

Present: Councillor Pat Vaughan (*in the Chair*),
Councillor Adrianna McNulty, Councillor Andy Kerry,
Councillor Paul Gowen and Councillor Peter West

Apologies for Absence: Councillor Loraine Woolley and Councillor
Kathleen Brothwell

20. Confirmation of Minutes

The minutes of the meeting held on 6 July 2017 were confirmed.

21. Declarations of Interest

No declarations of interest were received.

22. Exclusion of Press and Public

RESOLVED that the press and public be excluded from the meeting during consideration of the following item(s) of business because it is likely that if members of the public were present there would be a disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972.

23. To Interview an Applicant for a Private Hire Driver's Licence Who is Unable to Provide a Certificate of Good Conduct [08/2017]

The Licensing Officer:

- a. presented the report and explained that the applicant had been unable to provide a certificate of good conduct due to this not being a practice of the country where he had originated from;
- b. reported that the applicant came to the United Kingdom in 2002 and was granted citizenship in 2011;
- c. reported that the applicant had a full UK driving licence which he had held since June 2006;
- d. reported that the applicant had passed the knowledge test on his second attempt as well as achieving a Low Risk on the Driver Improvement Programme.

The applicant, when asked by the Chair, confirmed that the information contained within the report was a true record.

The applicant explained that he sought to become a Private Hire driver to provide a living for his wife and children and had already been in liaison with an operator in the City who had indicated that he would be able to drive for the company.

When asked whether he had any points on his licence, the applicant admitted that he had received points for driving a vehicle without insurance but that this

was a genuine mistake due to him not understanding the rules in this country regarding insurance at that time.

The Chair asked the applicant what he would do in a circumstance whereby a passenger, half way to their home in the evening, informed him that they had insufficient funds to pay the fare. The applicant said that he would report this to his operator's office but still take the passenger to their destination, making the point that they may have money at home with which to pay for the fare. He emphasised that he would not abandon the passenger and instruct them to get out of the vehicle and would continue to drive them home.

The applicant confirmed that he had worked as a delivery driver for a local takeaway business for three to four months.

Further to a question by the Chair, the applicant confirmed that he felt he had been treated fairly at this hearing.

The decision was made as follows:

That the Private Hire Driver's Licence be granted.

The reasons for this decision:

The Sub-Committee was satisfied that the applicant had sufficiently demonstrated that he was a fit and proper person to hold a Private Hire Driver's Licence.

24. To interview an Existing Driver who has been Convicted of a Relevant Offence [08/2017]

The Licensing Officer:

- a. presented the report and explained that the licence holder had been convicted of perverting the course of justice.
- b. reported that the licence holder had attended a previous Sub-Committee meeting in July 2017 where the hearing was postponed so that additional information could be provided by him for the Sub-Committee's consideration. The deadline for this paperwork was 20 July 2017 and the licence holder was informed of this via letter, with additional documents provided in accordance with that letter. A list of these documents, for clarity, was confirmed with the Sub-Committee at the meeting. All members confirmed that they had read them.
- c. reported that the licence holder had held a Private Hire Driver's Licence since 2012 and did attend a Licensing Committee in that year due to undisclosed offences, as set out in table 3.3 of Appendix A to the report.
- d. reported that the Council's Licensing team was contacted by Lincolnshire Police seeking information as to the licence holder of a private hire vehicle in which the driver of that vehicle was alleged to have been caught speeding.
- e. reported that in 2014 two members of the Council's Licensing team were asked to provide witness statements to Lincolnshire Police about the

licence holder regarding unrelated events as a holder of a premises licence.

- f. reported that in 2017 the same two officers were requested to attend Lincoln Crown Court as witnesses against the licence holder who was being prosecuted for perverting the course of justice.
- g. reported that in 2017 the Council's Licensing team was informed that the licence holder had been convicted, receiving a custodial sentence of six months to be served immediately.
- h. reminded the Sub-Committee of the Council's policy in relation to dishonesty, as set out in paragraph 3.9 of Appendix A of the report.

It was noted that the licence holder was joined at the meeting by his son as his representative. The Sub-Committee had also allowed the licence holder's four daughters to attend the hearing in the public gallery.

The Council's Solicitor advised the licence holder, in view of his conviction for an offence with intent to pervert the course of justice, that the Sub-Committee could not look behind that specific conviction or consider any investigation of fairness in relation to the offence itself. He added that the hearing was not about a speeding offence or anything to do with how the licence holder felt he may have been treated by the Council in the past and that the Sub-Committee's deliberations lay solely to be focussed on whether the licence holder was a fit and proper person to hold a Private Hire Driver's Licence in view of his offence and conviction involving dishonesty. The licence holder confirmed that he understood these points.

