



Minutes of the Licensing Sub-Committee

27 July 2017

-: Present :-

Councillors Sykes, Thomas (J) and Pentney

49. Election of Chairman/woman

Councillor Thomas (J) was elected as Chairman for the meeting.

50. Minutes

The Minutes of the meeting of the Sub-Committee held on 6 July 2017 were confirmed as a correct record and signed by the Chairman.

51. Exclusion of the Press and Public

Prior to consideration of the item in Minute 52 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

52. Review of a Torbay Council Drivers' Licence

Members considered an exempt report that sought a review of a Torbay Council Drivers' Licence. The Principal Officer for Licensing and Public Protection requested that Members consider information relating to the conduct of the holder of a dual Hackney Carriage and Private Hire Drivers Licence. Members were asked to determine on the facts laid before them, whether or not the licence holder continued to be regarded as a 'fit and proper' person to hold such a licence.

The Principal Officer for Licensing and Public Protection informed Members of the process undertaken to inform the Respondent of this meeting of the Licensing Sub-Committee. Upon receiving notification, the Respondent spoke with the Principal Officer for Licensing and Public Protection to seek a deferment of the hearing due to the Respondents Solicitor being unavailable. The Respondent was advised that the hearing would not be deferred due to Public Interest and Public Safety and that if the Respondent wanted legal representation at the hearing, he would need to engage the services of another Solicitor.

At the hearing the Senior Solicitor and Deputy Monitoring Officer sought confirmation of the Respondent's conversation with the Principal Officer for Licensing and Public Protection. It was stated by the Respondent that he had received the papers in respect of this hearing on Saturday 22 July 2017, that he

had gone to see his Solicitor on Monday 24 July 2017 at about 9.30am and on being informed that his Solicitor was on holiday, he contacted Torbay Council on Tuesday 25 July 2017 at about 9.30am and left a message for someone to call him back and that the person he subsequently spoke to was the Principal Officer for Licensing and Public Protection. On hearing these submissions, the Senior Solicitor and Deputy Monitoring Officer asked the Respondent whether he had sought advice from another Solicitor. The Respondent stated that he had not as it would cost him money and had decided that he was happy to attend and represent himself. On this further submission, the Senior Solicitor and Deputy Monitoring Officer asked the Respondent if he was happy that the hearing went ahead without legal representation and the Respondent stated that he was.

Given that Respondent was legally unrepresented and that the matter was yet to be heard in the criminal courts, the Senior Solicitor and Deputy Monitoring Officer informed the Respondent of his right not to incriminate himself. In response to this, the Respondent replied okay.

The Respondent proceeded to outline the circumstances that had led to the complaint and responded to Members questions.

Decision

That the Respondents Torbay Council Driver's Licence be revoked in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provision Act 1976 and that this revocation shall have immediate effect, in accordance with Section 61(2B) of the Local Government (Miscellaneous) Provision Act 1976.

Reason for Decision

Having carefully considered all the written and oral representations, Members resolved to revoke the Respondents Driver's Licence, as they could not be satisfied that he remained a 'fit and proper' person to hold such a licence.

In coming to that decision, Members considered having been charged with the responsibility to determine the driver's licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care or any vulnerable person known to them to get into a vehicle with the Respondent alone. An unequivocal and unanimous answer to this question, was no.

In determining that the Respondent does not remain a 'fit and proper person' to be a driver licensed by Torbay Council, Members had due regard to their duty to protect the public, in the knowledge that a licensed driver is in a position of trust and on the evidence before them; the Respondent appeared to them to have conducted himself in a manner that was unacceptable and fell well below the standard reasonably expected by them of a driver licensed by Torbay Council.

Members were concerned that, in the first instance the Respondent took monies from the passengers bank account having seen fit to take instruction from a person who by his own submission was so inebriated that she had attempted to

use her drivers licence to withdraw cash from the cash machine, and that he had considered this instruction to be consent for payment that was above the soiling charge and fare. In answering questions, it was established that in fact the Respondent had been asked to withdraw £200 but had not at anytime been told by the passenger that he would be paid £200. The amount withdrawn was following an incident of the passenger being sick in the Respondents vehicle and being told by him that this would cost her in the region of £100. Namely, £50 for the soiling charge and a further £50 fare for driving her to find a cashpoint machine to withdraw the monies and then ferrying her to her home address. Secondly on the submission of the Respondent that the passenger had fled his vehicle when he arrived at her home address without paying and not being able to retrieve the monies from her parents, he proceeded to withdraw a further £200 from the passengers bank account based upon the perceived authorisation provided earlier, having left the passengers home address and finding her cash card in the rear passenger seat foot well of his vehicle and remembering her PIN number.

When asked whether this course of conduct was appropriate by a licensed driver, the Respondent replied, on reflection that it was not but at the time he felt it was justified as he was not able to continue working and would be out of pocket by at least £200-£300. When asked if the passenger, who by his own submissions was so inebriated that she tried to use her drivers licence to withdraw monies which resulted in him saying 'you silly sod no wonder you can't get any money, that is your drivers licence', could reasonably have been said to have given consent to withdraw monies from her account, he said on reflection no. However the Respondent did submit that it was his belief that when persons were sick, they tended to sober up. Whilst Members considered this, in their determination they resolved that reliable consent had not been given.

When asked whether the second withdrawal could reasonably have amounted out of consent, given that the passenger was so inebriated in the first instance and that at no point had she said to him that he could take and then keep £200, the Respondent accepted that when put like that no.

In addition the Respondent submitted that he had taken the soiled seat cover from his vehicle and dumped it outside the home address of the passenger so that they could see the mess that she had made. When informed that this course of conduct could amount to a flytipping offence, the Respondent accepted that whilst he felt it right at the time, when put like that he could see that it was not right to have done this.

Members resolved that in their opinion, the passenger was not of a state to have reasonably given consent to the Respondent to withdraw monies from her bank account, that the amount sought by the Respondent exceeded the amount he was lawfully entitled to at that time, that the second withdrawal was unlawful, that in seeking this amount from such a person at that time was inappropriate given that there were other remedies available to him the following day or at a later date and that whilst the passenger being sick in his vehicle was wholly unpleasant, the dumping of the seat cover was a demonstration of his disapproval and could amount to fly tipping. As such, the Respondents overall conduct during this

incident fell well below the standard reasonably expected by them of a driver licensed by Torbay Council.

Members noted that following the Respondents submission that he had employed tools learnt on an anger management course he had been instructed to attend when he appeared before a Licensing Sub-Committee last summer but remained concerned that the Respondent continued to view himself as the aggrieved party and sought recompense through questionable means which fell well below the standard reasonably expected by them of a driver licensed by Torbay Council.

Members considered suspending the Respondents drivers licence but resolved that this was not appropriate, due to the seriousness of the incident and the manner in which the Respondent had conducted himself.

In coming to the decision to revoke the Respondents driver's licence, Members resolved that it should be with immediate effect, as in their opinion it was in the interest of the public's safety to do so. Members' reasoning for this determination is due to the perceived risk which they believe the Respondent poses on the evidence before them and having already been before a Licensing Sub-Committee only 12 months previously, where his conduct towards members of the public was then deemed to have been unacceptable and fell well below the standard reasonably expected of a driver licensed by Torbay Council.

Chairman/woman
