complaint. The driver's taxi operator confirmed that the complainant had been refunded the amount for the payment of £11.50 that was taken for the journey together with an apology. A copy of the driver's private hire booking record for the evening of 9 October was attached at Appendix 3.

At this point, the complainant, accompanied by her father, joined the meeting. The Chair introduced those present and explained the procedure to be followed. The complainant confirmed the content of her complaint and provided her account of the incident on 9 October 2021. The complainant responded to questions from Members, the Council's Legal Representative and the driver. The complainant's father also responded to questions from Members and the Council's Legal Representative.

There were no further questions and the complainant and her father withdrew from the meeting.

The driver was invited to present his case and provided his recollection of the journey on 9 October. The driver 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 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: 11/21, be revoked, 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 had been convicted of an offence involving dishonesty, indecency or violence;
 - Since the grant of the licence the driver had 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 the witness.

Decision

3. After carefully considering all of the information and considering the review on its own merits the Committee decided to revoke the private hire vehicle driver’s licence on the grounds of any other reasonable cause for the reasons set out below.

Reasons

4. It was a condition of the driver’s private hire vehicle driver’s licence that he must ensure that he charges passengers only the fare agreed between the operator and the passenger (unless a deviation of the route was requested by the hirer when an amended fare shall be agreed with the operator).
5. It was also a condition of the driver’s licence that he took all reasonable steps to ensure the safety of passengers conveyed in his vehicle, behaved in a civil and orderly manner at all times and at all times treat their passengers or any potential passenger with courtesy and respect.
6. The Policy required drivers to be courteous, avoid confrontation, not exhibit prejudice, not take the law into their own hands and demonstrate conduct befitting to the trust that was placed in them. The Policy confirmed drivers should not take advantage of their position of trust.
7. The Policy confirmed drivers were in an extreme position of trust as they may transport passengers travelling alone. It required a licensed driver to be a trustworthy person as it was comparatively easy for a dishonest driver to defraud the public by demanding more than the agreed fare.
8. A complaint was received from a female passenger who was travelling alone with the driver. The complainant stated and confirmed in Committee that she ordered a taxi and paid for it by an app in the sum of £6.70. The driver had told her the price was wrong but had phoned the office who confirmed the price was correct. The driver had then shouted at her and told her to get out of the vehicle on a dark country road in the middle of nowhere. The complainant refused but was very scared as a result. The driver continued to shout at her saying it was not fair and that she would have to go to a cash machine or he would not take her home. The complainant confirmed she was very scared throughout and was now worried about getting into a taxi alone. The complainant’s bank details showed that on top of the original fare of £6.70 an additional fare of £11.20 was pending. This was the £6.70 fare with additional drop offs which the driver had added. The drop offs did not take place. The Complainant’s father confirmed that the Complainant was very scared as a result of the journey.
9. The driver told Licensing Officers he had just dropped off a fare to the same pub where the complainant requested the booking in Hilton Village. He claimed as soon as he accepted the job the complainant got straight in his vehicle which is why he did not check the fare and did not refuse the job. However, the operator confirmed the booking records showed the previous booking was in Norton and was completed at 20:12 hours. This booking was picked up at 21:13 hours. The driver did not, therefore, have a pre-booked job to drop off at the pub in Hilton. The driver then changed his story at Committee and stated he was waiting near the pub in Hilton in between jobs. The

Committee did not consider the driver to be truthful and considered he may have been taking other jobs that were not pre-booked or lied about the circumstances of accepting the job.

10. The driver stated that the app did not show the fare. However, the operator confirmed that the driver received the full details of the booking before accepting it, including the price. The Committee, therefore, considered the driver was being untruthful.
11. The driver claimed that the complainant agreed for him to add one drop off to the price. The complainant confirmed she did not agree to the addition of any drop offs and informed the Committee that the driver said he would sort it. The Committee considered the driver was untruthful and the drop offs were not agreed.
12. The driver had added two drop offs to the fare. He claimed that he did this by mistake as he clicked the app then clicked it again as a result of a delay on the system. However, the operator confirmed that the drop offs were added by the app being clicked on two different roads, one being Low Lane and the other being Stainton Way. The Committee, therefore, considered the driver was again being untruthful.
13. The driver denied shouting at the passenger or telling her to get out of the vehicle. However the actions of the driver led to the complainant feeling very scared and scared to travel in private hire vehicles alone again. The complainant confirmed he was shouting during the journey.
14. The fare was agreed between the operator and the complainant and it was wholly inappropriate for the driver to continue to demand the complainant to pay more throughout the journey and asking her to go to a cash machine. It was wholly inappropriate and dangerous to tell the complainant to leave the vehicle on a dark secluded road. It was wholly inappropriate that a complainant felt very scared throughout and after the journey as a result of the driver's conduct. The Committee also considered the driver had been dishonest not only in increasing the fare but in respect of his explanations as set out above.
15. The purpose of the Licensing regime was to protect the travelling public against drivers who conduct themselves as the driver did which left a female passenger, travelling alone, feeling very scared and from untrustworthy drivers such as the Licensee. The Committee decided nothing less than revocation would meet its duty to protect the public.
16. If the driver was aggrieved by the decision he may appeal to the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough within 21 days from the date of the notice of the decision.
17. If the driver appealed the decision and the appeal was dismissed by the Magistrates Court, the Council would claim its costs in defending its decision from the driver which could be in the region in excess of £750.

21/39

APPLICATION FOR A COMBINED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE REF: 08/21

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with an application for a Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref: 08/21, 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, accompanied by his legal representative, was in attendance at the meeting and verified his name and address and confirmed that he had received a copy of the report and understood its contents.