The licence holder explained that he had not been dishonest and that a genuine mistake had occurred, which he had only realised when he was interviewed under caution by the police at the police station on 17 January 2014. The mistake was in respect of the time of day the offence had occurred and the person whom the licence holder reported was driving the vehicle at the time. The licence holder claimed that he had confused the morning with the evening when he responded to the Notice of Intended Prosecution and named another person as a possible driver at the time of the offence. A copy of the document was attached to the report at Appendix D(iii) and gave the date and time of the offence as 19:10 hours on 23 January 2013.

The licence holder confirmed that he was prosecuted for the offence of intentionally perverting the course of justice in that he supplied false information to Lincolnshire Police on a Notice of Intended Prosecution reply form as to the identity of the driver of the motor vehicle. The licence holder argued that it was difficult to prove intent and felt that this was not fair. He also claimed that the Council's Licensing Officer's made false statements against him. The licence holder felt that he had not done anything wrong and that his word against that of the police was worth nothing.

The licence holder reported that he had worked as a private hire driver for years without any problems so believed that he was a fit and proper person to hold a Private Hire Driver's Licence.

The Chair made the point that the operator he was driving for at the time had confirmed that the licence holder had been driving the vehicle at the time of the

offence. The Chair was therefore confused as to how the licence holder had been unable to confirm the correct time of the day, especially since at that time of the year it would have been dark in the evening. The licence holder admitted that he was confused about the time but had realised his mistake at the police station during the interview under caution. He added that, as a private hire driver, he had lots of jobs, consisting of approximately 450 a month, which made it difficult to remember specific details especially after the period of time that had elapsed between the day of the offence and the date he was interviewed by the police. In addition, the licence holder explained that at the time he was also dealing with problems associated with his father's health so admitted that his mental preparation was not right in view of these circumstances. He reiterated that it was a genuine mistake.

The licence holder was of the opinion that the police had been unreasonable to him due to a previous complaint he had made of them on another matter. He stated that he had lived in the country for forty years respecting law and order. He questioned the validity of the witness statements made against him for the trial at the Crown Court for the offence of perverting the course of justice and was of the view that it was their word against his, reiterating that he had done nothing wrong.

The Sub-Committee asked whether the other driver named by the licence holder on the Notice of Intended Prosecution, in the licence holder's statement and referred to throughout the case, held a Private Hire Driver's Licence. The Licensing Officer confirmed that he did not, but also reported that the vehicle was leased from the other driver to the licence holder.

Reference was made to the Notice of Intended Prosecution, attached to the report at Appendix D(iii), and the fact that it stated that the other driver, not the licence holder, was driving the vehicle at the time of the speeding offence. With this in mind, the point was made that this gentleman would have been driving the vehicle with no insurance which would have resulted in him being prosecuted for that offence. The licence holder explained that the other gentleman owned a garage and understood that he was insured to drive any vehicle to and from his garage to have it repaired.

The Licensing Officer clarified that anyone driving a Private Hire vehicle should have a Private Hire Driver's Licence, but acknowledged that some insurance policies may provide cover for garage employees to move vehicles for repair.

Referring to the Notice of Intended Prosecution, the Sub-Committee asked whether the other person was driving at the time of the speeding offence. The licence holder confirmed that the other driver was not driving at the time of the offence but had been driving the vehicle earlier that day during a visit to the other driver's garage and scrap yard to undertake repairs to the vehicle. The licence holder confirmed that he, the licence holder, was driving when the speeding offence occurred.

The Sub-Committee asked the licence holder why he had named the other driver as the driver of the vehicle at the time of the offence when he responded to the Notice of Intended Prosecution. The licence holder confirmed that he had mixed up the different times of day.

The licence holder's son, representing his father, confirmed that the licence holder's daughter, who was under the age of 16 at the time, had completed the Notice of Intended Prosecution form on his behalf which the licence holder had

subsequently signed. The other driver's name had been included on the form as the licence holder believed he had been driving at the time of the speeding offence.

The Council's Solicitor referred to the licence holder's interview under caution held on 17 January 2014, attached to the report at Appendix D(v), and asked whether it was only on that day that he had realised his mistake.

The licence holder responded by saying that he had realised this when he got to the police station.

The Council's Solicitor asked the licence holder to confirm that he only understood the full meaning of the Indictment, attached to the report at Appendix D(vii), when the Police Officer pointed out to him that the private hire operator had made a statement confirming that the licence holder was driving the vehicle at the time of the alleged offence. The licence holder confirmed that this was correct.

The Sub-Committee noted that the wording of the Indictment stated the licence holder had perverted the course of justice 'with intent', therefore concluding that this conviction was for a deliberate act and did not represent a reckless act.

