

Licensing Committee

Wednesday, 9th November, 2016
6.10 - 8.25 pm

Attendees	
Councillors:	David Willingham (Chairman), Mike Collins, Tim Harman, Adam Lillywhite, Paul McCloskey, Dennis Parsons and Diggory Seacome
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes

1. APOLOGIES

Apologies were received from Councillors Flynn and Wilkinson. In the absence of the Chairman Councillor Flynn, the Vice Chairman Councillor David Willingham took the chair for the meeting.

2. DECLARATIONS OF INTEREST

None

3. PUBLIC QUESTIONS

None

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 12 October 2016 were approved and signed as a true record.

A member questioned whether in this digital paper saving age, a paper copy of the minutes was required to be signed. As it was a regulatory committee, the Legal Officer felt that it was, but this would be checked.

5. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE - MR HOLDER

Please note that the order of the agenda was altered, so that the agenda item for Mr Chimuka was the final hearing.

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Duncan Clive Holder's Private Hire Driver's Licence PHD303. Mr Holder had been a licensed private hire driver since 2003 and his licence is due for renewal on 6 March 2018. However, in October 2016 Mr Holder pleaded guilty to the offence of plying for hire without the correct licence, having accepted a journey during the March race week without that journey being booked through a private hire operator. The court fined Mr Holder and ordered him to pay costs. The Officer informed members that during the 13 years Mr Holder had been licensed with the council, there had not been any history of complaints or other convictions prior to that recent incident.

The Officer advised the committee to consider whether, in light of the conviction, they felt that Mr Holder remained a fit and proper person to hold a

private hire driver's licence. The options for the committee were to allow the licence to continue or to revoke the licence. If the committee allowed the licence to continue, they could choose to issue a written warning which would be kept on record. If revoked, the committee could decide to revoke with immediate effect in the interest of public safety.

In reply to questions from members the Officer confirmed that the officers who had reported the offence were from Gloucester City Council helping out Cheltenham officers during race week and that Mr Holder was only licensed in Cheltenham. The Officer also confirmed that he didn't have any other information on the incident other than what was provided in the background papers and that statements had been provided to the court but were not now needed as Mr Holder had pleaded guilty.

A member questioned why Mr Holder's fine and costs were considerably higher than the other two reviews to be discussed. The Legal Officer, Vikki Fennell, was unsure as all 3 cases had been heard on the same day feasibly with the same Magistrates, however she advised that a means form has to be completed and this could have had a bearing on the outcome. The Officer reminded members that the level of the fine did not reflect the severity of the offence and that it was the same offence in all three cases.

Another member asked if a record was kept of how many times Officers approached private hire drivers to ply for hire, where the driver did refuse to take them. The Licensing Officer advised that no such records were kept as if an offence was not committed the Licensing team would not be informed. It was also confirmed that an alleged offence could be reported by anyone, including members of the public, and would need to be proven beyond reasonable doubt that it had happened with witness statements provided.

The Chair invited Mr Holder to speak in support of his review. Mr Holder told members that it was a genuine mistake. He was not plying for hire as it was race week and he was busy enough. He continued that he had finished for the evening and had pulled over in a quiet spot to text his wife when he was approached and that he thought the two people were lost, so he tried to book a fare for them by texting it through to the operator. He had pleaded guilty as he was unaware that booking a fare via text for someone else was still considered illegal. In response to a question from a member, Mr Holder confirmed that he had 'pre-book only' signs on the side of his car. Mr Holder was reminded that individuals have to book their fare not the driver.

Mr Holder informed members that he had contacted the Magistrates Court about the level of his fines and was informed that £1,000 costs was awarded to Cheltenham Borough Council to cover their legal fees and the fine of £500 was due to his income.

There being no further questions or comments, the committee voted to debate the matter in private and Mr Holder was asked to leave the room at 18.30.

Mr Holder was asked to return to the committee room at 18.43.

The Chair moved to vote on 1.3.1 of the report, being that Mr Holder's licence be continued with no further action.

Upon a vote it was unanimous with 7 for, 0 against.

RESOLVED THAT, Mr Duncan Clive Holder's private hire driver's licence be continued with no further action as the Committee was satisfied that he was a fit and proper person to hold such a licence.

The Committee decided not to issue a written warning, but wished it put on record should Mr Holder come before committee again, that he had been reminded that plying for hire and driving with someone in his car that had not been pre-booked, invalidated his insurance and was a potential safety issue.

6. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE - MR REHMAN

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Aziz Ur Rehman's Private Hire Driver's Licence PHD021. Mr Rehman had been a licensed private hire driver since 2010 and his licence is due for renewal on 11 July 2019. However, in October 2016 Mr Rehman pleaded guilty to the offence of plying for hire without the correct licence, having accepted a journey during the March race week without that journey being booked through a private hire operator. The court fined Mr Rehman and ordered him to pay costs. The Officer informed members that during the 6 years Mr Rehman had been licensed with the council, there had not been any history of complaints or other convictions prior to this recent incident.

