
SOUTHAMPTON CITY COUNCIL
LICENSING (GENERAL) SUB-COMMITTEE
MINUTES OF THE MEETING HELD ON 26 FEBRUARY 2015

Present: Councillors Tucker (Chair), Galton, Lloyd (Vice-Chair), Parnell and Whitbread

6. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meeting held on 3 July 2014 be approved and signed as a correct record.

7. **EXCLUSION OF THE PRESS AND PUBLIC - LEGAL ADVICE**

RESOLVED that the Sub-Committee may move into private session in order to receive legal advice when determining issues. The parties to the hearing, press and public, unless otherwise excluded by paragraph 10.4 of the Council's Access to Information Procedure Rules be invited to return immediately following the private session at which time the matter will be determined and the decision of the Sub-Committee will be announced.

8. **EXCLUSION OF THE PRESS AND PUBLIC - CONFIDENTIAL PAPERS**

RESOLVED that in accordance with the Council's Constitution, the press and public be excluded from the meeting in respect of item 7 based on Categories 1 and 2 of paragraph 10.4 of the Access to Information Procedure Rules. The information contained therein is potentially exempt as it relates to an individual's personal details and information held under the Data Protection Act 1998.

9. **HACKNEY CARRIAGE DRIVER'S LICENCE**
MEETING ON 29 JANUARY 2015

The Sub-Committee considered whether to proceed with the hearing in the absence of the hackney carriage driver.

The Licensing Manager explained to the Sub-Committee that a letter dated 14 January had been sent to the driver notifying him of the hearing and that this had been followed up with numerous telephone calls to both him and the family and despite messages being left, contact had not been made. The driver had previously been very good at responding to the licensing department and therefore it was questioned whether the hackney carriage driver was aware of the hearing.

RESOLVED

- (i) that in the absence of the hackney carriage driver the hearing be adjourned;
- (ii) that the Licensing Manager be given authority to reconvene the meeting at an appropriate time in order to give the hackney carriage driver a further opportunity to attend the hearing; and
- (iii) that correspondence makes it clear that in the event the driver fails to attend on the next occasion the hearing shall proceed in his absence.

ADJOURNED MEETING ON 26 FEBRUARY 2015

The Sub-Committee considered the suitability of a specific individual to hold a hackney carriage driver's licence.

The driver and his solicitor were present and with the consent of the Chair, addressed the meeting.

The Sub-Committee viewed CCTV evidence disclosed by the Police.

The Sub-Committee considered the decision in private session in order to receive legal advice when determining issues.

RESOLVED not to impose a suspension or revocation on the licence in this case.

After private deliberation the Sub-Committee reconvened and the Chair read the following decision with reasons:

All parties will receive written confirmation of the decision and reasons.

The Sub-Committee has considered very carefully the report of the Head of Legal and Democratic Services and all the evidence presented today by the Licensing Manager, the driver and his solicitor. Human Rights legislation has also been borne in mind.

It has given due regard to the Local Government (Miscellaneous Provisions) Act 1976 and the guidelines relating to the relevance of convictions (policy).

The Sub-Committee considered all the facts and have decided not to impose a suspension or to revoke the licence in this case.

Reasons for Decision

The Sub-Committee accepted legal advice that a suspension, if awarded, is not to be considered as a punishment but may be considered in terms of its deterrent effect on the driver. In this instance the Sub-Committee was satisfied that a deterrent was not required due to the specific facts and unusual circumstances in this particular case.

The Sub-Committee does take convictions for violence offences particularly seriously and accepts that the policy indicates that a single conviction for such an offence would ordinarily prevent an applicant or existing driver from holding a licence for a period of at least three years. However, the Sub-Committee has heard sufficient evidence to warrant a departure from the terms of the policy and exercise its discretion as set out in paragraph 2 (of that policy):

“some discretion may be appropriate if the offence is isolated and there are mitigating circumstances”.

The Sub-Committee heard that the incident related to a long-standing family dispute and that significant effort has subsequently been made to resolve that dispute. It was also noted that a guilty plea was entered at the first opportunity and that the licence

holder presented evidence, including a letter from the Probation Service very clearly showing: that no further convictions have occurred during the period of suspended sentence, he has displayed remorse and that he has taken positive steps to ensure a repeat of his behaviour is “increasingly unlikely”. Further, that “the retention of his licence is strongly supported as this will enable him to continue with gainful employment and further reduce the likelihood of any further offending”.

The Sub-Committee heard substantial and compelling evidence from the licence holder in relation to the nature of the incident and the causes / mitigating factors. The licence holder’s father had been assaulted and was suffering from the early stages of cancer at the time. The incident did not occur in the course of the licence holder’s employment as a taxi driver.

As a result, the Sub-Committee were satisfied that the factors triggering the incident in question were unique and unlikely to reoccur. The Sub-Committee was reassured by evidence that the family dispute has been the subject of strong mediation.

The driver’s personal circumstances were taken into account insofar as they explain his behaviour but not in relation to loss of livelihood. Changed personal circumstances were taken into account insofar as they are considered to further reduce the likelihood of such an incident happening again.

The Sub-Committee considered whether it was able to take into account a spent conviction as well as other matters and decided that they were relevant matters to be considered in determining whether the driver was fit and proper in accordance with the legislation. Nonetheless the Sub-Committee primarily focussed its mind upon this particular incident and whether the driver posed a risk to public safety, including, but not limited to, passengers within his licensed vehicle.

The driver is strictly warned that an offence of this nature would ordinarily lead to revocation – it is only due to very unusual personal circumstances that the licence has not been revoked today. In this regard, any further offending or issues causing concern as to his character or fitness generally will be considered extremely seriously and such departure from the guidelines is only exercised in exceptional circumstances and is extremely unlikely to be permissible in future.

The Sub-Committee was impressed by the frank admittance of the driver and remorse shown, both to the Sub-Committee and Probation Services. The incident involved extreme provocation and the driver has demonstrated his commitment to comply with all requirements imposed. The Sub-Committee did consider very carefully imposing a suspension in this case, however did not feel that for all the above reasons a deterrent was required. The extended period during which the driver has been, for other reasons, unable to drive in his capacity as a licence driver within Southampton has influenced this decision.

There is a right of appeal for an aggrieved driver to the Magistrates’ Court. Formal notification of the decision will set out that right in full.

