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## GENERAL LICENSING SUB COMMITTEE 12/02/20

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**Present:** Councillor Annwen Hughes (Chair), Councillors Angela Russell and Gareth Williams.

**Officers:** Siôn Huws (Senior Solicitor - Corporate), Gwenan Mai Roberts (Licensing Manager) and Lowri Haf Evans (Democratic Services Officer).

### 1. APOLOGIES

None to note.

### 2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

### 3. URGENT ITEMS

None to note.

### 4. EXCLUSION OF PRESS AND PUBLIC

It was RESOLVED to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12A of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, or their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

### 5. APPLICATION FOR A HACKNEY/PRIVATE HIRE LICENCE

- a) The Chair welcomed everyone to the meeting. She explained that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in using licensed vehicles.

The Licensing Officer presented a written report on an application received from Mr A for a hackney carriage/private hire driver's licence. The Sub-committee was

requested to consider the application in accordance with the DBS record, and the guidelines on relevant criminal offences and convictions. The Licensing Authority had recommended that the Sub-committee should refuse the application.

The applicant's representative was invited to ask questions of the Council's representative. The applicant was given an opportunity to expand on his application and provide background information about the incidents in question and also his personal circumstances. It was noted that he was experiencing personal difficulties involving his son's health and the death of both his father and his friend. It was added that he had a quality taxi company, that he employed local drivers and that his priority was to retain the business. A witness was invited to support the applicant's application.

With the evidence having been presented, the applicant, his solicitor, and his friend withdrew from the room along with the Licensing Manager, while the members of the Sub-committee discussed the application.

b) **It was RESOLVED that the applicant was not a fit and proper person to be issued with a hackney carriage/private hire driver's licence from Gwynedd Council.**

c) In reaching its decision, the Sub-committee had considered the following:

- the requirements of the 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations by the applicant, his solicitor, and his friend
- documents and images submitted by the applicant during the hearing
- character references in the form of letters received in support of the applicant's application
- an excerpt of closed circuit television footage (2018 incident)
- recordings of 999 calls (2019 incident)
- the Licensing Department's report along with the DBS statement disclosing a conviction.
- Evidence and observations of the Magistrates' Court.

d) Specific consideration was given to the following matters:

The applicant had received a formal caution from North Wales Police (May 2018) on a charge of assaulting a person contrary to section 39 of the Criminal Justice Act 1988.

In February 2019 the Licensing Department received a telephone call from the Police to advise that a member of the public had made an accusation that he had suffered a physical assault by the applicant following a fare dispute. No criminal charges were brought against the applicant for this incident. Following the incident, the Licensing Manager had received information which outlined the facts of the matter, and a decision was made to revoke the applicant's licence in order to safeguard the public, in accordance with the provisions contained in section 61(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976.

The applicant appealed against the decision, and in a hearing at Caernarfon Magistrates' Court (July 2019) his appeal against the Council's decision on 14 March 2019 to revoke his hackney carriage/private hire driving licence under

section 60 of the Local Government (Miscellaneous Provisions) Act 1976 was turned down.

- e) Paragraph 2.2 of the Council's Policy was considered, which stated that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to remain free of any conviction for an appropriate period as stated in the Policy, and to show evidence that the individual is a fit and proper person to hold a licence. The onus was on the applicant to prove that he was a fit and proper person.

Paragraph 2.3 of the Policy was considered, in which reference was made to formal cautions.

Paragraph 5.1 of the policy was considered, which set out the requirements of the Licensing Authority in terms of matters to be considered in deciding whether an applicant was a 'fit and proper person' to be issued with a licence.

Paragraph 6 of the Policy addressed violent offences. Paragraph 6.1 stated that, since licensed drivers came into close contact regularly with the public, the sub-committee shall adopt a firm stance towards those who have offences involving violence. Paragraph 6.2 states that any applicant found guilty of violence-related offences was unlikely to receive a licence until they had been free from such convictions for at least three years .

Paragraph 6.5 of the Policy stated that an application for a licence shall generally be rejected if the applicant had a matter to be considered (including cautions) for common assault and/or an offence under section 4 of the Public Order Act 1986 which took place less than three years prior to the date of application.

- f) The Sub-committee concluded that the caution dating from 2018, along with the February 2019 incident, involved violent offending. As the May 2018 caution had been given 21 months prior, and that a little over a year had passed since the February 2019 incident, both fell within the three-year period. In accordance with paragraph 6.5 of the Policy, and the recommendation of the Licensing Manager, the initial considerations were clearly in favour of refusing the application. The Sub-committee was also aware, however, that the Policy was only a guidance, and that it was possible to deviate from it if there was justification for doing so.

In deciding whether or not to deviate from the provisions contained within the Policy, the Sub-committee considered the reasons upon which the following decisions were based:

- revocation of licence (May 2018)
- decision of the Sub-committee to grant a licence (October 2018)
- revocation of licence (February 2019)
- Magistrates' Court verdict (July 2019) on appeal against February 2019 revocation.