The Officer advised the committee to consider whether, in light of the conviction, they felt that Mr Rehman remained a fit and proper person to hold a private hire driver's licence. The options for the committee were to allow the licence to continue or to revoke the licence. If the committee allowed the licence to continue, they could choose to issue a written warning which would be kept on record. If revoked, the committee could decide to revoke with immediate effect in the interest of public safety.

A member questioned the Officer as to where the incident had taken place, however the Officer replied that he did not have this information which was in the statements that went to the Magistrates Court.

There were no further questions as other relevant questions had already been covered in the previous agenda item.

The Chair invited Mr Rehman to speak in support of his review. Mr Rehman told members that he was very sorry about the offence, that he had paid the fine and learnt his lesson and wouldn't do it again. He continued that he has had a clean driving licence with no points since 2007 and been a private hire driver since 2010 with no previous offences and had a copy of his driving licence and DBS certificate with him should members have wished to see them. He said he was a family man, his wife didn't work and apologised again.

In reply to questions from members, Mr Rehman stated that it was about 8pm on 17 March and that he was in Pittville Street planning to go to KFC to get some dinner. He confirmed he was not in the taxi rank but behind it, outside Subway. He also confirmed that he had 'pre-book only' signs on the sides of his car. He said he was asked to go to Gloucester and that the fare would be £30. When questioned on this price by a member when the normal fare to

Gloucester would only be £16-£17, Mr Rehman said they were race week prices. Mr Rehman admitted he made a mistake and was ashamed. Mr Rehman confirmed he didn't attempt to notify his controller of this fare, but did inform the council of the offence afterwards.

There being no further questions, Mr Rehman summed up by reiterating he had learnt from his mistake, he was sorry and assured the committee it wouldn't happen again and he would follow the regulations properly in future.

The committee voted to debate the matter in private and Mr Rehman was asked to leave the room at 18.56.

Mr Rehman was asked to return to the committee room at 19.05.

The Chair moved to vote on 1.3.1 of the report, being that Mr Rehman's licence be continued with no further action.

Upon a vote it was unanimous with 7 for, 0 against.

RESOLVED THAT, Mr Aziz Ur Rehman's private hire driver's licence be continued with no further action as the Committee was satisfied that he was a fit and proper person to hold such a licence.

The Committee decided not to issue a written warning, but wished it put on record should Mr Rehman come before committee again, that he had been reminded that plying for hire and driving with someone in his car that had not been pre-booked, invalidated his insurance and was a potential safety issue.

7. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

RESOLVED THAT in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:

Information relating to any individual,

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

8. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE - MR CHIMUKA

Please note that although the committee voted to go into exempt session, there was subsequently nothing discussed that could not be put into the public minute, therefore there is no exempt minute. Members had been given time to read the exempt minutes and background papers of the Licensing Committee dated 10 April 2015.

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Ephraim Chimuka's Private Hire Driver's Licence PHD555. Mr Chimuka had been a licensed private hire driver since 2007 and his licence is due for renewal on 13 December 2017. However, in October 2016 Mr Chimuka

pleaded guilty to the offence of plying for hire without the correct licence, having accepted a journey during the March race week without that journey being booked through a private hire operator. The court fined Mr Chimuka and ordered him to pay costs. The Officer drew members' attention to the fact that the report referred to a previous licensing committee hearing in April 2015 at which Mr Chimuka's fitness as a private hire driver was considered. That hearing involved a different set of circumstances and Mr Chimuka was not convicted of any offence and on that occasion the committee determined to allow Mr Chimuka's licence to continue with no further action.

The Officer advised the committee to consider whether, in light of this recent conviction, they felt that Mr Chimuka remained a fit and proper person to hold a private hire driver's licence. The options for the committee were to allow the licence to continue or to revoke the licence. If the committee allowed the licence to continue, they could choose to issue a written warning which would be kept on record. If revoked, the committee could decide to revoke with immediate effect in the interest of public safety.

There being no questions to the Officer, as relevant questions had already been covered in the previous two review agenda items, the Chair invited Mr Chimuka to speak in support of his review. Mr Chimuka admitted to members that he was wrong. He said he was parked outside The Stable, which gave him easy access to the ring road around Cheltenham, he was eating a sandwich and it was his intention to wait for a fare. The Officers approached him and asked to go to Gloucester. He thought they were a couple and that the lady looked pregnant and he pointed out the taxi rank. Mr Chimuka said they asked him again and as he was concerned about the lady as he knew the taxi rank queue was very long, he said yes. He wanted to help the lady who he thought looked upset and to get her home safely during race week. He apologised again for what he did.

