

Licensing Sub-Committee

Minutes - 22 February 2017

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr John Rowley

Conservative

Cllr Patricia Patten

Employees

Elaine Moreton
Leonie Woodward
Marissa Sehmar
Mike Hooper

Section Leader (Licensing)
Lead Lawyer
Legal Work Experience (observing)
Democratic Services Officer

Item No. *Title*

1 Apologies for absence

There were no apologies for absence.

2 Declarations of interest

Councillor Rowley declared a non-pecuniary personal interest in agenda item 8, Application for a Hackney Carriage Driver's Licence, as the Ward Member for Blakenhall, where the applicant lived.

3 Exclusion of press and public

Resolved: That the Press and public be excluded.

4 Application for a Private Hire Vehicle Driver's Licence (14:00)

The Sub-Committee had received a report regarding an application for a Private Hire Driver Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee in accordance with Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions, specifically paragraphs 5.1.6(a), 5.1.13(a) and 5.1.3(a).

Prior to the meeting, the Democratic Services Officer had received a call from the wife of the applicant (AR) in which she said that her husband had been abroad when notice of the Hearing had been received and that through oversight on her part she had neglected to notify him of it. He had returned to the country that morning and was heavily jet-lagged. She intended to speak to him ahead of making a second call to the Democratic Services Officer to inform him of whether or not AR intended to attend. No second call was received and AR was not present.

Resolved: That consideration of the application be deferred to a future Sub-Committee meeting.

5 Application for a Private Hire Vehicle Driver's Licence (14:30)

The Chair invited Elaine Moreton, Section Leader (Licensing) and the Applicant (AK) into the Hearing, made introductions and outlined the procedure to be followed.

The Section Leader (Licensing), outlined the report regarding an application for a Private Hire Driver Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee in accordance with Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions, specifically the accumulation of 9 penalty points on his driving licence.

All parties were invited to question the Section Leader (Licensing) on the report and in response to a question from the Chair she confirmed that the 6 penalty points accrued in July 2016 had been due to driving with the incorrect insurance.

AK confirmed that the information contained within the report was accurate.

The Chair invited AK to make representations.

AK stated that on the evening of the driving offence referred to he had been working in a fast food outlet and, due to staff shortages, his boss asked him to make a home delivery which he did in his own car. During the journey he was stopped by the Police and charged with driving with the incorrect insurance. He had been unaware that he was committing an offence but accepted the 6 points and a fine. He had been driving for 10 years without any other problems. Driving a taxi would afford him the flexibility to both work and take care of his unwell wife and their children.

All parties were invited to question the Applicant on his submission.

In response to questions from the Sub-Committee, AK stated the following:

- The Police had pulled him over as one of the car's back lights were not working;
- Whilst he would prefer to work in Birmingham to enable him to take and collect his children from school, he also intended to look for work in Wolverhampton;
- His boss had not checked if he had the correct insurance. Following the incident AK left his job as he felt he could not work for that person. AK paid the fine himself;
- The 3 points received for speeding was for exceeding the speed limit in an area in which the limit had been reduced from 40 mph to 30 mph;
- He had not yet approached any taxi companies for work.

The Chair invited the Section Leader (Licensing) to question AK. No questions were asked.

The Chair invited AK to make a final statement. AK said that he would appreciate a positive outcome and that it would help him and his family greatly.

AK and the Section Leader (Licensing) left the room to allow the Sub-Committee to determine the matter.

The Chair invited AK and the Section Leader (Licensing) back into the Hearing.

The Chair detailed the decision of the Sub-Committee.

Resolved

That, having considered all the evidence presented at the Hearing, both written and oral, the Sub-Committee agree to grant a Private Hire Vehicle Driver's Licence for a period of 12 months. The Licence is subject to AK passing the knowledge test and a satisfactory medical, if he hasn't already done so. The Licence is also subject to review by Licensing Services in six months time.

The Applicant has a right of appeal, against the decision of the Sub-Committee, to the Magistrates' Court within 21 days of receipt of this decision.

The Senior Solicitor detailed the appeals process as well as the costs and potential costs to the Applicant.

AK and the Section Leader (Licensing) left the room.

6 Change to the Order of Agenda Items

The Sub-Committee had received a report regarding an application for a Private Hire Driver Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee in accordance with Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions, specifically paragraphs 5.1.4(a), 5.1.6(a), 5.1.12(a) and 5.1.3(a).

