

PUBLIC PROTECTION LICENSING COMMITTEE

Minutes of a meeting held on 14th November, 2019.

Present: Councillor J.W. Thomas (Chairman); Councillor O. Griffiths (Vice-Chairman), Councillors Ms. J. Aviet, R. Crowley, Mrs. P. Drake, K.F. McCaffer, Mrs. A. Moore, M.J.G. Morgan, Mrs. J.M. Norman, Mrs. R. Nugent-Finn and Mrs. M.R. Wilkinson.

437 APOLOGIES FOR ABSENCE –

These were received from Councillors Dr. I.J. Johnson, L.O. Rowlands and Ms. M. Wright.

438 MINUTES –

RESOLVED – T H A T the minutes of the meeting held on 3rd September, 2019 and those of the Extraordinary Meeting held on 17th October, 2019 be approved as a correct record.

439 DECLARATIONS OF INTEREST –

No declarations were received.

440 LICENSING DISCRETIONARY FEES 2019/2020 (DEH) –

The Operational Manager for Shared Regulatory Services (SRS) outlined the report which advised Committee on the consultation concerning the proposed fees.

On 4th June, 2019, the Committee received a report on proposed fee changes in respect of various licensing functions. The report outlined that the fees relating to hackney carriages, private hire vehicles and private hire operators were subject to a statutory consultation before implementation.

The report outlined that if objections were received within 28 days of the publication of the notice of the proposed changes to the above-mentioned fees, that the matter come back before the next appropriate Committee meeting so that any such objections could be considered, together with modifications and a new date for the introduction of the variations of fees could be set.

The Operational Manager noted that all other fees had been approved by the Committee at its meeting on 4th June, 2019. The Operational Manager went on to detail the fee setting toolkit developed by the All Wales Licensing Technical Panel which was used to set the discretionary licensing fees. This process had regard to the relevant legislation and where permitted, allowed costs to be factored into a

particular licence including the introduction of Right to Work checks. The fee toolkit comprised three main parts within a spreadsheet calculator:

- A cost summary was prepared identifying all costs connected with the service such as central recharges, office accommodation, printing and training, etc. which generated an hourly rate for all the officers involved;
- Time spent on tasks including enquiries, complaints, project work, general administration, etc. was entered onto the spreadsheet;
- The relevant data was entered into the spreadsheet identifying the hourly rate of the officer involved and calculating the time spent on the process. Processes included all stages from receipt of the application to the issue of the licence including inspections if required as well as time spent inputting data and production of licences.

The spreadsheet then added the cost of the process to the pro rata Other Costs - thereby arriving at a licence fee, with the process being repeated for the steps required to issue new licences and renewals of existing licences.

The Operational Manager stressed that this was the first year where the toolkit principle had been applied to vehicle fees. These proposed fees would be a calculated estimate of the costs for the next financial year, taking account of predicted expenditure and planned enforcement exercises for example. A review of any subsequent surplus or deficit would inform whether there should be a reduction or increase of fees in the following year.

The Operational Manager then outlined the responses from the consultation in the attached appendices.

The Operational Manager detailed some of the concerns raised as part of the consultation, the first one being around the increased fee for the Vale of Glamorgan licence. The Operational Manager stated that the proposed increase reflected the licence fee to recover estimated costs for the following year and would be reviewed against actual costs at the end of that financial year. He also informed Members that these fees were last increased in 2010. In addition, the increases would only apply to those fees applicable on the grant of the relevant licence and specified in the legislation to be included on the fee scales. Another concern was with regard to the closing of the public counter for licensing on two afternoons per week. The Operational Manager went on to say that this was an operational decision which would be kept under review but did not form part of the fee setting process. Similarly, officers would arrange for the Council's Traffic Management Department and the Taxi Association to be asked to comment on the issues the respondent had raised.

