



Minutes of the meeting of the **General Licensing Sub-Committee** held in Committee Room 1 on Tuesday 1 August 2023 at 9.30 am

Members Present: Mr H Potter, Mr I Ballantyne and Mr B Brisbane

Members not present:

In attendance by invitation:

Officers present all items: Miss K Davis (Democratic Services Officer), Ms G Di Lauro (Litigation and Licensing Lawyer), Mr D Knowles-Ley (Licensing Manager) and Mrs A Courtney (Licensing Technician)

27 **Election of Chairman**

RESOLVED:

1. That Councillor Ballantyne be duly elected as chairman for the duration of this meeting.

28 **Declarations of Interests**

There were no declarations of interest.

29 **Late Items**

There were no late items

30 **Exclusion of Press and Public**

RESOLVED:

1. That in accordance with section 100A of the Local Government Act 1972 (the Act) the public and the press be excluded from the meeting during the consideration of the following item on the agenda for the reason that it is likely in view of the nature of the business to be transacted that there would be disclosure to the public of "exempt" information" being information of the nature described in Paragraph 1 (information relating to any individual) of Part I of Schedule 12A to the Act and the public interest in disclosing the information.

31 **Hearing Procedure**

The Sub-Committee noted the hearing procedure.

32 **Local Government (Miscellaneous Provisions) Act 1976 - Application for a Private Hire Driver's Licence - Mr A M**

Mr Knowles-Ley introduced the applicant, Mr AM, along with Mr MK, who was attending the Sub-Committee in order to support and assist his brother-in-law.

Mr Knowles-Ley explained that this Sub-Committee had been convened in order to consider and determine the application for a Private Hire driver's license submitted by Mr AM. Mr AM's application has been submitted under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976.

Mr Knowles-Ley explained that there was no statutory national framework prescribing what forms, documents or certificates must be submitted by an applicant when applying for a driver's licence under the Act, however Section 51 states that a Council shall not grant a licence unless they are satisfied that the applicant is a *'fit and proper person to hold a driver's licence'*.

Mr Knowles-Ley explained that in order to provide a framework for the Council to ultimately determine whether an applicant is 'fit and proper', the council had historically developed and adopted on the 12th October 2022 a Hackney Carriage and Private Hire Policy for the Chichester district. The Policy sets out very clearly not only the overarching licensing framework that is to be applied in relation to the licensing of operators, vehicles and drivers, but also what specific criteria or requirements must be met by all applicants for each licence type.

With respect to the various documents and certificates that had been provided by Mr AM, Mr Knowles-Ley confirmed that these had all been reviewed by officers and had been found to be acceptable. Subsequent additional checks had been undertaken by officers including, for example, a check of the DVLA Driving Licence held by Mr AM along with a check of the National Register of Taxi Licence Revocations and Refusals (NR3) in order to confirm that Mr AM had not either had an application for a driver's licence refused or revoked by another Council. Mr Knowles-Ley confirmed that no issues of concern had been identified.

Mr Knowles-Ley advised that it is a requirement that where an applicant for a driver's licence has resided outside of the UK in the last 5 years, that a Certificate of Good Conduct (with certified English translation) is provided by the applicant from the UK Embassy or Consulate of the relevant country. In view of Mr AM having stated on his application form that he resided outside of the UK between 31st August 1982 and 21st September 2019 he had been requested to provide an appropriate Certificate of Good Conduct.

Mr AM subsequently agreed to make the necessary enquiries with respect to obtaining a Certificate of Good Conduct, however he did at the outset express serious concerns regarding his personal safety in doing so given he had arrived in the UK with refugee status in September 2019. Mr AM subsequently advised on the 14th June 2023 that his friend had contacted the Iranian Embassy and had identified that in order to obtain a Certificate of Good Conduct, that Mr AM would have to disclose to the Iranian Embassy his 'visa status' and also provide his fingerprints. Mr AM advised that he was not prepared to progress this stating that *'I as a refugee can really put my life in risk if I go to the Embassy to get any certificate'*.

Mr Knowles-Ley explained that whilst it is clear that Mr AM had not complied with the Licensing Authority's requirement in terms of providing a Certificate of Good Conduct, the question of whether an 'exceptional circumstance' applied to his application had arisen.

Whilst Mr AM had applied for a three year licence, Mr Knowles-Ley advised that it should be noted that he currently only had a right to work in the UK until the 15th March 2025. This has been verified by a separate check by officers with the Home Office. Therefore, should the decision be to grant a driver's licence, a licence could presently only be granted until the 15th March 2025, although could be extended until the end of the 3 year period upon satisfactory evidence of a continuation of a right to work in the UK being provided by Mr AM or the Home Office.