The Sub-Committee questioned why the date of 15 January 2013 had been inserted on the Notice of Intended Prosecution form, attached at Appendix D(iii) of the report. The licence holder reiterated that his young daughter had completed the form on his behalf and that this date was a mistake.

The Chair asked the licence holder why he had not brought the other driver with him as a witness to this hearing. The licence holder explained that the other driver had moved away from the area and he did not have any contact details for him.

The Sub-Committee asked whether the other driver had been charged or convicted for the speeding offence. The licence holder did not know this.

The Sub-Committee asked whether the licence holder had received any points on his UK driving licence for the alleged speeding offence. The licence holder confirmed that he had not received any points.

The Council's Solicitor made the point that the exact time recorded in the correspondence between Lincolnshire Police and the licence holder for the speeding offence was in 24 hour clock format at 19:10 hours, rather than 'a.m.' or 'p.m.' He therefore questioned how any mistake about the time of day could have occurred. The licence holder believed that the offence had occurred earlier on the day of the offence, when the other driver had been driving the vehicle. In view of this and in liaison with the other driver the licence holder said that he had agreed with the other driver that the other driver's details should be added to the Notice of Intended Prosecution form and returned to the police. The licence holder reiterated that he had made a mistake regarding the time.

The Council's Solicitor stated that, as a private hire driver, the licence holder should be expected to know that he would be logged-in with his operator when he started his shift and should understand the seriousness of the offence. He therefore asked whether the licence holder had made contact with his operator to clarify the time he was on duty on the day of the alleged offence. The licence

holder said that he knew the time he was on duty, so there was no need for him to check this with the operator. The licence holder's son, as his representative, confirmed that an assumption had been made by his father that the offence had occurred during the daytime as this was when he was used to seeing mobile speed camera vans.

The Council's Solicitor asked how he knew the offence was captured by a mobile speed camera. The licence holder's son replied by saying that there were not usually any other cameras on that particular road.

The Council's Solicitor reiterated his opening statement that the Sub-Committee could not look behind the merits of the conviction of perverting the course of justice. He asked why the licence holder, in view of his comments put forward at this meeting regarding his claim that the conviction was unfair and that there was no intent to provide false or misleading information, had not appealed against his conviction.

The licence holder confirmed that he had sought independent legal advice whereby he was informed that he was not entitled to the right of appeal. He outlined that he would be making a number of complaints, namely to the Crown Prosecution Service, the Ministry of Justice, Lincolnshire Police and the City of Lincoln Council regarding what he claimed to be misleading statements provided by the Council's Licensing Officers.

The Council's Solicitor informed the licence holder that any appeal against a conviction would need to take place through the Court of Appeal and a complaint would not address or rectify this. He emphasised, however, that he could not provide any legal advice to the licence holder in respect of this issue.

The Council's Solicitor made the point that the element of intent in the offence and conviction was clearly set out in the Indictment for the offence, as set out in Appendix D(vii) of the report.

The Chair asked why it had taken so long for the case to go to court. The licence holder explained that he thought the issue would be heard at the Magistrates Court as he had admitted the mistake regarding the time of the offence and who was driving the vehicle when he was interviewed under caution by the police. He felt that if the Crown Prosecution Service had dealt with the matter more reasonably he would have been issued with a fine and points on his licence for the speeding offence. Instead, the matter was referred to the Crown Court which he felt was very unfair.

The Sub-Committee questioned why a letter from the DVLA to the licence holder regarding vehicle tax mentioned in the licence holder's interview with the police, attached at the report at Appendix D(v), and had been sent to the licence holder rather than the owner of the vehicle. It was noted that an agreement was in place between the licence holder and the vehicle owner regarding the leasing and maintenance of the vehicle. Appendix C(vii) of the report was a copy of the agreement and showed that the owner of the vehicle was also the second driver named by the licence holder in the Notice of Intended Prosecution.

The Council's Solicitor confirmed that the offence of perverting the course of justice could only be tried in Crown Court due to the nature and seriousness of the offence as an indictable offence.

The licence holder said that intention had to be proved and he was of the opinion that his particular case had been taken to the Crown Court on a personal basis.

The Council's Solicitor noted and understood the licence holder's views in this respect, but reminded him that the Sub-Committee could not look behind the merits or otherwise of the conviction.

The Chair asked the licence holder whether he felt that he had received a fair hearing at this meeting. The licence holder said that he had been treated fairly and appreciated the second opportunity to address the Sub-Committee, following deferral of the previous meeting, to have this issue looked into very carefully. He added that he believed the final decision would be fair.

The Chair invited the licence holder to address the Sub-Committee by way of summary.

