

LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in Conference Room 1a, County Hall, Ruthin on Thursday, 24 March 2016 at 2.00 pm.

PRESENT

Councillors Bill Cowie, Stuart Davies, Hugh Irving, Arwel Roberts, Cefyn Williams (Chair) and Huw Williams

ALSO PRESENT

Head of Legal, HR and Democratic Services (GW), Public Protection Business Manager (IM), Licensing Enforcement Officer (HB) and Committee Administrator (KEJ)

TRIBUTE - COUNCILLOR RICHARD DAVIES

The Chair paid tribute to Councillor Richard Davies who sadly passed away on 22 March. Members and officers stood in silent tribute.

1 APOLOGIES

Councillors Barry Mellor, Win Mullen-James and Pete Prendergast

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

EXCLUSION OF PRESS AND PUBLIC

***RESOLVED** that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act.*

4 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 15/0427/TXJDR

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) the suitability of Driver No. 15/0427/TXJDR to hold a licence to drive hackney carriage and private hire vehicles following allegations of inappropriate behaviour whilst undertaking a school transport contract;

- (ii) details of the allegations and circumstances of the case having been provided (a summary of facts together with associated witness statements and documentation having been attached to the report);
- (iii) the Driver having submitted documentary evidence in support of his licence review which had been included as an appendix to the report, and
- (iv) the Driver having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver was in attendance at the meeting accompanied by his Union Representative and a fellow witness. The Union Representative confirmed receipt of the report and committee procedures.

The Licensing Enforcement Officer outlined the case as detailed within the report.

The Union Representative presented the Driver's case. He advised that the typed witness statements submitted by the Investigating Officer had not been signed and asked that they be discounted. He also submitted that the investigation had not been conducted in a fair and open manner highlighting where he considered there to be areas of bias within the case. It was argued that particular lines of enquiry which may have found in the Driver's favour had not been pursued and the credibility of particular evidence was also questioned. Representations were also made regarding the standard of proof required in such cases given that the right of appeal was to the Magistrates Court. In terms of the allegations detailed within the report the Union Representative clarified those allegations admitted by the Driver and put them into context giving the Driver's version of events. The committee was also advised of the allegations which had been denied by the Driver. It was highlighted that no complaints against the Driver had been made from other service users or the public. Given the contrary evidence presented and support detailed in the character references (previously circulated) the Union Representative asked that the Driver be permitted to retain his licence and continue as a licensed driver.

At this point the issue of the unsigned witness statements was discussed and copies of the original signed witness statements were made available. The Union Representative argued that he had not been given the opportunity to check the documents and asked that they be discounted in the interests of a fair hearing. The Head of Legal, HR and Democratic Services gave a legal viewpoint on the situation and fairness of the proceedings. The Licensing Enforcement Officer confirmed the statements had been typed to ensure they were legible and had been checked for accuracy. The committee adjourned to consider the legal arguments. Upon resuming the proceedings all parties were advised of the committee's decision to accept the statements in evidence and continue the proceedings. The committee did not consider there was a material unfairness on the basis that assurances had been given by the Licensing Enforcement Officer, who owed the committee a duty of candor, that the typed versions had been transcribed accurately and that the information contained within the statements had been made available in advance and could have been clarified earlier within the process. In making their decision the committee had also considered advice from the Head of Legal, HR and Democratic Services regarding the standard of proof required. It was clarified that

the committee's decision as to whether the Driver was a fit and proper person to hold a licence was based on the balance of probabilities. The point that the appeal route was to the Magistrates Court did not change that fact given that they did not sit on a criminal basis when considering such appeals and therefore the burden of proof was not beyond all reasonable doubt. Interviews carried out under the Police and Criminal Evidence Act could be used in cases involving both probability and criminal standards of proof.

Members took the opportunity to question the Driver and his accompanying witness regarding the facts of the case in order to ascertain whether or not they considered the Driver to be a fit and proper person to hold a licence. The witness clarified his relationship to the Driver and the extent of his involvement in the case and evidence he could corroborate. The Driver responded to questions regarding the allegations made and elaborated upon the circumstances surrounding particular incidents and discrepancies between his version of events and witness statements.

The Union Representative took the opportunity to make a final statement. He referred to the manner in which the Driver had responded to particular situations without the benefit of appropriate formal training as previously requested by the committee. There was no denial that mistakes had been made or that lessons could not be learned from the process. However, taking into account the explanation of the events and denial of particular allegations, and given the concerns raised regarding the investigation process, he asked that the Driver be allowed to retain his licence and be given appropriate support in order to achieve the best outcome in this case.

The committee adjourned to consider the case and it was –

RESOLVED that the hackney carriage and private hire vehicle driver's licence issued to Driver No. 15/0427/TXJDR be revoked.

The reasons for the Licensing Committee's decision were as follows –

Members had carefully considered the contents of the report together with the submissions presented for the Driver in this case and his response to questions. The committee found that, on the balance of probabilities, the Driver had behaved in an inappropriate manner by reasons of his actions, both those he had admitted and which the committee had found. Those actions had caused the committee to consider that the Driver was not a fit and proper person to hold a licence to drive hackney carriage and private hire vehicles. The committee was particularly concerned about the inappropriate behaviour and remarks towards a 16 year old girl. Given that their overriding consideration was protection of the public, members were minded to revoke the licence with immediate effect on public safety grounds.

The committee's decision and reasons therefore were conveyed to the Driver and his Union Representative. As they had not been given previous opportunity to respond to the basis for revocation on public safety grounds the Driver and his Union Representative were invited to make representations in that regard.

The Union Representative argued that the evidence had not been properly tested in this case and reiterated concerns over the investigation process. He drew members' attention to the written references attesting to the Driver's good character and submitted that immediate revocation was not warranted in this case.

The committee adjourned to consider the basis of the revocation and it was –

RESOLVED that the hackney carriage and private hire vehicle driver's licence issued to Driver No. 15/0427/TXJDR be revoked on public safety grounds with immediate effect.

Having considered the representations submitted on behalf of the Driver with regard to the basis for revocation members remained of the view that, given their concerns regarding his behaviour, the licence should be revoked with immediate effect on the grounds of public safety. The Head of Legal, HR and Democratic Services conveyed the committee's decision to the Driver and his Union Representative and explained the implications of that decision. The Driver and his Union Representative were also advised that they would be advised of the decision and reasons for the decision in writing as soon as practicable together with the right of appeal against the decision to the Magistrates Court within twenty one days.

The meeting concluded at 3.50 p.m.