The following matters were considered:

- the evidence provided by the applicant to the Sub-committee prior to the meeting pertaining to the incidents, along with character references
- the context of previous decisions, the substance and quality of the evidence presented to the relevant forums, and the manner in which this evidence had been challenged in those forums
- the situation when the applicant would seek to reopen / challenge matters of fact subject to previous Court rulings, in which the Sub-committee

would be entitled to consider the Court's findings to be final; especially were the applicant to seek to challenge those same matters without any new, additional evidence being submitted, and/or would seek to submit new evidence pertaining to those matters that could have been presented in the Court in which the appeal was heard.

Following the revocation of his licence in May 2018, the applicant then submitted a new application for a licence in October 2018. Despite the Licensing Department's recommendation to refuse the application, the Sub-committee decided to approve it as the circumstances had justified a deviation from the policy, for the following reasons:

- That the applicant had shown remorse for the assault
- The incident was out of character and this was highlighted in the many character references received in support of the applicant's application
- That there was no record of any conviction or other caution against the applicant as noted on the DBS record
- That the applicant was already under caution by the Police and was therefore mindful not to breach the law again
- That the attack was not a violent one against the public, but rather against another competitor in the taxi trade
- The victim of the attack was not without blame
- That the attack had been provoked, in a location that had CCTV coverage
- That the attack had arisen in the context of a lengthy campaign of harassment and provocation by the victim of the attack
- An honest explanation was given as to why the applicant had not appealed against the decision to revoke his licence - he had experienced personal difficulties involving his son's health.

In the view of the Sub-committee, the Sub-committee in 2018 had clearly given the applicant another chance, believing that he would take the Police caution seriously and take proactive steps to keep out of any trouble which could cast further doubt upon his ability to be a fit and proper person. It was on that basis that the Sub-committee in 2018 came to the conclusion that he was a fit and proper person. Nevertheless, following the February 2019 incident, the Sub-committee was required to reconsider the decision made in 2018 that the applicant was a fit and proper person to be issued with a licence, along with the reasons given for that decision.

The applicant's hackney carriage/private hire licence was revoked for the second time by the Licensing Department following the February 2019 incident. This decision was made on the grounds of the applicant's conduct in the incidents that occurred in May 2018 and February 2019.

The applicant appealed to the Magistrates' Court against that decision, and live evidence of the 2018 and 2019 incidents was presented in the hearing, along with written witness statements and recordings of telephone calls made to the police.

- It was noted that the Court had favoured the description of the defendant in the 2018 incident, rather than the appellant's description. It was highlighted that in reaching their decision, the Magistrates had disregarded some of the reasons provided by the Sub-committee in 2018, and had given no weight to the fact that the offence was one of assault against a competitor; the Policy did not discriminate according to the

identity of the victim of violence.

- In the same manner, the Court also gave precedence to the descriptions given by the victims of assault in the 2019 incident, highlighting that this had been a serious incident. Despite apparent inconsistencies in the evidence in terms of the absence of injuries resulting from the alleged assault, the incident had clearly been an unpleasant one for the passengers. Consequently, the Court found that the Council had not been mistaken in its decision that 'the applicant is not a fit and proper person to be issued with a licence' on the grounds of the 2018 and 2019 incidents. The appeal had been dismissed.

Consideration was given to the applicant's personal statement, in which he had noted:

- That he was being treated unfairly compared to other drivers
- That he had not been invited / given the opportunity by the Licensing Department to discuss / present evidence pertaining to the 2019 incident prior to his licence being revoked in May 2019
- That the Licensing Committee's investigations into the 2018 and 2019 incidents, which led to his licence being revoked, was flawed
- That the campaign of harassment and provocation by the victim of the 2018 attack persisted - CCTV images were shown of incidents outside his home
- That there were no grounds for the Magistrates' Court ruling based on the evidence submitted
- That the police had not identified any physical injuries to the passenger when they attended the 2019 incident
- That the 2018 and 2019 incidents had not taken place in the manner in which the Court found that they had
- That he had obtained several character references in support of his application.

In reaching its decision, the Sub-committee deemed the Court's findings to be clear and unambiguous. The Court had considered a great deal of written evidence, oral evidence by living witnesses under thorough questioning, and both the Council and the applicant had presented their respective legal arguments. Under the circumstances, these findings were considered to be of great significance.

It was considered that the applicant's presentation to the Sub-committee amounted to a retelling of the factual matters presented before the Magistrates' Court in regard to the 2018 and 2019 incidents. The Sub-committee found no evidence to show that anything had changed substantially since the appeal, and the Sub-committee was under the impression that the applicant was inviting it to disregard the Court's findings.

- g) Having carefully considered all the evidence and information, the Sub-committee was not of the view that the application merited deviation from the policy guidance, and thus came to the conclusion that the applicant was not a fit and proper person to hold a hackney carriage and private hire vehicle driver's licence.

The Solicitor reported that the applicant had the right to submit an appeal to Caernarfon Magistrates' Court against the Sub-committee's decision and that any such appeal should be submitted to the Chief Executive of Llandudno Magistrates' Court within 21 days of receiving the letter to confirm the Sub-committee's decision. It was also noted that should the applicant wish to appeal

against the decision of the Magistrates' Court, such an appeal should be directed to the Crown Court.

The meeting commenced at 10.20 am and concluded at 2.40 pm

**CHAIRMAN**