

# **Cheltenham Borough Council Licensing Sub-Committee - Miscellaneous Exempt Minutes**

**Meeting date:** 11 January 2023

**Meeting time:** 6.00 pm - 8.25 pm

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**In attendance:**

**Councillors:**

David Willingham (Chair), Angie Boyes (Vice-Chair), Barbara Clark, Diggory Seacome and Simon Wheeler

**Also in attendance:**

Vikki Fennell (Solicitor) and Jason Kirkwood (Licensing Team Leader)

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## **4 Review of a Hackney Carriage Driver's Licence**

The Chair explained the committee process to the driver, and invited the Senior Licensing Office to introduce his report, which concerned a complaint against the driver who allegedly refused to carry an assistance dog accompanying a wheelchair user. The Senior Licensing Officer told Members that this is a serious allegation and potentially a criminal offence; equality issues are covered in great detail in safeguarding training, which this driver attended in 2019. The case has been referred to Committee to give members the opportunity to consider whether they believe the driver is fit and proper to hold a licence. Available actions are to take no action, to issue a written warning, to suspend the licence or to revoke the licence.

He reminded Members that CBC has a legal obligation to ensure that drivers are fit and proper to drive the public, and the statutory guidance states clearly that the question they must ask themselves is whether they would be happy for a loved one to travel in this person's vehicle at any time of day or night. Their decision should be based on the balance of probability, and they should believe in the trustworthiness and honesty of the driver. The council must take a robust stance to ensure equal access to people with disabilities who want to use a taxi. Drivers should be courteous and caring, and have a legal obligation to carry assistance dogs, the only excuse being that the driver has a medical exemption.

There is no obligation on the passenger to provide evidence that their dog is an assistance dog, or for the dog to be wearing any identifying coat or harness – if the owner says their dog is an assistance dog, the driver must take it without question.

As the driver and the complainant give two very different accounts of the incident, Members must drill down to ascertain the validity of the complaint and who they believe is telling the truth.

In response to questions from Members, the Senior Licensing Officer confirmed that:

- it is not the business of the driver to be told why a person may need an assistance dog or for the person to have to explain;
- the driver does not have an exemption certificate which allows him to refuse to carry a dog for his own health reasons;
- the driver undertook safeguarding training in December 2019, which included a question about carrying assistance dogs.

The Chair noted that the complainant, driver and witness statements were made under criminal procedure rules and any misstatement was viewed as perjury under civil rules.

The driver did not have any questions for the officer, and was invited to make his statement. He told Members that he has been in the UK for 13 years, has never had any problem with the law, is married with three children, and that his HCV licence is his livelihood – he would not do anything to risk losing it. On the Saturday night in question, he was first in the taxi queue in the Promenade and was approached by the complainant and her husband. At first he agreed to take them, but when he noticed the dog, which wasn't wearing a harness, he refused the fare, as the previous week a customer had complained about dog hair in his cab. The lady didn't tell him it was an assistance dog, but moved down the line to another driver. He could see her talking about him and taking pictures of his licence plate, so got out of his car to see what was happening. At this stage, the lady told him her dog was an assistance dog and he said in that case he was happy to drive them, but she refused, saying he was rude.

In response to questions from Members, the driver confirmed that:

- he didn't notice the lady's wheelchair when she and her husband first approached him – he was sitting in the driver's seat of his car, they approached from the back of the taxi queue, and leaned down to speak to him. Her husband did the talking. He believes she was standing at that point, but subsequently noticed some kind of boot on her leg, from the knee down;
- the dog was not wearing anything to identify it and the lady did not say initially that it was an assistance dog, even when he said he couldn't take it in his car;
- he didn't think to ask if the dog was an assistance dog; he was thinking about the complaint about dog hair from the previous week. Drivers have to try and keep all their customers happy but it isn't always possible to do this;
- although the complainant states that she explained that her dog was a registered assistance dog and offered to show him certification but he just laughed and still refused to take him, his recollection is that she didn't provide any certificate and he only discovered it was an assistance dog when she had moved on to a taxi further back in the rank;
- when he realised that it was an assistance dog, he apologised and offered to take them, opening the boot for her husband's bags of shopping, but the lady refused;
- he asked the HCV driver (plate 125) to make a witness statement after his interview with a licensing officer; he doesn't know this driver personally;

- his vehicle at the time was borrowed, a silver Mercedes which was not wheelchair accessible.

In response to questions from the Senior Licensing Officer and Chair, the driver stated that:

- he believed his conversation with the complainant lasted no more than seconds, and that it was just a few minutes until she left in another taxi, even though her statement times the whole incident at eight minutes, from 22:45 to 22:53;
- he doesn't know why she got angry with him so quickly, why she states that her dog was wearing its uniform and that she offered to show its certificate, and that he laughed – none of this was his recollection of the incident. He can only assume she was angry because he refused to take her dog;
- he has no other connection with the complainant or her husband, and cannot understand why she might lie to licensing officers under threat of prosecution, but thought that maybe she had asked other drivers in the queue to take her and they had refused – this happens sometimes and passengers get frustrated;
- rank etiquette is that the driver at the front of the queue takes the next fare; all drivers in the queue are aware of and abide by this, but people still sometimes ask drivers further back in the queue to take them;
- he believed the lady was standing when she approached his car - he was sitting in the driver's seat and they approached from behind. He wasn't aware of a wheelchair at that stage, and didn't see how she and her husband got from his car to one further back in the queue after he refused to take them;
- he did, however, notice the cast on her leg, and her dog;
- he occasionally but regularly carries a blind customer with an assistance dog – maybe once a month;
- he does not have CCTV in his vehicle.

