

LICENSING SUB-COMMITTEE B - TUESDAY, 27 JUNE 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD REMOTELY - VIA MICROSOFT TEAMS ON TUESDAY, 27 JUNE 2023 AT 10:00

Present

Councillor R Williams – Chairperson

H T Bennett

S Easterbrook

H Griffiths

RM James

P W Jenkins

Apologies for Absence

R J Smith

Officers:

Mark Galvin

Senior Democratic Services Officer - Committees

Yvonne Witchell

Team Manager Licensing

27. DECLARATIONS OF INTEREST

Councillor S Eastwood declared a personal interest in Agenda item 8 in that he knew the applicant.

28. APPROVAL OF MINUTES

RESOLVED: That the minutes of a meeting of the Sub-Committee dated 3 January 2023, be approved as a true and accurate record.

29. URGENT ITEMS

There were no urgent items.

30. EXCLUSION OF THE PUBLIC

RESOLVED: That under Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, the public was excluded from the meeting during consideration of the following items of business as they contained exempt information as defined in Paragraph 12 of Part 4 and/or Paragraph 21 of Part 5 of Schedule 12A of the Act.

Following the application of the public interest test it was resolved that pursuant to the Act referred to above, to consider the following items in private, with the public excluded from the meeting, as it was considered that in all the circumstances relating to the item, the public interest in maintaining the exemption outweighed the public interest in disclosing the information, because the information would be prejudicial to the applicant so mentioned.

31. APPROVAL OF EXEMPT MINUTES

RESOLVED: That the exempt minutes of a meeting of the Sub-Committee dated 3 January 2023, be approved as a true and accurate record.

32. APPLICATION FOR THE GRANT OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE

Muhammed Ashraf Uddin

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94 Pysgah Street
Kenfig Hill
CF33 6DA

The applicant Mr. Uddin was in attendance.

The Team Manager – Licensing asked the applicant if he had received a copy of the report and if the details contained therein were correct. Mr Uddin replied yes to both these points.

She explained that Mr. Uddin appeared before a Licensing Sub-Committee on 6 September 2022, which resolved to refuse his application for the grant of hackney carriage and private hire vehicle licences. A copy of the decision Notice was attached at Appendix A to the cover report.

At the above meeting, Members received a report outlining Mr. Uddin's history as a licensed driver. Mr. Uddin was first licensed with this Authority in 2005. In 2011 he appeared at Newport Crown Court and was acquitted of offences under the Sexual Offences Act 2003. However, as part of the court proceedings Mr. Uddin admitted that he had engaged in sexual activity with a passenger who had told him that she had no means to pay the taxi fare.

As a result of the outcome of the Crown Court proceedings Mr. Uddin appeared before the Licensing Sub-Committee at their meeting of 28 December 2011. During this meeting they considered the information that was before the court, together with Mr. Uddin's representations, and resolved to revoke Mr Uddin's Hackney Carriage/Private Hire Driver's Licence. A copy of the reasons for the decision can be found in Appendix B of the report.

On 12 May 2015 Mr. Uddin submitted a fresh application and a Sub-Committee resolved to grant him a licence for a period of 6 months. On 10 November 2015, Mr. Uddin's renewal application was referred to the Licensing Sub-Committee for consideration.

The Sub-Committee resolved to grant him a licence for a period of 1 year and the decision letter outlining this was attached at Appendix C to the report. This set out the reasons for Members not granting a three year licence; it included that by his own admission, Mr. Uddin still appeared to have a large number of fares (passengers) who did not pay the fare at the end of the journey and the Sub-Committee were concerned in relation to his ability to deal with passengers who "won't pay fares".

The Team Manager – Licensing then confirmed, that in June 2021 the Authority received notification of a complaint regarding Mr Uddin's behaviour made to the Private Hire Operator; Veezu Ltd/Trading as Dragon Taxis.

The bullet points raised in relation to the alleged conversation with the female passenger were listed in paragraph 3.9 of the report.

An investigation ensued into the complaint and following a multi-agency safeguarding meeting along with consultation with the Chief Officer Legal, HR and Regulatory Services, Mr Uddin's licence was suspended with immediate effect.

