

General Licensing Committee

A meeting of General Licensing Committee was held on Tuesday, 11th June, 2019.

Present: Cllr Paul Kirton(Chairman), Cllr Eileen Johnson(Vice-Chair), Cllr Evaline Cunningham, Cllr Ken Dixon, Cllr Clare Gamble, Cllr Tina Large, Cllr Mick Moore, Cllr Mrs Jean O'Donnell, Cllr Norma Stephenson O.B.E, Cllr Hilary Vickers, Cllr Julia Whitehill, Cllr Bill Woodhead MBE

Officers: Jonathan Nertney (HR,L&C), Leanne Maloney-Kelly, Margaret Waggott, Sarah Whaley (DCE)

Also in attendance: Combined Hackney Carriage and Private Hire Driver – 001128 and Complainant. Combined Hackney Carriage and Private Hire Driver - 001318 and his legal representative Mr John Nixon, and Complainant.

Apologies: Cllr Jacqueline Bright, Cllr Maurice Perry,

GLC 1/19 Evacuation Procedure

The evacuation procedure was noted.

GLC 2/19 Declarations of Interest

Councillor Paul Kirton declared a personal non prejudicial interest in the item 'Combined Hackney Carriage and Private Hire Driver – 001128' as Cllr Kirton was known to Combined Hackney Carriage and Private Hire Driver – 001128 and also to various members of his family. Cllr Kirton was not in attendance during the hearing of Combined Hackney Carriage and Private Hire Driver – 001128.

Councillor Julia Whitehill declared a personal non prejudicial interest in the item 'Combined Hackney Carriage and Private Hire Driver - 001318', as Cllr Whitehill knew the witness providing evidence in the item concerning Combined Hackney Carriage and Private Hire Driver - 001318. Cllr Whitehill was not in attendance during the hearing of Combined Hackney Carriage and Private Hire Driver - 001318.

RESOLVED that the declarations of interest be noted.

GLC 3/19 Minutes from the Other Licensing Committee meeting which was held on the 23rd April 2019

Consideration was given to the minutes from the Other Licensing Committee which was held on the 23rd April 2019 for approval and signature.

RESOLVED that the minutes be approved and signed as a correct record by the Chairman.

GLC 4/19 Exclusion of the Public

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

GLC Combined Hackney Carriage and Private Hire Driver – 001128

Members were asked to consider a report and determine what action to take in relation to the continued fitness of Combined Hackney Carriage and Private Hire Driver – 001128, who had allegedly refused to carry a passenger with an assistance dog.

Combined Hackney Carriage and Private Hire Driver – 001128 was in attendance at the meeting and was given the opportunity to make representation.

The Complainant was in attendance at the meeting and was given the opportunity to make representation.

Committee papers and reports had been provided to all relevant parties prior to the meeting.

The report detailed the following:

- A copy of a statement dated 17 April 2019 taken from the complainant.

- A copy of a summary transcript of an interview dated Friday 3 May 2019 with Combined Hackney Carriage and Private Hire Driver – 001128.

- A copy of the Trade Times dated March 2019.

The Committee were asked to determine whether Combined Hackney Carriage and Private Hire Driver – 001128 was a 'fit and proper person' to remain a Private Hire Driver with this Authority.

The Committee had regard to the report, appendices and oral evidence given by Combined Hackney Carriage and Private Hire Driver - 119522 and the complainant at the meeting.

The role of the Committee was to make findings on the balance of probabilities and determine whether such findings were relevant to Combined Hackney Carriage and Private Hire Driver - 119522's fitness to hold a combined hackney carriage and private hire drivers licence with this Authority.

The Committee were asked to determine what action, if any, to take in relation to Combined Hackney Carriage and Private Hire Driver - 119522's licence.

After considering all of the evidence including the report and CCTV footage it was determined that the complaint was inconclusive.

Combined Hackney Carriage and Private Hire Driver - 119522, was however reminded that he had a legal requirement to take assistance dogs, this was not only guide dogs but also dogs that assisted persons with many different conditions.

Guide dog and assistance dog owners had important rights under the Equality Act 2010 (EA). The Equality Act provided for people with disabilities to have the same right to services supplied by shops, banks, hotels, libraries, pubs, taxis and restaurants as everyone else.

Under Part 12 of the Equality Act it was illegal for assistance dog owners to be refused access to a taxi or minicab with their assistance dog. Medical exemptions were available if drivers had a certificate from their GPs.