The Chair was concerned about what he felt was the driver's 'selective memory' – he could remember some details, such as the direction from which the complainant and her husband approached, but not others, such as whether she was in a wheelchair. The Senior Licensing Officer commented that, with his livelihood at stake and with two conflicting stories, the driver was giving the Committee exactly the same information that he had given at his interview. It was surprising that he had not gone away and reflected, and tried to remember more of the incident; most people would have done this and filled gaps to add credibility to their story compared.

The driver repeated that he wasn't aware of the wheelchair when the lady approached his car and he had the impression she was standing with her husband, noticing the boot and dog only when he looked down - this was the truth. A Member commented that the issue of which direction the passengers came from was irrelevant if the driver was only aware of them standing next to his window, and added that he was actually encouraged by the consistency of the driver's statement – it was the same as his interview for a reason, and to his credit that he had not tried to twist the evidence.

In response to further questioning from the Senior Licensing Officer, the driver reiterated that:

- the lady didn't show him any certification, even though she says in her statement that she did. He didn't think to ask if the dog was an assistance dog, even when he noticed the cast on the lady's leg;
- when he offered to take them, having realised it was an assistance dog, the husband was prepared to go with him, but the lady refused, saying he was rude;
- after the initial conversation, he sat in his car for a minute or so, and was triggered to get out when he saw the lady talking to the driver further back in the queue.

A Member commented that she felt the wheelchair was a red herring – people sometimes opt to use one even though they can walk. It could have been a lightweight, foldable wheelchair, easily accommodated in the vehicle, and she felt Members should not focus on this too much. She also noted that the lady said that when the interaction ended at 22:53, she felt herself in a vulnerable position in her wheelchair, though she didn't mention this at the beginning of her statement.

**The meeting then adjourned, to allow Members to take advice from the Legal Officer.**

In the following debate, Members made the following points:

- this was a difficult case, with two conflicting and unverified stories, but the crux of the matter was whether the driver was a danger to the public - he clearly was not;
- accessibility is important for the council but the wheelchair may be a red herring. Although the driver should have asked initially if the dog was an assistance dog, there was no reason not to consider him a fit and proper person to be a driver, which was the important factor here, although he could benefit from some repeat of the safeguarding training;
- the driver was happy to take the dog when he realised it was an assistance dog, and the whole experience is enough to remind him always to ask if a dog is an assistance dog in future; further training isn't needed;
- in the complainant's statement, the driver did not agree to take the dog even when it became evident it was an assistance dog;
- the driver's consistent statement under questioning holds weight, but his selective memory doesn't inspire confidence;
- on the balance of probability and without the benefit of the doubt, the threshold to suspend or revoke the driver's licence has not been reached; he will be required to retake the safeguarding training as part of his upcoming licence renewal. This leaves a written warning as the only other option, which is also inappropriate;
- however, a wheelchair user is inherently vulnerable, and to take no action would be concerning and give the message to the community that CBC doesn't take such matters seriously.

The Senior Licensing Officer said the main emphasis of the hearing was to decide whether the driver was fit and proper to hold a licence. If no action was taken, licensing officers will have to go back to the complainant and explain the decision, which could bring into question the integrity of the process. Although the meeting was in exempt session and the case won't be picked up directly by the press, the complainant can do what she wants with the story once she has had the council's feedback.

Members continued their debate with the following points:

- the policy is too loose – it seems that almost any charges can be brought against drivers - and needs to be tightened up;
- drivers should be courteous at all times, and the complainant says she was left feeling upset and now doesn't feel comfortable travelling in Cheltenham. This should be taken into account;
- without hearing directly from the complainant, it is a struggle to work out the actual truth. The driver has been questioned and maintained his story throughout but Members have had no opportunity to question the complainant whose written statement has been taken as gospel.

The Senior Licensing Officer said the gist of what he has heard – and what he will have to put in a letter to the complainant – is that no action will be taken because, to put it bluntly,

Members believe the driver's story over the complainant's: that he didn't see the wheelchair, that the conversation only lasted a couple of minutes, and that he didn't know it was an assistance dog. A Member said it was not a question of believing one and not the other, just that on the balance of evidence, Members had heard more evidence from the driver than from the complainant.

The Chair again expressed concern at the driver's selective memory, and was concerned that the witness statement from the other driver was received after the driver's interview with licensing officers – drivers should be made aware that if they identify another driver in an interview, they should not then speak to that person to avoid any risk of being accused of witness tampering. Members had also noted that there was no witness statement from the complainant's husband, although the Senior Licensing Officer said there was a specific reason for this.

The Chair continued that not taking an assistance dog is a serious offence and undermines the integrity of the taxi service, but the driver says he was happy to take the fare once he realised this was an assistance dog. Members have concluded that he is a fit and proper person to hold a licence, although he personally does not think he is and would vote to revoke the driver's licence. One Member agreed that wheelchair users are vulnerable, and if we could be sure that the driver refused to take the dog knowing it was an assistance dog, he too would vote to revoke his licence, but we cannot be sure – there is a gulf between the two stories, and the truth and right course of action lies somewhere between. Another Member said that a misunderstanding is at the heart of this case, and as soon as the driver realised it was an assistance dog, he offered to take the fare – this is in his favour.

The Senior Licensing Officer suggested a possible solution: this is a serious and difficult case, and if the complainant was present to give her side of the story, a robust and right decision could be made. He suggested deferring the meeting, and inviting the complainant to attend a future hearing.

A Member asked for confirmation that the same group of Members would sit, and the Chair confirmed that if the complainant doesn't want to attend, the decision will be made based on the statements and evidence Members have before them.

**Vote on recommendation to defer to the meeting on 1 February 2023, and invite the complainant to attend**

3 in support

2 in objection

**CARRIED**

The Senior Licensing Officer advised the driver that he could continue to work as normal until that date.