

## **Licensing and Appeals Sub Committee Hearing Panel**

### **Minutes of the meeting held on Monday, 15 April 2019**

**Present:** Councillor Ludford (Chair) – in the Chair

**Councillors:** Grimshaw, Jeavons and Lynch

#### **LACHP/19/36. Interests**

Councillor Lynch declared a personal and prejudicial interest in Item 9, as she knew the attendee in a personal capacity. Councillor Grimshaw replaced her while this matter was considered and determined.

#### **LACHP/19/37. Exclusion of the Public**

A recommendation was made that the public is excluded during consideration of the items of business.

#### **Decision**

To exclude the public during consideration of the following items which involved consideration of exempt information relating to the financial or business affairs of particular persons, and public interest in maintaining the exemption outweighed the public interest in disclosing the information.

#### **LACHP/19/38. Application for a Review of a Private Hire Driver Licence (MS)**

This item was deferred to 13 May 2019 to allow the driver's legal representative to attend.

#### **LACHP/19/39. Application for a Review of a Hackney Carriage Driver Licence and a Private Hire Driver Licence (IK)**

This item was deferred to 23 April 2019 to allow a DBS check to be carried out.

#### **LACHP/19/40. Application for a Review of a Private Hire Driver Licence (SH)**

The Applicant attends with another a friend to translate but was advised this was not appropriate and the Clerk to the Committee arranged for an authorised Urdu interpreter to attend.

At the hearing, The Applicant also provided the following documentation: Written explanation; references; Uber documentation and financial documentation. The Committee was made aware that the Applicant had appeared before the Greater Manchester Magistrates' Court in respect of four allegations of domestic related Common Assaults and was convicted on the 8<sup>th</sup> of January 2019 and sentenced to a

Community penalty for each offence, (to run concurrently), on the 30<sup>th</sup> of January. The Applicant notified the Authority of the conviction on the 20<sup>th</sup> of February.

The Applicant explained to the Committee he had come to this country 20 years previously, until these convictions he had been of good character both here and in Pakistan and had also not accumulated any motoring convictions. He had carried out 9000 jobs with Uber and worked with Street Cars for 14 years without any complaints. He had worked as a bus driver without any complaints. This was only incident.

Of the four convictions, he explained one was in relation to his daughter whom had disrespected him when she was told to go to her room and he had only taken hold of her arm; there was no other force, no incident and no injury; she had given evidence at the trial.

The three other allegations were made by his wife and he disputed these in their entirety, maintained she had not given evidence at his trial; stated his daughter hadn't given evidence against him in this regard but he had been convicted.

He maintained the allegations by his wife were malicious as a result of debts accrued in connection with family land in Pakistan. Both he and his wife had entered into IVA's which ultimately meant they could not re-mortgage the house and had resulted in the mortgage company instigating steps to repossess the house.

His wife had been angry and blamed him; locked him in the marital home and made false allegations to the police.

The Committee noted the Applicant had stated on his notification form that bruising to the upper arm was entered in relation to injuries to the victim. The Applicant disputed this stating someone else had completed the form for him.

The Committee were of the opinion that notwithstanding the explanation provided by the Applicant, he had been convicted of four separate assaults on three different dates and had been convicted after a trial. The Committee could not go behind those convictions.

The Committee did not accept the explanation proffered by the Applicant and did not find it credible. Thereafter the Committee applied the statement of policy and guidelines noting the conviction date, (and the actual offence dates), were within the previous twelve months.

Although there was some mitigation in respect of the Applicant's previous good character, this was not sufficient in the circumstances to depart the policy and due to the number of allegations, they did not feel this could be treated as an 'isolated incident'. They found the Applicant not to be a fit and proper person for the purposes of holding a private hire licence.

## **Decision**

To refuse to grant the renewal

**LACHP/19/41.                    Application for a Review of a Private Hire Driver Licence (SA)**

The Committee was advised that the Applicant held a Private Hire Driver's Licence and had applied for a Hackney Carriage Driver's Licence.

He had notified the Authority of convictions on the 1<sup>st</sup> of March 2019.

As a result of this, the Licensing Unit had spoken with Club Cars who in turn had notified the officers of three complaints: -

26.6.18:            Inappropriate comments made to a passenger;

28.12.19:        Intrusive and odd comments to a female passenger and had been watching a violent video;

21.3.19:        Complaint by a 15 year old female re inappropriate comments following which Club Cars had released the Applicant from their books and he had attended at the girls address and remained there for twenty minutes asking why they had reported him and asking them to change their story.

