

LICENSING SUB-COMMITTEE
8 SEPTEMBER 2021

Minutes of the remote attendance meeting of the Licensing Sub-Committee of Flintshire County Council held on Wednesday, 8 September 2021 (adjourned hearing from 1 September 2021)

Present: Councillor Tony Sharps (Chairman)

Councillors: Ron Davies and Ralph Small

Officers of Flintshire County Council:

Licensing Team Leader (Gemma Potter) and Democratic Services Officer (Sharon Thomas)

Legal Officer

Solicitor (Matt Powell)

Licence holder

1. APOLOGIES

None.

2. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

None.

3. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 - TO CONSIDER THE EXCLUSION OF PRESS AND PUBLIC

RESOLVED:

That the press and public be excluded from the meeting for the following item as this was considered to contain exempt information by virtue of paragraphs 12 and 13 of Part 4 of Schedule 12A of the Local Government Act 1972 (as amended).

4. CONDUCT OF A LICENSED PRIVATE HIRE/HACKNEY CARRIAGE (JOINT) DRIVER

The report was to consider the conduct of a Private Hire/Hackney Carriage (Joint) Driver in respect of additional information disclosed on his Disclosure and Barring Service (DBS) Enhanced Certificate at the discretion of the Chief of Police. Having initially considered the report on 1 September 2021, the panel had resolved to adjourn the hearing to allow for further information to be made available in order to reach a decision on whether the licence holder was a fit and proper person to hold a Private Hire/Hackney Carriage (Joint) Driver Licence.

The Chairman confirmed that the panel had received further documentation provided by the licence holder in advance of the meeting and had been produced to the meeting. This comprised:

- Letter from the licence holder in relation to the challenge of the information included on his DBS.
- Letter from the licence holder addressing different paragraphs of the report from the hearing on 1 September 2021.
- An email forwarded by the licence holder showing correspondence with his Solicitor.
- An email forwarded by the licence holder showing previous correspondence with his Solicitor.

In response to questions, the licence holder said that he had been advised that his legal representative had prepared the grounds for his application for judicial review regarding the disclosure remaining on his DBS. However, no further progress had been made and the licence holder was pursuing a meeting with the legal representative prior to paying the legal fees. The licence holder expressed his concerns about the lack of response by his legal company with whom he had engaged.

The Licensing Team Leader read out the sections of the report which had been added since the adjourned hearing; namely paragraphs 1.13 to 1.16.

In response to questions from the Solicitor, the licence holder confirmed that he had delayed producing his DBS certificate to the licensing authority because he had been embarrassed about the disclosure and was intent on challenging this to seek its removal from the certificate.

The licence holder said that in his representations to the Police, he had made the point that there had been no evidence to substantiate the allegations and yet the opinion of the Chief of Police overrode that. He considered this to be a dangerous precedent. The Solicitor referred to the Statutory Disclosure Guidance that must be considered by the Chief of Police (as set out in the report) on the disclosure of information that was considered relevant. The licence holder accepted that the Chief of Police had such discretion but said that the opinion was not supported by evidence.

In respect of his legal representatives, the licence holder accepted that there was no current legal challenge but said that he was committed to progressing a judicial review and may seek to use another company if necessary. When asked about the length of time since the DBS was issued and the lack of any obvious progress with any legal challenge, the licence holder said that he had been seeking to rebuild his life and was unsure at the time whether he wanted to drive again and challenge the disclosure. He went on to clarify the incident relating to his previous employment, shared previously, which had taken a long time to reach conclusion.

When asked by the panel about character references, the Licensing Team Leader advised that two had been provided at the first stage of the application.

When the Chairman was satisfied that all relevant questions had been raised, he asked that the licence holder and the Licensing Team Leader leave the meeting to enable the panel to reach a decision.

4.1 Determination of the Application

In determining the application, the panel took into account the representations, both written and verbal, made by the licence holder, the disclosure which had been made by the Chief of Police, the Statutory Disclosure Guidance and the Council's Guidance on the Treatment of Convictions, Cautions, Criminal Charges or other recorded sanctions. It was taken into account that the licence holder denied any criminal wrongdoing and it was noted that there had been no conviction. The decision to include the information by the Chief of Police was not subject to any formal legal challenge. The information was considered serious in nature and it was determined that regard should be given to it in determining fitness and propriety. The panel paid particular attention to the overriding consideration to protect the public and to exercise the precautionary principle where there was evidence to cause significant doubt about the appropriateness of the licence holder.

The Licensing Team Leader and licence holder were invited to return so that the meeting could be reconvened.

4.2 Decision

The Solicitor was asked to read the decision reached by the Sub Committee, as below. The Chairman reminded the licence holder of his right to appeal.

RESOLVED:

The Sub Committee consider that the information disclosed within the DBS is relevant to assessing the fitness and propriety of the licence holder. Having taken all relevant information and representations into account, the Sub Committee do not consider that it should be disregarded. The Sub Committee note the principles the Police follow when considering whether such information should be disclosed and this includes such factors as the information being sufficiently credible and serious and that whilst the licence holder has made representations to the Police about the inclusion of this information the Police have determined that it should remain, and there is no current legal challenge. On a balance of probabilities, the Sub Committee has therefore determined that the licence holder is not a 'fit and proper' person within the meaning of the Local Government (Miscellaneous Provisions) Act 1976 to continue to hold a Private Hire / Hackney Carriage (Joint) Driver Licence and his licence should be revoked.

(The meeting started at 10am and ended at 12.10pm)

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Chairman