The complainant also came forward to make a statement as part of the investigation and a summary of this, was shown at paragraph 3.11 of the report.

On 29 June 2021 a Professional Strategy Meeting was held under Section 5 of the Wales Safeguarding Procedures, convened in response to allegations or concerns

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regarding employment or volunteering in relation to contact with children. The group included representatives from the police, safeguarding and licensing. The group concluded that the allegations made against Mr. Uddin had been substantiated.

On 17 August 2021, the matter was referred to the Licensing Sub-Committee for determination. The Sub-Committee resolved to revoke Mr. Uddin's Hackney Carriage/Private Hire Driver's Licence. A copy of the Decision Letter was shown at Appendix D to the report.

The Team Manager – Licensing advised that the remainder of the report contained Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades, the powers available to the Sub-Committee and certain policy guidelines.

The Chairperson asked Mr. Uddin if he disputed anything in the Officer's report, to which he replied that he disputed the last referred incident.

The Chairperson replied that that particular issue however, had been considered by a previous Sub-Committee.

A Member asked Mr. Uddin that when a previous Sub-Committee had made a decision to refuse his application, why did he not appeal this decision through the Magistrates' Court.

Mr. Uddin replied that as there was a fee attached to doing this, he had not been able to afford this, as he had been now struggling financially speaking for some time.

The Chairperson noted that Mr. Uddin's licence had been revoked last September. He asked him what he felt had changed from then until now, in order for the Sub-Committee to reach a different decision to this one.

Mr. Uddin stated that he had applied for other jobs since then, but they had not worked out. He was presently studying full-time as a student in Cardiff University. He confirmed that he both needed and wanted to work as he was struggling to meet his outgoings and had a bill of over £2k outstanding for Council Tax.

He appreciated what he had done as a taxi driver in 2011 had been wrong, it was a mistake, that had cost him dearly. He assured Members however, that since then he had re-formed. He contested that the more recent accusations against him had not been true.

He urged the Sub-Committee to give consideration to him working weekends as a taxi driver, in order to pay his debts and make ends meet. He added that he would be happy for a camera being fitted in his car, so that his conduct could be the subject of ongoing review.

The Sub-Committee then retired to consider the application further, whereupon on their return, it was

RESOLVED: The Sub-Committee heard the application of Mr. Uddin for the grant of a hackney carriage and private hire vehicle driver's licence.

The Sub-Committee noted that the application was referred for consideration due to concerns/complaints regarding Mr. Uddin's previous history as a licenced driver for the authority.

The Sub-Committee had before it a report setting out the history and details of the said concerns/complaints, including appendices.

Mr. Uddin attended in person and advised the Sub-Committee that not all of what is set out in the report is true, particularly in relation to the complaint made against him in 2021. Mr. Uddin was advised by the Chair of the Sub-Committee that the complaint had been heard previously.

Mr. Uddin was asked what had changed since last year when his previous application was refused. He stated that since then, he has had to try and build up his career doing something else as he is unable to drive taxis and he is now a full-time student in Cardiff University. Due to this, he is unable to work and has a family and rent to pay. He also has debts. He stated that he knows what he did was wrong and he realises that. He said, "this time I do not have to hide anything". He invited the Sub-Committee to consider using their discretion to allow him to work weekends only to allow him to provide for his family.

The Sub-Committee considered the Guidance on Determining Suitability of Applicants and Licensees in the Hackney Carriage and Private Hire Trades and the powers available and policy guidelines when determining Mr. Uddin's application.

The Sub-Committee considered all of the relevant sections as noted within the report to the Committee, in particular, the following paragraphs:-

“1.2 The purpose of hackney carriage and private hire licensing is to protect and ensure the safety of the travelling public; there are many instances where an application will be refused, or a licence suspended or revoked if the person falls short of the fit and proper test. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account.

1.3 The Licensing Authority makes decisions on the balance of probabilities rather than beyond reasonable doubt.

2.1 Powers to grant driver / operator licences are contained within Section 51, Section 55 and Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act).