Combined Hackney Carriage and Private Hire Driver - 119522 was advised to ensure he had full understanding of the law in relation to his legal obligations as a licensed driver with this authority.

Combined Hackney Carriage and Private Hire Driver - 119522 was advised to access and read the following guidance which was available on the internet.

<https://www.equalityhumanrights.com/sites/default/files/assistance-dogs-a-guide-for-all-businesses.pdf>

<http://www.assistancedogs.org.uk/law/>

RESOLVED that the complaint against Combined Hackney Carriage and Private Hire Driver - 119522 was inconclusive and therefore no further action was taken other than the advice given by the Committee a detailed above.

**GLC
6/19** **Combined Hackney Carriage and Private Hire Driver - 001318**

Members were asked to consider a report and determine what action to take in relation to the continued fitness of Combined Hackney Carriage and Private Hire Driver – 001318 who had had a complaint made against him by a female passenger. This matter was scheduled to be heard on 23 April 2019 and was deferred at the request of the driver’s legal representative.

Combined Hackney Carriage and Private Hire Driver – 001318 was in attendance at the meeting alongside his Solicitor Mr John Nixon of BBNM Solicitors and was given the opportunity to make representation.

Prior to the commencement of the meeting the Committee were required to deal with a preliminary matter and Mr John Nixon’s request for the matter to be adjourned to another date so that Mr Graham Brown, Solicitor, could attend. Mr Nixon noted that the reasons for the request had been set out in an e-mail from BBNM to the Council dated 07 June 2019 copies of which had been circulated to members of the Committee.

All parties left the room while the Committee considered the request.

The Committee resolved not to agree for the matter to be adjourned as the matter had already been adjourned on one previous occasion at the request of Combined Hackney Carriage and Private Hire Driver – 001318's legal advisers. The Committee had a great deal of sympathy with Mr Brown’s personal circumstances but also had to weigh those factors against the public interest in proceeding to consider the complaint. The Committee noted that the complainant was in attendance at the meeting and also that Combined Hackney Carriage and Private Hire Driver – 001318 was able to be represented by Mr Nixon from the same firm.

The Complainant was in attendance at the meeting and was given the

opportunity to make representation.

Committee papers and reports had been provided to all relevant parties prior to the meeting.

The report detailed the following:

- A copy of an email detailing information about a complaint made against Combined Hackney Carriage and Private Hire Driver – 001318.
- A copy of a photo sheet containing the pictures of 9 licensed drivers taken from the driver's photo index.
- Two typed copies of handwritten signed statements by the complainant.
- A copy of a statement taken from a previous complainant in March 2014.
- A copy of an original email notifying of the arrest of Combined Hackney Carriage and Private Hire Driver – 001318, relating to an alleged incident in July 2009.
- A copy of a police statement taken from the complainant relating to the alleged incident in July 2009.
- A copy of a suspension letter dated 6 July 2009 to Combined Hackney Carriage and Private Hire Driver – 001318.
- A copy of a letter dated 7 January 2010 sent to Combined Hackney Carriage and Private Hire Driver – 001318 after his licence was reinstated.

The role of the Committee was to make findings on the balance of probabilities and determine whether such findings were relevant to Combined Hackney Carriage and Private Hire Driver – 001318's fitness to hold a combined hackney carriage and private hire drivers licence with this Authority.

The Committee were to determine what action, if any, to take in relation to Combined Hackney Carriage and Private Hire Driver – 001318's licence.

The following facts were not in dispute:

- The Complainant got into Combined Hackney Carriage and Private Hire Driver – 001318's vehicle at the taxi rank in Yarm at approximately 22:20 on Saturday 30 March 2019.
- Combined Hackney Carriage and Private Hire Driver – 001318 was the driver of the vehicle and the passengers were the complainant and her friend.
- The destinations where Combined Hackney Carriage and Private Hire Driver – 001318 was asked to take the complainant and her friend.
- The complainant's friend got out of the vehicle at her home address leaving the complainant in the vehicle to continue the journey.

- After setting off again Combined Hackney Carriage and Private Hire Driver – 001318 asked the complainant if he could ask her a question.
- On the way to the complainant’s home address the complainant asked Combined Hackney Carriage and Private Hire Driver – 001318 to stop the vehicle, terminating the journey before her destination.
- The complainant paid Combined Hackney Carriage and Private Hire Driver – 001318 the fare. Combined Hackney Carriage and Private Hire Driver – 001318 left the complainant in the location she had asked to get out, and Combined Hackney Carriage and Private Hire Driver – 001318 continued to work.