A separate respondent raised an objection on behalf of the Vale of Glamorgan Taxi Association and had requested more detailed information which had been sent back to the respondent – albeit this had been slightly delayed due to a Freedom of Information enquiry. The information provided included financial data and the number of compliance inspections. This approach reflected the position adopted by partner Councils, mirroring the information provided to enquirers if

requested and had been tested in Cardiff Council by judicial scrutiny and found to be suitable and sufficient.

The Operational Manager concluded that as well as seeking Committee approval for the vehicle and operator fees, he was also looking at setting a specific start date for these to be enacted.

A Taxi Representative, with permission to speak, referred to the meeting in June 2019 where the taxi trade had raised the need for more regular meetings between taxi representatives and the relevant Council officers in relation to licensing and other issues, which had still not happened. He also went on to say that he believed some licensing fees had in fact changed in 2015 rather than 2010 as mentioned by the officer. The Taxi Representative also mentioned that they had still not had all of the information they had requested from the Council and wanted to say that the proposed fee increase amounted to approximately 17.5% and would only be redressed later, if it turned out to be too much. The Operational Manager replied that with regard to the fees mentioned being raised in 2015, this referred to driver fees and not vehicle licensing fees.

Another Taxi Representative, with permission to speak, stated that one of the reasons for the objections to the proposal was that they were not given specific information in order to make an informed decision. They had tried to obtain this information through Freedom of Information, but this had not been forthcoming as licensing information was exempt from Freedom of Information requests, although there was potential redress by appealing to the Monitoring Officer and Ombudsman if necessary. The Chairman reiterated the point previously raised by the Operational Manager for SRS where the figures provided had been judicially tested in Cardiff and had been used by partner Councils and deemed sufficient for that purpose. The Operational Manager for SRS added that with regard to the overall fee setting process, the toolkit that had been set up to provide Welsh Local Authorities with a mechanism for setting fees and the ability to evidence that these fees were reasonable. In relation to providing information from this data base, due to legal considerations not all information could be provided. He went on to add that although trade representatives played an important part with regard to fee setting, it had to ultimately be the Council that set the fees for licensing.

The trade representative asked about enforcement which she noted over the last few years had been relatively small, to which the Operational Manager stated that although enforcement had been relatively small scale, it had still been occurring and this in part had been due to staff changes but going forward this would now be improved with the appointment of a new Enforcement Officer. The Operational Manager added that if enforcement and other services were not fully enacted then a surplus would be produced and then the fees for the following year would subsequently be reduced. The Licensing Team Manager also wanted to add that there had now been an increase in enforcement over the recent period and that the fees also reflected the cost of checking documents and the processes for issuing licences.

The trade representative raised a query around the availability of the toolkit used as information from this would enable them to make appropriate decisions and

respond accordingly to the proposed increase in licence fees, as well as having a list of other Authorities' licensing fees in order to compare with the Vale of Glamorgan. The Operational Manager for SRS replied with regard to the toolkit, the software licensing agreement stated that they could not provide detailed information from this and he did know of any other Local Authority who could provide similar information due to these types of constraints. With regard to licensing fees from other Authorities, these could be accessed by logging on to the relevant Local Authority websites. Ultimately, officers needed to use the toolkit in order to set the fee based on the relevant administrative costs and other calculations and was not intended as a resource for all other stakeholders such as trade representatives.

A Taxi Representative referred to the previous Committee meeting on 4th June where there had been discussion around time and motion and how this impacted on the calculations made in the toolkit. She questioned the use of historical data and whether more recent time and motion studies should be used instead. The Licensing Team Manager replied that updated exercises had been carried out to reflect new processes introduced – for example, immigration checks.

A Taxi Representative also asked a question around the calculation of fees, as they believed the fees were calculated based on the previous year and not the year going forward. The Operational Manager of SRS stated that fees were based on projected activity for the following year.