5.4 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 s51 and s59 in respect of drivers; s55 in respect of operators).

5.6 In determining whether an applicant is a fit and proper person the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person's behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual's attitude and temperament.

5.10 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.

5.11 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or

private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.

5.13 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.

5.22 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.”

Having considered the above in detail, along with the information provided to the Sub-Committee at the meeting, it found on the balance of probabilities that Mr. Uddin is responsible for the behaviour which resulted in the previous complaints. At Crown Court in 2011, Mr. Uddin admitted indulging in sexual relations with a passenger who could not afford the fare, and another customer complained about similar inappropriate behaviour in 2021. The complaint made in 2021 was substantiated at a Professional Strategy Meeting held under Section 5 of the Wales Safeguarding Procedures and is therefore behaviour which cannot be ignored by the Sub-Committee.

The Sub-Committee must decide whether Mr. Uddin is a fit and proper person to hold a taxi licence and in making its determination, has considered the report and appendices and the evidence given by Mr. Uddin today.

When asked what has changed since his previous application was refused, Mr. Uddin advised the Sub-Committee that he would like a taxi licence in order to provide for his family. However, with reference to paragraph 1.2 of the guidance, case law makes it clear that the impact of not being granted a driver's licence on the applicant and his family is not a consideration to be taken into account.

The priority of the Sub-Committee is to protect the public and on the evidence before it, the Sub-Committee finds that on the balance of probabilities, Mr. Uddin has previously abused his position as a licenced taxi driver, particularly in relation to young, female passengers. The Sub-Committee has serious concerns regarding Mr. Uddin's previous unacceptable behaviour and feels that he is a risk to the public. This sort of behaviour falls short of what is expected of a licenced taxi driver, and therefore, the Sub-Committee decided that Mr. Uddin is not a fit and proper person to hold a licence and refused his application.

33. APPLICATION FOR THE GRANT OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE

34. APPLICATION FOR THE GRANT OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE

James Edward Charles Bonsall
16 Waun Goch Terrace
Bridgend
CF32 7PS

The applicant Mr. Bonsall was in attendance.

The Team Manager – Licensing asked the applicant if he had received a copy of the report and if the details contained therein were correct. Mr Bonsall replied yes to both these points.

She advised that the purpose of the report, was to ask the Sub-Committee to determine an application for the grant of a hackney carriage/private hire vehicle driver's licence.

The Team Manager – Licensing referred to paragraph 3.2 of the report and Mr. Bonsall's previous convictions and she gave an outline of these for the benefit of Members. She stated to Mr. Bonsall that consideration would be given to the nature of these convictions, given that the Sub-Committee had to ensure that he was deemed as a fit and proper person to drive taxis and ensure the safe custody of his paying passengers. She then asked Mr. Bonsall to explain the circumstances that led to him receiving these convictions, for the benefit of Members.

Mr. Bonsall confirmed that he had been conviction free now for nearly 3 years and that the majority of his previous convictions, had been incurred within a 4 or 5 year period when he had been part of a 'wrong crowd'.

In relation to the first conviction for theft, he advised that he had done this and had been very sorry after for what he had done. With regards to the second count of theft, he informed the Sub-Committee that there was more to this than meets the eye. He had been working for someone who had not been paying him, though he did give him accommodation in the public house (he was working in). He therefore took a sum of £300 off the proprietor as an estimated figure as to what was owed to him for this amount of work. In relation to this issue, the Crime Prosecution Panel that Mr. Bonsall had determined that he had owed the proprietor £100 and had stolen from.

Mr. Bonsall then wished to point out, that his offending that had taken place in a given period of time, then stopped as he grew more mature, met a partner and had children. He also had steady employment now.

He appreciated that the conviction when he was caught in possession of a blade appears bad, however, the DBS did not reflect what was going on in his life at this time, when he was in a 'bad place'. At this time he had actually called the Police himself as a cry for help.

Mr. Bonsall confirmed that he had previously received a custodial sentence, however, his offending started to decrease when the situation regarding his mental health improved. He wished to point out to Members that he had never been involved in terms of offending, in drugs, violence or anything sexual.