The licence holder was of the view that if the Licensing Officer's statements had been honest and true, there would not be a case against him of acting with intention to pervert the course of justice. He claimed that their witness statements were unfair, wrongful and led to the police and Crown Prosecution Service taking this action due to his previous record. The licence holder added that, had their witness statements not been provided, the police would have agreed that there had been a mistake.

The licence holder's son, as his representative, with regards to the Sub-Committee considering whether his father was a fit and proper person to hold a Private Hire Driver's Licence, reminded the Sub-Committee that his father had been a self-employed private hire driver his whole life and this was his livelihood which provided for his family who depended on him. He added that he did not feel the offence made his father improper to deal with the general public, as he had in previous years and that he provided a reliable and honest service as a Private Hire driver.

In closing, the Council's Solicitor encouraged the licence holder to submit a formal complaint regarding the allegations made against the Council's Licensing Officers using the authority's complaints process.

The decision was made as follows:

That the licence be revoked.

Reasons for the decision:

1. The Local Government (Miscellaneous Provisions) Act 1976 empowers the Licensing Authority acting through the Licensing Sub-Committee to revoke the licence holder's licence in accordance with the following provisions:

61: Suspension and revocation of drivers' licences.

(1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:

(a) that he has since the grant of the licence –

(i) been convicted of an offence involving dishonesty, indecency or violence; or

(b) any other reasonable cause.

2. The Council's Statement of Policy on Relevant Convictions with regards to offences involving dishonesty states as follows:

10. Dishonesty

10.1 Licensed Hire Drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property, taking children to school and families on holiday, is indicative of the trust that people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by any lost property being kept by an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 5 years free of conviction should be required before entertaining an application.

A licensed Hire Driver found guilty of a dishonesty offence should expect to have his/her licence revoked immediately and be banned from holding such a licence with the Council for 5 years.

10.2 In general, a minimum period of 5 years free of conviction or at least 5 years from completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

- *theft*
- *burglary*
- *fraud*
- *benefit fraud*
- *handling or receiving stolen goods*
- *forgery*
- *conspiracy to defraud*
- *obtaining money or property by deception*
- *other deception*
- *taking a vehicle without consent*
- *and any similar offences*
- *Or any similar offences (including attempted or conspiracy to commit) offences which replace the above*

10.3 A licence will not normally be granted if an applicant has more than one conviction for a dishonesty offence.

3. The Indictment of the licence holder at Appendix D(vii) of the report sets out the offence to be one of 'DOING AN ACT TENDING AND INTENDED TO PERVERT THE COURSE OF PUBLIC JUSTICE.' It goes on to give the following particulars of the offence: the licence holder 'with intent to

pervert the course of public justice did an act which had a tendency to pervert the course of public justice in that he supplied false information to Lincolnshire Police on a Notice of Intended Prosecution as to the identity of the driver of a motor vehicle that was alleged to have been driven in excess of the speed limit at 7:10 pm on 23rd day of January, 2013.'

4. The licence holder was convicted of the above offence and given a six-month custodial sentence plus a victim surcharge of £80.00.
5. The Sub-Committee were of the view that the licence holder had acted dishonestly and with intent by providing false information to the Lincolnshire Police as to the identity of the driver of the vehicle when the licence holder responded to the Notice of Intended Prosecution, a copy of which is shown at Appendix D (iii) of the report. The Sub-Committee noted that the Notice of Intended Prosecution clearly refers to the date and time of the alleged speeding offence as being at '19:10 hours on 23 Jan 2013', which would have been after dark at that time of year.
6. The Sub-Committee were not persuaded by the licence holder's explanation that he had made a mistake as to the time of day of the alleged speeding offence and the identity of the driver at that time of day when he responded to the Notice of Intended Prosecution naming another person as the possible driver.
7. The Sub-Committee noted that the licence holder had been shown to have been on duty as a private hire driver on the date and at the time of the alleged speeding offence, which he only admitted to when he was confronted by the evidence provided by the private hire operator during an interview under caution with the Lincolnshire Police.
8. The Sub-Committee were of the view that they could not look behind the merits of the conviction and that the licence holder had not provided them with extenuating circumstances as to why the Sub-Committee should depart from the Council's Policy on Relevant Convictions with regards to offences involving dishonesty.
9. The Sub-Committee were of the view that the offence and resulting conviction were extremely serious, being an indictable offence involving dishonesty which resulted in the imposition of a custodial sentence of six months.
10. The Sub-Committee addressed the question set out in paragraph 2.5 of the report: "would a member of the Licensing Committee be comfortable in allowing their son, daughter, spouse or partner, mother or father, grandchild or any persons for whom they care, to get into a private hire vehicle with this person?" The Sub-Committee concluded that they would not be comfortable in so allowing the above.