The Licensing Manager presented a summary of the report in relation to the application. It was highlighted that applicant was previously licensed with Middlesbrough Council in 2006 but his licence was revoked in 2018 following his conviction for the offence at 2) in the report. The applicant appealed the decision, however, he was unsuccessful.

The applicant now appeared with a fresh application which was due to be considered a the previous Licensing Committee, however, Members deferred consideration due to a request for further information in relation to the revocation decision and from the Council's LADO (Local Authority Designated Officer).

The applicant was interviewed by a Licensing Enforcement Officer on 27 August 2021 when he confirmed his previous explanations for the offences at 1) and 2) in the submitted report.

At the Licensing Committee in June 2018, Members also considered further information provided by Cleveland Police in relation circumstances leading to the applicant's conviction, attached at Appendix 1. This information raised safeguarding concerns and subsequent enquiries with the Council's LADO revealed Social Services involvement. A meeting with the LADO was held in April 2018 and was also considered by the Committee at the time. A copy was attached at Appendix 2.

On 16 November 2021, further enquiries were made with the LADO and it was confirmed that there had been no Social Services involvement since 2018.

A copy of the Licensing Committee's decision made in June 2018 to revoke the applicant's licence was attached at Appendix 3.

The report also contained information taken from Council records showing that the applicant was issued with warnings in relation to four separate complaints in 2009, 2016 and two in 2017.

The applicant confirmed that the report was an accurate representation of the facts and was invited to address the Committee in support of his application.

The applicant's legal representative addressed the Committee in support of the application. The legal representative and the applicant responded to questions from Members and the Council's legal representative.

It was confirmed that there were no further questions and applicant, his legal representative 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 application.

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

ORDERED that the application for a Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref 08/21 be refused, as follows:-

Authority to Act

1. Under Section 51 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may decide to grant a combined hackney carriage and private hire vehicle driver's licence only if it was satisfied the driver was a fit and proper person to be granted such a licence.
2. The Committee considered Section 51 of the Act, Policy Guidance to Applicants, Licensed Drivers and Members of the Licensing Committee which came into force on the 1 November 2019 ("the Policy"), the report and representations made by the applicant and his representative.
3. The Application was considered on its own particular facts and on its merits.

Decision

4. After carefully considering all of the information, the Licensing Committee decided to refuse to grant the application for a combined hackney carriage and private hire vehicle driver's licence on the grounds that the Committee was not satisfied the applicant was a fit and proper person to be granted the licence.

Reasons

5. Licensed drivers had close regular contact with passenger and were in an extreme position of trust, it was a high risk environment for passengers and the primary and overriding objective of the Committee was to protect the public.
6. For an isolated conviction of common assault, the Policy required an incident-free period of at least three years since the completion of the sentence imposed. If there had been more than one conviction of an offence like assault there must be an incident free period of five to ten years.
7. However, the Policy also confirmed that a person who responded with violence when provoked would not be suitable to be granted a licence. It confirmed that the Council deemed incidents of domestic violence to be extremely serious because if an individual was prepared to assault an individual in a domestic or home environment, then they would have concerns over the person's ability to maintain their temper when working in an environment dealing with members of the public.
8. Under the Policy, multiple incidents were likely to give greater cause for concern and may demonstrate an inappropriate pattern of behaviour which showed an applicant was unsuitable to be granted a licence. The Committee must assess the offending on the whole rather than separately in order to assess the suitability of an applicant.
9. The applicant was convicted of Common Assault on 12 March 2018. He was sentenced to a 12 month Community Order with 80 hours unpaid work. The applicant received a restraining order for two years. Although the applicant's solicitor confirmed that the unpaid work would have been completed quickly and the Community Order would not have been required, therefore, for 12 months, the sentence in accordance with the documentation was 12 months and, therefore, expired on 11 March 2019. A restraining order protecting another person from the applicant was in place until 11 March 2020. Taken as a whole the application was still within the minimum three year incident-free period required by the Policy for a single isolated conviction for assault.
10. However, the Committee considered that there were other incidents and the assault was not a one-off isolated out of character incident. A previous Local Authority Designated Officer ("LADO") investigation report stated there was a significant history of domestic violence and intimidation since 2016 with social workers being involved and supervision required for the applicant to access his children.
11. The Committee noted the representations that the applicant had previously been licensed for a long period since 2006 without complaint from passengers until his licence was revoked as a result of the conviction. However, during the life of that licence, whilst being in such a position of trust and having the privilege of a licence, he acted violently which resulted in a serious sentence of a requirement of unpaid work.
12. The Committee was also concerned that the court found it necessary to protect another person from the applicant for a period of two years.
13. In addition, although in no way as serious as the assault, the applicant did not have a clean record when he was licensed as there were other issues which warranted three warnings. The applicant also had a previous old conviction for dishonesty and whilst the Committee considered his explanation for the offence did not match up to the sentence imposed, it did consider the conviction too old to be relevant.
14. The Committee considered all of the representations including the applicant confirming he had moved on with his life, had a new wife, did not see he ex-wife and that there had been no further issues and the issues related to the relationship only with his ex-wife which he regretted.
15. However, the Committee considered the applicant was not fit and proper to be licensed because of his domestic abuse to his ex-wife and for the reasons set out above. The decision was in accordance with the Policy and there were no good reasons to depart from it. The report noted the Government's particularly serious view of violent offences by proposing a 10 years conviction free period standard.

16. If the applicant was aggrieved by the decision he may appeal to the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough within 21 days from the date of the notice of the decision.
17. If the applicant does appeal the decision and the appeal was dismissed by the Magistrates Court, the Council would claim its costs in defending its decision from the applicant which could be in the region in excess of £750.