The Democratic Services Officer had received notice that MA had arrived at the wrong venue and would therefore be delayed.

Resolved: That consideration of the application be deferred to later in the day to afford MA the opportunity to attend.

7 Application for a Private Hire Vehicle Driver's Licence (15:30)

The Chair invited Elaine Moreton, Section Leader (Licensing) and the Applicant (RK), accompanied by MN, a private hire vehicle driver in Birmingham, into the Hearing, made introductions and outlined the procedure to be followed.

The Section Leader (Licensing), outlined the report regarding an application for a Private Hire Driver Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee in accordance with Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions, specifically paragraphs 5.1.10(b), 5.1.13(b) and 5.1.6(b).

All parties were invited to question the Section Leader (Licensing) on the report. No questions were asked.

RK confirmed that the information contained within the report was accurate.

The Chair invited RK to make representations.

With the agreement of the Chair, RK circulated a character reference from his local Member of Parliament. RK stated that at the time of his drug related offences he had been having a bad time and stress with his children and had smoked cannabis whilst playing snooker with friends, who he now stayed away from, but had found that it made him paranoid. He no longer smoked it and would be willing to take a drug test to prove so. He had never drank alcohol. He had recently undertaken work in the community and worked with his local councillors. He was a very trustworthy and honest person that needed a secure job to support a large family. He added that he had never stolen from anyone.

MN added that he trusted RZ, he was an honest person and would be a good PHVD. He needed the job to allow him to take care of his kids.

All parties were invited to question the Applicant on his submission.

In response to questions from the Sub-Committee, RK stated the following:

- Although the cannabis conviction were 2 years apart, he had only taken it occasionally during a stressful time;
- For the second drug offence the Police had found him parked up in a park smoking cannabis. He was not driving. He pleaded guilty;
- At the time of the drug offences he had not recognised the bad example that he was setting for his children but he was now disgusted with himself. He had not smoked cannabis since 2015;
- He was currently a delivery driver for a takeaway restaurant on a zero hours contract;
- He saw the key roles of a PHVD as being responsible, picking up the public, being nice, pleasant, loyal and respectful, providing customer service with a smile on his face and driving safely. He would also assist any customers in need, such as disabled people;
- He had approached a taxi company with a view to working for them;

No questions were asked by officers.

The Chair invited AK to make a final statement. MN said that he knew a lot of PHVD drivers and thought that RZ would make a good one. RZ said that his father had died when he was young and that his mother had brought her children up to show respect regardless of colour. He had got married young and had been friends with the wrong people. He believed in working hard and behaving in the right way as he did not want to bring shame on his parents. He would appreciate from the heart if a licence was granted.

RK, MN and the Section Leader (Licensing) left the room to allow the Sub-Committee to determine the matter.

The Chair invited RK, MN and the Section Leader (Licensing) back into the Hearing.

The Chair detailed the decision of the Sub-Committee.

Resolved

That, having considered all the evidence presented at the Hearing, both written and oral, the Sub-Committee is not satisfied that you are a fit and proper person and therefore, in accordance with Section 51 of the Local Government (Miscellaneous Provisions) Act 1976, have decided not to grant RK a Private Hire Vehicle Driver's Licence. This decision is made in accordance with paragraphs 5.1.13(b) and 5.1.6(b) of the guidelines relating to relevance of convictions and breaches of licence conditions agreed by the Licence Committee on 25 July 2012.

The Applicant has a right of appeal, against the decision of the Sub-Committee, to the Magistrates' Court within 21 days of receipt of this decision.

RK, MN and the Section Leader (Licensing) left the room.

8 Application for a Private Hire Vehicle Driver's Licence (15:00)

The Chair invited Elaine Moreton, Section Leader (Licensing) and the Applicant (MA), accompanied by his wife, into the Hearing, made introductions and outlined the procedure to be followed.

The Section Leader (Licensing), outlined the report regarding an application for a Private Hire Driver Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee in accordance with Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions, specifically paragraphs 5.1.4(a), 5.1.6(a), 5.1.12(a) and 5.1.3(a).

All parties were invited to question the Section Leader (Licensing) on the report. No questions were asked.

MA confirmed that the information contained within the report was accurate.