On the 21<sup>st</sup> of March 2019, the Authority had suspended his licence with immediate effect.

The Committee was advised Applicant also holds a licence with Trafford and when stopped illegally plying for hire in Liverpool he was driving a Trafford licence.

Applicant, via his legal representative explained it was evidence he had picked up passengers 0240 in the morning in Liverpool, Hanover Street and taken to destination requested. The Applicant has a number of friends licensed by Liverpool. One of his friends rang him asking him to come and assist him as he had broken down and need his help. This friend, like the Applicant are from Oldham. The intention was to take him back. Applicant went to destination, Hanover Street, one of the main thoroughfares to Liverpool City Centre. He was waiting for his friend, had been there for about an hour and as his back was hurting got out of the vehicle to have a smoke. At the time, his windows had been closed. He got back into his vehicle, didn't lock the doors and opened the windows for fresh air. A male and female then came to the car, they were aggressive and threw money into the vehicle telling him to take them to the destination.

He didn't tell them to get out due to fear as a result of an incident that had happened some nine days previously when he had been attacked and robbed by a passenger and sustained stab wounds to his left shoulder, (documentation by way of photographs and hospital correspondence was provided). The Applicant had felt scared and felt intimidated and believed it was in his interests to do as he was told. He did not go to Liverpool with any intention of illegally plying for hire.

He had attended at Liverpool Magistrates' Court, pleaded guilty and also presented a 'Special Reasons' argument as to why the offence took place. This had not been successful.

He had notified and remained in contact with Local Authority and therefore had not shirked his responsibilities but faced them head on.

In terms of the additional allegations Applicant was not aware of the 26.6.18 allegations and in respect of those on the 28.12.18 he accepted a conversation had taken place but of that conversation was inappropriate; he was asking simple questions. She had asked rhetorical questions. The conversation was inconsequential and not wrong or intrusive.

Despite the Applicant's legal representative referring to the possibility that it may not have been obvious how young the passenger was, the Applicant confirmed she he knew she was a young girl stating, "She's a little girl, just trying to make her happy. Because I'm a married man, she like my daughter".

The Applicant accepted he went to see the girl's family the following day. He wanted to make an apology. He spoke directly with the Mother who confirmed a complaint had already been made. He left and had no further contact.

Reference was made to correspondence from Club Cars and additional copy provided that was legible and it was highlighted by the Applicant's legal representative that even after those incidents, Club Cars were still willing to write a reference. If they had any concerns, they were duty bound to notify the Local Authority. These allegations made as an afterthought after what comes to pass after March 2019.

Reference was made to the case of McCool v Rushcliffe Borough Council in respect of the definition of what constituted a 'Fit and Proper' person and it was requested that the Applicant be dealt with by way of an alternative sanction as opposed to immediate revocation.

When questioned, the Applicant stated he hadn't gone directly to where his friend had broken down because his friend didn't know the post code of where he was so he had waiting for him on Hanover Street. The Committee did not find this explanation credible.

Nor did they find credible that given the proximity of the stabbing incident and the emphasis placed on this, that he would not have been alive to the need for ensuring his personal security.

There was also a complaint by Local Authority Customer Service staff from the 25<sup>th</sup> of October 2018 of aggressive conduct which had resulted in an enforcement Officer speaking with the Applicant who apologised. Initially the Applicant stated he did not remember the incident. He then stated it may have been the first time he obtained his licence but was being sent to different departments and became frustrated.

In respect of the incident on the 28<sup>th</sup> of December, he disputed watching a violent video and stated the female had been on, "weed and stuff".

The Committee did not accept the Applicant's account regarding the illegally plying for hire; he had pleaded guilty on the full facts at court, Special Reasons had not been found and the Committee could not go behind that conviction.

Did not attach weight to the public order incident due to its historic nature

The Committee was extremely concerned regarding the number of complaints regarding inappropriate comments and conversations with females on the 26<sup>th</sup> of June 2018, 28<sup>th</sup> of December 2018 and the 21<sup>st</sup> of March 2019, one of which was with a young vulnerable female. They found a concerning 'course of conduct' which coupled with the aggressive conduct towards member of the Authority's staff and the convictions for illegally Plying for Hire, they deemed the Applicant was not deemed to be a fit & proper person to hold a licence.