A Committee Member stated that going forward the consultation meetings between trade representatives and Licensing officers should be restarted in order to pre-empt similar issues in the future. Another Committee Member stated that officers had done the right thing in proposing the fee increases as some current fees had been set over 10 years ago. A further Committee Member also wanted to add that fee levels would be reviewed the following year, but also agreed that consultation was needed in order to avoid similar issues between trade representatives and Licensing officers in the future.

There was consensus amongst the Committee in support of the vehicle and operator fees and subsequently, it was

RESOLVED –

- (1) T H A T the Vehicle and Operator Fees highlighted in Appendix A of the report be approved.
- (2) T H A T the Vehicle and Operator Fees highlighted in Appendix A of the report come into effect from 28th November, 2019.

Reasons for decisions

- (1) To ensure a reasonable proportion of the Council's costs are recovered in relation to Hackney Carriage, Private Hire and other non-statutory licensing fees and that the costs of such licensing does not present a burden on local taxpayers.

(2) That a date is set for the Vehicle and Operator Fees highlighted in Appendix A of the report to come into force.

441 EXCLUSION OF PRESS AND PUBLIC –

RESOLVED – T H A T under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Part 4 of Schedule 12A (as amended) of the Act, the relevant paragraphs of the Schedule being referred to in brackets after the minute heading.

442 DISCIPLINARY FOR EXISTING DRIVER – O (DEH) (EXEMPT INFORMATION – PARAGRAPHS 12, 13 AND 14) –

The Committee was requested to determine whether O was a fit and proper person to hold a Vale of Glamorgan Hackney Carriage and Private Hire Vehicle Driver Licences. O was present during the disciplinary.

The Licensing Team Manager began by advising that on 1st August, 2019 when officers inspected O's vehicle at Cardiff Airport, the vehicle had no door stickers or window licence on display. Officers spoke to O and asked to see his Licensed Drivers identification badge. O told the officer that his badge had been taken by the Police for forensic examination following his vehicle being broken into. The door stickers had been attached to magnetic backing and were in the boot of the vehicle and window licence was in the glove compartment. Condition number 14 of the Vale of Glamorgan's Conditions for Drivers required that the driver wear the badge in an obvious and visible position at all times when driving a licensed vehicle; Condition number 9 of the same Conditions specified that the stickers must be "permanently fixed to each door with the identification sticker's adhesive backing"; Condition number 10 also stated that "The door stickers shall not be altered or defaced in any way"; and finally Condition number 7 required that the proprietor and / or driver of a vehicle ensured that the window licence was displayed on the left hand side of the vehicle window. As a result, the magnetised plates were removed by officers and O was issued with a Section 68 Suspension Notice.

Members were also advised that O had received a previous warning in relation to non-declaration of an offence when making an application for his driver's licence. Further, O received a written warning on 5th August, 2019 in relation to the current matters. Finally, on 11th September, 2019, O's vehicle was again parked outside arrivals at the local airport. There were door stickers on the vehicle but when officers examined them they were found to be magnetically attached. Officers again asked why this had been done, to which O replied that he had an issue with car crime in the area where he lived. O was asked if he was aware that his actions in relation to the door stickers was a breach of the Vale of Glamorgan's conditions to which he said that he did.

Having heard the verbal representations and having sight of the supplementary information provided by O at the time of the hearing, Members of the Committee questioned O in relation to the contents of the report and sought clarity on a number of current and historical matters.

Following this, the Committee then deliberated the matter in private.

Following the Committee's deliberations, O and the Licensing Team Manager were invited back into the room for the Committee's decision.

Committee, having considered the report presented and having taken into account all representations

RESOLVED –

(1) T H A T O was a fit and proper person to hold a Vale of Glamorgan Hackney Carriage Private Hire Vehicle Driver Licence.

(2) T H A T O receive a final written warning.

Reason for decisions

(1&2) To ensure decisions of the Licensing Authority are consistent with the adopted Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades.