The Chair invited MA to make representations.

MA apologised for being late and the Chair assured him that it would not affect the Sub-Committee's consideration of the matter.

MA said that he had presented to the mini-panel a reference from a Birmingham based taxi company which supported his application. He worked phenomenally hard for that company and he wanted to make a positive contribution to society. Regarding his 2012 conviction for battery, his wife had taken offence to his actions and had reported him to the Police, quite rightly. With regard to the fine and penalty points received for using a vehicle uninsured against third party risks, he had overlooked the insurance payments due to hardship.

All parties were invited to question the Applicant on his submission.

In response to questions from the Sub-Committee, MA stated the following:

- The battery convictions was deemed to be an act of domestic violence;
- He was of small physical stature and therefore if he encountered problematic customers it would be in his interest to be polite and to get them out of his vehicle in a nice manner at the end of their journey;
- Regarding the conviction for battery, his wife had got angry with him for smoking cannabis. His wife stated that she didn't like him doing it and she began breaking plates. He had then slapped her to calm her down. She now felt that she should not have reported the incident to the Police;
- He had grown 8 small cannabis plants for personal use only, not to sell. His wife had informed the Police of them;
- He felt that he should be granted a PHVD licence as he now had the burden of a family. Although the term battery sounded bad on paper the incident was a gentle slap to calm his wife down. He had since become a different person and would not have dragged his family to the meeting if he didn't believe that to be true;
- Regarding the insurance conviction, he had not renewed it due to a lack of funds. He was now an organised person;

- Driving would pay more than the clerical and customer complaints work that he currently undertook.

In response to questions from the Lead Lawyer, MA stated the following:

- He had 3 children, 2 of whom were alive when he was growing cannabis in the house;
- His children had been there when the argument leading to his battery conviction occurred. His wife added that it was the smoking of cannabis in the presence of their children that had led to her losing her temper;
- He acknowledged that one their children was particularly vulnerable as she was autistic but said that such things create difficulties.

No questions were asked by the Section Leader (Licensing).

The Chair invited MA to make a final statement. MA said that he was happy that the Sub-Committee had given him a fair opportunity and that they had afforded his wife the chance to explain the circumstances leading to the battery conviction. He thought that the Sub-Committee could see the type of person that he was.

MA, his wife and the Section Leader (Licensing) left the room to allow the Sub-Committee to determine the matter.

The Chair invited MA, his wife and the Section Leader (Licensing) back into the Hearing.

The Chair detailed the decision of the Sub-Committee.

Resolved

That, having considered all the evidence presented at the Hearing, both written and oral, the Sub-Committee is not satisfied that you are a fit and proper person and therefore, in accordance with Section 51 of the Local Government (Miscellaneous Provisions) Act 1976, have decided not to grant RK a Private Hire Vehicle Driver's Licence. This decision is made in accordance with paragraphs 5.1.12(a) and 5.1.13(a) of the guidelines relating to relevance of convictions and breaches of licence conditions agreed by the Licence Committee on 25 July 2012.

The Applicant has a right of appeal, against the decision of the Sub-Committee, to the Magistrates' Court within 21 days of receipt of this decision.

MA, his wife and the Section Leader (Licensing) left the room.

Having declared an interest in the following item, Councillor Rowley left the meeting.

9 **Application for a Hackney Carriage Driver's Licence (16:00)**

The Chair invited Elaine Moreton, Section Leader (Licensing) and the Applicant (BS), accompanied by his solicitor, Mahmood Hussain of MH Solicitors (MH), into the Hearing, made introductions and outlined the procedure to be followed.

The Section Leader (Licensing), outlined the report regarding an application for a Hackney Carriage Driver's Licence, which had been circulated to all parties in advance of the meeting. The matter had been referred to the Sub-Committee in accordance with Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions, specifically paragraphs 5.1.10(b), 5.1.3(b) and 5.1.9.

All parties were invited to question the Section Leader (Licensing) on the report. No questions were asked.

MH confirmed that the information contained within the report was accurate.

The Chair invited BS to make representations.

With the agreement of the Chair, MH circulated BS character references from his current employer and his place of worship, which included photographs of his community work. Documents detailing the death of his child and the medical records of his other child were also circulated.