In reply to questions from members, Mr Chimuka confirmed he was married with two children, that The Stable was in Clarence Street nearly opposite the library and the offence took place at approximately 9pm. When asked why he changed his mind, Mr Chimuka repeated that he thought the lady was pregnant and knowing that it was very busy and that they wouldn't get a taxi very soon, he wanted to help. Mr Chimuka confirmed that he did have 'pre-book only' stickers on the inside of his vehicle windows, but that these maybe less visible as his rear windows were tinted.

A member referred to the hearing on 10 April 2015, when Mr Chimuka had been before the committee and had said that he was an honest and trustworthy person, and asked Mr Chimuka if he still considered himself to be honest and trustworthy. Mr Chimuka replied that he admitted when he had done something wrong and was trustworthy. Mr Chimuka was further questioned about the advice the committee had given him following the serious allegations that led to his hearing in 2015. Mr Chimuka replied that he had learnt from this and that he had fitted audio and video devices in his car, so that he had proof of any allegations made against him. When asked, he confirmed that on the day of the offence in March 2016, the audio / video devices were not operating as they only worked when the ignition was turned on.

There being no further questions, Mr Chimuka was invited to sum up. He stated that he admitted he was wrong on the day, that he believed himself to be honest and trustworthy and that he wouldn't be back before the committee again as he would now stick to the rules as stated with no grey areas.

The committee voted to debate the matter in private and Mr Chimuka was asked to leave the room at 19.29.

Mr Chimuka was asked to return to the committee room at 20.12.

The Chair moved to vote on 1.3.1 of the report, being that Mr Chimuka's licence be continued with no further action.

Upon a vote it was unanimous with 0 for, 7 against.

The Chair moved to vote on 1.3.2 of the report (with a slight change in the order of the wording), being that Mr Chimuka's licence be revoked.

Upon a vote it was unanimous with 7 for, 0 against.

Upon a further vote on 1.3.3 of the report, for the licence to be revoked with immediate effect,

It was unanimous 7 for, 0 against.

RESOLVED THAT, Mr Ephraim Chimuka's private hire driver's licence be revoked with immediate effect as the Committee no longer considered him to be a fit and proper person to hold such a licence.

The Committee's rationale was as follows:-

- The overriding consideration was the safety of the public. The council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe, honest drivers, and not persons who take advantage of their employment;
- The safety of the citizens of Cheltenham and those visiting the town was of paramount importance. There was a duty on the council to ensure that anyone in a licensed vehicle was safe;
- Mr Chimuka implied that he would stick to the rules now but the evidence showed that he had not done so before and he admitted to there being a pattern of behaviour;
- Mr Chimuka appeared before the committee in April 2015 and his fit and proper status was brought into question at that time. It was not a unanimous decision from the committee for him to continue to hold a licence;
- Mr Chimuka was convicted of plying for hire without the right to do so which again threw into question the trustworthiness of him as a driver;
- Plying for hire would have invalidated his car insurance which could have potentially seriously endangered the lives of the passengers he was carrying in the vehicle;
- The committee and the council were put in an untenable position in that if there were to be a further incident the reputation of the council would

be in jeopardy given this was the second time that Mr Chimuka had appeared before the committee in an 18 month period;

- Members felt that his demeanour before the committee did not appear to be one of a man of credibility, trustworthiness or honesty;
- Mr Chimuka's behaviour had given the committee the impression that if he saw an opportunity present itself to him, he would take it as an opportunity to earn more money or to take advantage of a lone female;
- Given that he had appeared before the committee in April 2015 where the rules were made clear to him, he had acted in blatant contravention of those rules possibly endangering the safety of the public;
- There was a cumulative impact in that Mr Chimuka had already been given a second chance to prove himself in April 2015 and he had failed to do so.

The Legal Officer advised Mr Chimuka that he had the right of appeal to the Magistrates Court within 21 days of the date of the decision letter that would be sent to him.

9. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

The Licensing Officer informed the Committee that a new application for a sexual entertainment licence had been received in the last week, relating to the Two Pigs premises in Church Street for a licence on four occasions each year when there was racing. This was now out for consultation until 2 December and would come before the Committee at the January meeting. It was suggested that this meeting be held in the Council Chamber. The Officer informed members that a site visit would be arranged. He also informed members that the other sexual entertainment venue in Cheltenham still had a licence as it was an annual licence, although the premises was currently closed.

One member asked the Licensing Team to ensure that applicants were aware that they could be represented at committee and that they understood the committee procedure. It was also suggested that plain simple English be used where possible.

10. DATE OF NEXT MEETING

Wednesday 7 December 2016 at 6pm.

David Willingham
Chairman