He also advised the Sub-Committee that he had two children now and he had regular contact with them, notwithstanding that he had broken up with their mother. As he was now employed he had no debts outstanding and was on top of his finances.

The Team Manager – Licensing asked Mr. Bonsall what was the nature of his employment.

He replied that since he had served a custodial sentence, he had worked in pubs and since then he had secured an HGV licence so that he could drive larger vehicles. He had then had employment driving lorries and coaches carrying passengers, including the more vulnerable in society.

The Team Manager – Licensing confirmed that one of Mr. Bonsall's convictions had not yet expired, ie for a speeding offence. She noted that the penalty for this had been at the higher level, as it had resulted in him having 6 points on his licence.

Mr. Bonsall advised that he had accrued this amount of points, as when he was caught for the offence he had been doing 99mph on the motorway. He therefore excepted his punishment due to the fact that he had exceeded the speed limit by quite some margin. He said he has learnt from this and was much more careful on the roads now, as it was his livelihood so if he lost his driving licence he would also lose his job.

A Member asked Mr. Bonsall if he drove buses for a private or a public provider. He responded by stating that he worked for First Cymru in Bridgend.

Members then retired to consider the application further, whereupon on their return, it was

RESOLVED: The Sub-Committee heard the application of Mr Bonsall for the grant of a Hackney Carriage and Private Hire Vehicle Licence.

The Sub-Committee noted that the application was referred for consideration due to a number of convictions set out within the DBS Certificate. Details of these offences, including dates of conviction and sentences, were set out clearly in the report, which the Sub-Committee had considered in detail.

Mr Bosnall was given the opportunity to explain to the Sub-Committee the background to the offences. In summary, he stated that the majority of the offences took place over a period of around 4 or 5 years, when he 'went down a slippery path', and had 'got in with the wrong crowd' but since then, he now 'lives a normal life' and has 'grown up'.

In relation to one of the convictions for theft, Mr Bosnall explained that it was not as it seemed and that he was owed money from his employer so took the money from them. He accepted that this was 'not the correct way to go about it'.

In relation to the speeding conviction dated 1 November 2020, Mr Bosnall advised the Sub-Committee at the meeting that he was caught driving 99mph on a motorway where he received 6 points on his licence but has not been caught speeding since.

Mr Bosnall stated that he has since taken on different job roles including working in a pub and thereafter obtained his bus licence and HGV licence. He currently works for First Cymru Buses.

The Sub-Committee, when determining an application for a Licence, has to ensure public safety and that any applicant for a licence is a fit and proper person to hold a licence. The Sub-Committee also has to take into consideration the Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades.

The Sub-Committee considered all of the relevant paragraphs of the policy guidance when making its determination, as set out within the report.

The key paragraphs considered were:-

"2.5 – The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant

convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

5.12 As the licensing authority will be looking at the entirety of the individual, in many cases the application will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.

5.13 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.

5.18 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed”.

The Sub-Committee noted that there is a long history of offending and although this is not a recent pattern, there was a pattern of serious offences particularly during the period between 2012 and 2016, which caused the Committee to have concerns that Mr Bonsall is not a fit and proper person to hold a licence.

The Sub-Committee considered all offences in line with its policy and guidance and noted that the offence of ‘Having an article or blade of which was sharply pointed in a public place on 18 August 2015’, which Mr Bonsall was convicted of on 30 October 2015, fell under the following paragraph:-

“5.28 Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed”.

The Sub-Committee noted that the sentence imposed was imprisonment of 6 months, wholly suspended for 24 months. Therefore, the period as set out in 5.28 does not elapse until 30 October 2024.

Therefore, whilst the Sub-Committee accepted that Mr Bonsall has made significant effort to change his life and that he currently has responsibility for driving buses, due to the gravity and nature of all of the offences considered together, and in particular the fact that the 7 year period from conclusion of the sentence has not yet elapsed in relation to the conviction dated 30 October 2015, the Sub-Committee has determined to refuse Mr Bonsall’s application on this occasion.

The meeting closed at Time Not Specified