On behalf of BS, MH stated that BS was a fit and proper person and should be granted a licence. He had driven taxis for almost 10 years prior to his 2000 conviction for indecent assault on a female 16 or over. Since then he had only had one speeding offence. The relevant conviction was the only really serious offence on his record. He understood that it involved touching, which BS continued to deny, which was not to say that it was not serious. The offence would today be categorised as the lowest of the 3 'sexual offence' categories, at the bottom end of the spectrum and BS had served 3 months imprisonment and 3 months on licence. It was a long time ago and no pattern of behaviour had occurred since then. He was not a persistent offender and the guidelines stated that an applicant could be eligible for a licence after 7 years and the Sub-Committee had discretion to grant one. For BS to face an indefinite ban would be to put the offence on a par with terrorism or murder. He had previously twice been granted fit and proper person status and the circumstances should allow a lot of mitigation.

The reason for providing written evidence relating to the applicant's existing child was to show the need for BS to have a job that enabled him to work flexible hours. He needed to be able to visit his child whenever necessary.

BS had enjoyed his previous taxi work and was very eager to drive again. He was sorry for occurrences in the past.

All parties were invited to question the Applicant on his submission.

In response to questions from the Sub-Committee, BS stated the following:

- The circumstances of the indecent assault conviction were that following a drop-off a couple at 3am, BS wound down his window to ask for the fare. The couple were drunk and laughing and had left a rear door open so he got out to shut it and again asked for the fare. The female passenger said that she worked in town and would pay later so he gave her his card. The male passenger then tried to come at him so he left. 2 weeks later the female passenger reported him and 2 days on the Police arrived at the taxi rank to take him to the station, where he was charged;

- He was later convicted despite there being no proof of the incident;
- The male passenger had come at him, touched him and the female passenger had stopped him. MH added that BS Was alleged to have hugged her;
- His current work as a delivery driver entailed deliveries to both shops and residential properties.

The Lead Lawyer corrected MH's earlier statement that the indecent assault would today be categorised as the lowest of the 3 'sexual offence' categories, saying that the lowest point would be a high end community order whereas the offence referred to was only the lowest starting point for culpability A. The guidelines followed in 2000, based on the 1956 Act, would be a lot more lenient than the 2014 guidelines followed today.

In response to questions from the Lead Lawyer, MH stated the following:

- BS had told him that the offence was a hug or a touch. BS demonstrated how he was alleged to have touched the female passenger.

In response to questions from the Sub-Committee, MH stated the following on behalf of BS:

- He recognised that if he admitted guilt with regard to the sexual assault it could help his case but he specifically instructed me that he didn't do it. In context, even if he had done it, he had done nothing since that conviction;
- The earlier demonstration by BS was of what the female passenger accused him of and what he denied doing.

In response to questions from the Section Leader (Licensing), BS again demonstrated the sexual assault that he was convicted of and stated the following:

- He had got out of the car to close the left-side rear door. The male passenger leant on the open driver's side window and BS went to move him. The female alleged that that was when he held her;
- Between 2000 and 2010 his time was taken up with part-time work, visits to his mother in India and looking after his unwell child.

The Chair invited BS to make a final statement. On BS's behalf, MH said that he understood that public safety was paramount and that he was a fit and proper person. Even for a serious assault the guidelines state that discretion can be applied after 7 years and the relevant conviction in this case was 17 years ago with no incidents since then. A licence could be granted without fear.

BS, MH and the Section Leader (Licensing) left the room to allow the Sub-Committee to determine the matter.

The Chair invited BS, MH and the Section Leader (Licensing) back into the Hearing.

The Chair detailed the decision of the Sub-Committee.

Resolved

That, having considered all the evidence presented at the Hearing, both written and oral, the Sub-Committee is not satisfied that you are a fit and proper person and therefore, in accordance with Section 51 of the Local Government (Miscellaneous Provisions) Act 1976, have decided not to grant RK a Private Hire Vehicle Driver's Licence. This decision is made in accordance with paragraph 5.1.9 of the guidelines relating to relevance of convictions and breaches of licence conditions agreed by the Licence Committee on 25 July 2012.

The Applicant has a right of appeal, against the decision of the Sub-Committee, to the Magistrates' Court within 21 days of receipt of this decision.

BS, MH and the Section Leader (Licensing) left the room and the Chair closed the meeting