They applied the Policy and Statement of Guidelines, noting the main provisions were the protection of the public.

## **Decision**

To revoke the Private Hire Driver Licence and to refuse to grant the Hackney Carriage Driver Licence.

### **LACHP/19/42.            Application for a Review of a Hackney Carriage Driver Licence (NR)**

Cllr Lynch was replaced on the Committee by Councillor Grimshaw following a declaration of interest and the matter was deferred until 2.30 for Cllr Grimshaw to attend.

The Committee heard the Applicant was currently a Hackney Carriage licenced driver. His renewal application had been submitted but he had answered 'No' to all questions re previous convictions.

A DBS check showed the following convictions: -

- 2.6.15:            a conviction for common assault;
- 15.8.17:        Conviction for MS90 – Failing to provide driver information

The renewal application was dated 7.3.16 and therefore these matters fell within policy guidelines hence the appearance before the Committee.

The Applicant was not legally represented. He explained he was wrong not to report the conviction for Common Assault but had been scared when he had seen the term, "battery" and fearful of losing his licence. It was all he had known for forty years i.e. being a taxi driver.

He explained the allegation of assault had never happened. It was a false allegation. He accepted he had been present at the scene and had, had an exchange with the other driver. The Applicant had been in a van at the time, had seen a fellow taxi driver blocking the road as his vehicle appeared to have been in an accident and

went to help him. He stated the other driver had become aggressive and come at him with jump leads. He had put his hands up to protect himself but no blows were struck. The police were not called to the scene but they had come and arrested him two weeks later. He gave a full account to them.

In relation to the MS90 offence, he explained he had no knowledge of it. He had worked a tracker cab. The owner got notification of a speeding but hadn't notified him. He had left the track due to poor maintenance of the vehicle. The Operator was very bitter about it and the only time he was aware of the points and conviction was when he received a letter from the bailiff for £1,000. Had he received any notification he would have paid the fine and taken the three points instead of six. He also stated as it was 45 mph in a 40 mph limit, he would probably have been offered a speed awareness course and he would have done that.

Regardless of the explanation given by the Applicant, the Committee could not go behind the conviction. They did however note the Applicant had been a taxi driver for forty years without complaint. He had explained his actions to the Committee and apologised. The Committee was of the opinion the assault conviction was an isolated incident and the account provided regarding the MS90 conviction was significantly mitigated. The Applicant had been suspended for four weeks and they therefore believed there had already been a punitive element, there were grounds to depart from the policy and grant the Application with a Warning to be recorded.

## **Decision**

To grant the renewal with a warning as to the future conduct of the driver.

### **LACHP/19/43.            Application for a Review of a Private Hire Driver Licence (MAA)**

The hearing was initially delayed due to a requirement for a Bangali interpreter. Also in attendance was the Manager of restaurant, Ferdousi Hoque), where the Applicant had been working.

The Applicant appeared today as on 29.3.18 the Applicant's Private Hire Driver's Licence had been suspended with immediate effect following and allegations of two sexual assaults on his daughter, (a child under 16). He had then been referred to the Committee on the 15th of May 2018 and a decision was made to continue suspension pending outcome of investigation.

The investigation was now concluded and no action had been taken against the Applicant and a letter from his acting solicitor was provided as confirmation of this. In addition, there was no evidence that it had been referred to the Crown prosecution Service for charging advice. In circumstances, appropriate to be referred back to Committee.

A written account was provided by the Applicant which his employer confirmed he had written on behalf of the Applicant in English and as instructed by the Applicant. He confirmed he had worked with him for a year, had discussed matters with him and been confided in. he described the Applicant as a very shy person who discussed

very little and who had been very affected by what had happened. He wants to be taxi driver to enable to provide for family.

It was confirmed the Applicant had separated from his wife and following financial problems, he and his wife had fought, he had also fallen out with his wife's brother and his wife had instigated the complaint. When he been brought before the Committee the previous year, his wife had phoned the police again and tried to escalate matters further. The Applicant denied matters in their entirety.

The Committee whilst concerned that such allegations had been made, accepted the police had conducted an investigation and a decision had been made that no further criminal action was to be taken.

He was therefore in the same position he had been in prior to the allegation and therefore the suspension was lifted and his licence restored.

### **Decision**

To take no further action.