443 DISCIPLINARY FOR EXISTING DRIVER – A (DEH) (EXEMPT INFORMATION – PARAGRAPHS 12, 13 AND 14) –

Committee was requested to determine whether A was a fit and proper person to hold a Vale of Glamorgan Hackney Carriage and Private Hire Vehicle Driver Licences. A was not present during the disciplinary.

The Licensing Team Manager began by advising that on 15th August, 2019 officers inspected a licensed Private Hire Vehicle licensed to A. The vehicle was fitted with magnetic backed door plates which were easily removed by the officers. A Section 68 Suspension Notice was issued to A. Condition number 9 of the Vale of Glamorgan's Conditions for Private Hire Vehicles specified that the stickers must be "permanent fixed to each door with the identification sticker's adhesive backing". Condition number 10 of the conditions also stated that "the door stickers shall not be altered or defaced in any way". The officer added that compliance with conditions 9 and 10 was the responsibility of the driver and the proprietor of a vehicle. Breach of condition was a matter dealt with as a disciplinary matter under Section 61 of the 1976 Act rather than prosecution.

Furthermore, on 16th August, 2019 A attended the Civic Offices to buy replacement door stickers. He was interviewed under caution and asked why he had placed magnetic door stickers on his vehicle and he replied that he did not know that they had to be stuck on. A copy of the relevant licence conditions was

issued with every licence and the reply given when he was asked how long he had been a driver and proprietor was a "long time".

The Licensing Officer added that A had received a first warning in relation to the use of door stickers in November 2003 as well as receiving a written warning regarding A's failure to notify the Licensing Authority of a change of address within the permitted timescale on 20th April, 2011. Finally, on 3rd September, 2013, A appeared before the Licensing Committee as a vehicle proprietor, following his failure to notify the Licensing Authority of accidents involving two of his vehicles. Subsequently, the Committee issued A with a formal final written warning as to his future conduct.

The officer reiterated the Vale of Glamorgan Conditions for Private Hire Vehicles numbers 9 and 10, as well as adding that the door stickers shall not be altered or defaced in any way. The rationale for condition 9 is that members of the public can clearly identify licensed Private hire Vehicles from both the rear and side of the vehicle as well as clearly advising that the vehicle must be pre-booked and display the licence number, which aids both the public in identifying licensed vehicles and the Licensing Authority with regard to enforcement. The use of magnetised door stickers presented a particular problem as they could be removed from the licensed vehicle making it less identifiable to the public and could be potentially placed on an unlicensed vehicle.

The officer then outlined the Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades. The legal option open to the Committee was set out in paragraph 4.4 of the report and the relevant sections of the Guidance (sections 5.5, 5.10, 5.14, 5.45 - 5.46) regarding the Applicant's behaviour, any offences committed, the responsibility around maintaining the safety and suitability of the licensed vehicle. A vehicle proprietor is responsible for ensuring that the vehicle is maintained to an acceptable standard at all times as well as ensuring that the vehicle is not used for illegal or illicit purposes.

Where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.

As A was not in attendance to present their case, the Committee determined that the matter be deferred to the next meeting. Should A fail to attend the next meeting, then the Committee agreed that it would make a determination on this matter in A's absence.

RESOLVED – T H A T the matter be deferred to the next Committee meeting and that A be asked again to attend, if A does not attend, then a decision will be made at that next Committee meeting.

Reason for decision

To ensure decisions of the Licensing Authority are consistent with the Adopted Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades.

444 DISCLOSURE AND BARRING SERVICE – Z (DEH) (EXEMPT INFORMATION – PARAGRAPHS 12, 13 AND 14) –

The Committee was requested to determine whether Z was a fit and proper person, as a result of information contained in his Disclosure and Barring Service (DBS) Certificate, to hold Vale of Glamorgan Hackney Carriage and Private Hire Vehicle Driver Licences. Z was present during the disciplinary.