The following facts were in dispute:

- Whether Combined Hackney Carriage and Private Hire Driver – 001318 had asked the complainant the question “How can a man tell if a woman is turned on?”

The Committee found that Combined Hackney Carriage and Private Hire Driver – 001318's did engage the Complainant in a conversation of an inappropriate sexual nature and asked her “how can a man tell if a woman is turned on”?

The Committee also found that Combined Hackney Carriage and Private Hire Driver – 001318, asked this question when the complainant was alone in the vehicle and she was made to feel shaken and upset by his behaviour.

The Committee noted that Combined Hackney Carriage and Private Hire Driver – 001318 had previous history of complaints from lone female passengers in his vehicle from 2009/10 and 2014. This indicated a pattern of behaviour which was further corroborated by the nature of the complainant’s complaint.

In making their findings the Committee considered all of the documentary evidence including the report and appendices. The Committee heard evidence from the complainant who had made the complaint.

Combined Hackney Carriage and Private Hire Driver – 001318 also gave evidence to the Committee and submissions were made by Mr Nixon on his behalf.

The Committee noted that they had to consider the evidence on the civil burden of proof, i.e. on the balance of probabilities.

Combined Hackney Carriage and Private Hire Driver – 001318 claimed the complainant was lying but he did not give a reasonable explanation as to why the complainant would make this up. The complainant was a credible and believable witness and gave her evidence in a calm and compelling manner.

Given the Committee’s findings a decision had to be made as to what action should be taken in relation to Combined Hackney Carriage and Private Hire Driver – 001318's licence.

Combined Hackney Carriage and Private Hire Driver – 001318's behaviour on 30 March 2019 in making comments of an inappropriate and sexual nature to

one female passenger was of great concern to the Committee. The Committee also attached some weight to the previous complaints of inappropriate conversations which had also been received from lone female passengers of Combined Hackney Carriage and Private Hire Driver – 001318's vehicle. The Committee did not attach any weight to the allegation of sexual touching from 2009/10 as Combined Hackney Carriage and Private Hire Driver – 001318 had been acquitted of that matter. However it was relevant to note that part of that allegation had also involved Combined Hackney Carriage and Private Hire Driver – 001318 making inappropriate comments to a lone female passenger. On each of the three occasions the passengers had all indicated that Combined Hackney Carriage and Private Hire Driver – 001318's had made them feel extremely uncomfortable with his tone and the nature of the conversations that Combined Hackney Carriage and Private Hire Driver – 001318 had attempted to engage them with.

The Committee found on the balance of probabilities that it was Combined Hackney Carriage and Private Hire Driver – 001318 who had lied to officers and to the Committee. Combined Hackney Carriage and Private Hire Driver – 001318 had accepted no responsibility for his behaviour and had shown no remorse.

The findings in relation to Combined Hackney Carriage and Private Hire Driver – 001318's behaviour were clearly relevant to whether Combined Hackney Carriage and Private Hire Driver – 001318's remained a fit and proper person to hold a licence.

The Committee resolved that given their findings and Combined Hackney Carriage and Private Hire Driver – 001318's previous disciplinary history, a suspension of his licence was not appropriate.

The Committee resolved that under section 61 (1) (b) there were sufficient reasonable cause to revoke Combined Hackney Carriage and Private Hire Driver – 001318's licence. Combined Hackney Carriage and Private Hire Driver – 001318 was no longer deemed to be a fit and proper person. Given the fact that Combined Hackney Carriage and Private Hire Driver – 001318's behaviour was aimed at lone female passengers who had been made to feel uncomfortable and scared and that the conversations were of a sexual nature the Committee resolved that under section 61(2B) public safety was a relevant consideration and the revocation was with immediate effect and Combined Hackney Carriage and Private Hire Driver – 001318 was therefore no longer authorised to drive such vehicles.

RESOLVED that Combined Hackney Carriage and Private Hire Driver – 001318's Combined Hackney Carriage and Private Hire Drivers licence be revoked for the reasons as detailed above.

**GLC
7/19**

DELEGATED DECISIONS UPDATE REPORT

Members were asked to consider a report which provided Members with an update with regards to the decisions officers had made in utilising powers delegated to them by the General Licensing Committee. The report also updated Members on legal appeals that had been lodged and concluded.

The Committee noted the report.

RESOLVED that the report be noted.