The Licensing Team Manager began by advising that on 10th May, 2019 Z made an application for renewal of his Hackney Carriage and Private Hire Driver Licences. In the relevant sections of the application form, Z disclosed that he had no previous convictions or pending issues. A DBS Certificate was commissioned as part of the application process. There was a delay in the return of the DBS Certificate, which the Licensing Team tracked throughout. Z supplied the Certificate to the Council on 30th October, 2019. The DBS Certificate contained other relevant information disclosed at the Chief Police Officer's discretion – the details were provided at the meeting.

The information received about Z fell into the Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades, Section 5.7 which stated that "It is important to recognise that matters which have not resulted in a criminal conviction whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) may still be taken into account by the licensing authority. In addition, complaints where there was no police involvement would also be considered. Condition number 5 of a Hackney Carriage and Private Hire Vehicle Driver's Licence also required a licence holder notify the Licensing Authority, within seven days, or any pending criminal investigation and the outcome. Further details were provided at the meeting.

Having heard the verbal representations and having sight of supplementary information provided by Z at the time of the hearing, Members of the Committee questioned Z in relation to the contents of the report and sought clarity on a number of current and historical matters.

Following this, the Committee then deliberated the matter in private.

Following the Committee's deliberations, Z and the Licensing Team Manager were invited back into the room for the Committee's decision.

The Committee, having considered the report presented and having taken into account all representations,

RESOLVED –

(1) T H A T Z remained a fit and proper person to hold a Vale of Glamorgan Hackney Carriage Private Hire Vehicle Driver Licence.

(2) T H A T Condition number 5 of the Hackney Carriage and Private Hire Vehicle Driver's Licence required Z to notify the Licensing Authority of the outcome of the criminal investigation.

Reason for decisions

(1&2) To ensure decisions of the Licensing Authority are consistent with the Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades, in respect of Driver's Licences.

445 DISCLOSURE AND BARRING SERVICE – S (DEH) (EXEMPT INFORMATION – PARAGRAPHS 12, 13 AND 14) –

The Committee was requested to determine whether S was a fit and proper person to hold Vale of Glamorgan Hackney Carriage and Private Hire Vehicle Driver Licences. S was present during the disciplinary.

The Licensing Team Manager began by advising that on 17th July, 2019 S made an application for the renewal of Hackney Carriage and Private Hire Driver Licences. In the relevant sections of the application form S disclosed he had no previous convictions or pending issues. A Disclosure and Barring Service (DBS) Certificate was commissioned as part of the application process. There was a delay in the return of the DBS Certificate, which the Licensing Team tracked throughout. A third party supplied the original certificate to the Council on S's behalf on 1st November, 2019. Subsequently, it was found that the DBS Certificate contained other relevant information disclosed at the Chief Police Officer's discretion. Details of this were provided at the meeting.

The information received about S fell into the Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades, Section 5.7 which stated that "It is important to recognise that matters which have not resulted in a criminal conviction whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) may still be taken into account by the licensing authority. In addition, complaints where there was no police involvement would also be considered. Condition number 5 of a Hackney Carriage and Private Hire Vehicle Driver's Licence also required a licence holder notify the Licensing Authority, within seven days, or any pending criminal investigation and the outcome. Further details were provided at the meeting.

Having heard the verbal presentations and sight of supplementary information provided by S during the hearing, Members of the Committee questioned S in relation to the contents of the report and sought clarity on a number of current and historical matters.

Following this, the Committee then deliberated the matter in private.

Following the Committee's deliberations, S and the Licensing Team Manager were invited back into the room for the Committee's decision.

The Committee, having considered the report presented and having taken into account all representations,

RESOLVED –

- (1) T H A T S was a fit and proper person to hold a Vale of Glamorgan Hackney Carriage Private Hire Vehicle Driver Licence.
- (2) T H A T Condition number 5 of the Hackney Carriage and Private Hire Vehicle Driver's Licence required S to notify the Licensing Authority of the outcome of the criminal investigation.

Reason for decisions

(1&2) To ensure decisions of the Licensing Authority are consistent with the Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades, in respect of Driver's Licences.