Mr Knowles-Ley advised that it was therefore a matter for the Sub-Committee to determine whether the absence of a Certificate of Good Conduct for the reason explained constituted an exceptional circumstance and that it was appropriate to depart from the council's normal Policy. Mr Knowles-Ley stressed that should an exceptional circumstance apply, the Sub-Committee is still required to determine whether, in the absence of a Certificate of Good Conduct, that the applicant is a 'fit and proper person' to be granted a Private Hire Driver's Licence.

Mr AM presented his case to the Licensing Sub-Committee. Mr AM stated that he had fled Iran due to religious persecution. The Sub-Committee asked Mr AM to explain why he fled Iran in more detail. Mr AM explained that his family were threatened by the police in Iran and that all his accounts were locked. The Sub-Committee asked if Mr AM had been able to secure any work up until this point. Mr AM explained that he had a Master's degree from Iran and had tried to find work in the UK. However, many jobs had refused to accept Iranian certification.

The Licensing Sub-Committee asked Mr AM why he was applying for a private hire driver's license in Chichester if he lived outside of the Chichester district. Mr AM explained that he had attempted to apply for the licence in Brighton but was told that he needed to have held a Driving Licence issued by the DVLA for three years. Mr AM explained that he needed the job as his wife was sick. Mr AM also stated that the a taxi job was flexible and suited his lifestyle as he was currently studying. Mr Knowles-Ley reiterated the reasons why a certificate of good conduct was not available, and they included that the Iranian Embassy had not provided a certificate to Mr AM as they did not recognise his status or reasons as to why he was in the UK.

The Sub-Committee asked if Mr AM had any previous experience in a similar field of work. Mr AM explained that he had worked for a taxi company in Iran for about two years to help for his university fees.

NOTICE OF DETERMINATION

The matter before this General Licensing Sub-Committee was an application for a private hire driver's licence under section 51 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act).

The Sub-Committee has been convened to decide whether to grant such licence in exceptional circumstances by departing from one particular requirement of this Council's Hackney Carriage and Private Hire Policy (the Policy) which was adopted on 12 October 2022.

The Policy's overarching aim is to promote public safety and to protect the travelling public. The particular requirement mentioned above is, amongst others, required to establish whether the applicant is a 'fit and proper person' to whom a licence should be granted and it is that the applicant must provide a Certificate of Good Conduct when they have been residing outside of the UK in the previous 5 years. Such Certificate would certify whether the person has an overseas criminal record. Such Certificate would be provided by the Embassy of the country where the person has been residing.

This Sub-Committee was aware of the fact that the Policy reflects the principles in the Statutory Taxi & Private Hire Vehicle Standards 2020 (the 2020 Standards) issued by the Department for Transport and that such principles, such as protecting children and vulnerable people from harm must be implemented unless there is a good reason not to do so.

The Officer's Report drew this Sub-Committee's attention to the fact that, all the other requirements which would aid the Licensing Authority to decide whether an applicant is 'a fit and proper person' had been satisfied. Those requirements are listed at page 4 of the Pack and they include, for example: a clear Enhanced Disclosure and Barring Service Certificate which is a record of criminal convictions in the UK; evidence from the Home Office of an applicant's right to work in the UK without any relevant restrictions; a Medical Report and a 'pass' Certificate of an approved Driving Assessment Test and others.

This Sub-Committee, has considered the Officer's Report and all the evidence supporting the application, as well as the extra evidence provided at the hearing and it has heard from the Officer explaining during the hearing that the applicant, Mr AM

arrived in the UK with refugee status in September 2019 and the evidence in the pack showed his right to work in the UK, without restrictions until 15 March 2025 as granted by The Home Office. Because of this, the applicant was asked to obtain a Certificate of Good Conduct from his country of origin: Iran. The applicant explained that after some initial enquiries at the Iranian Embassy, he felt that that he would put himself at risk and potentially jeopardise his refugee status by attending the Embassy for his fingerprints to be taken and by providing them with his visa status, as required.

The Sub-Committee, in reaching its decision, had to consider whether the applicant is a 'fit and proper person' to whom a licence ought to be granted under the exceptional circumstance of not having provided a Certificate of Good Conduct. The Sub-Committee was advised that there is not a statutory definition under section 51 of the Act of what a 'fit and proper person' is and all the facts of each individual case must be taken into account. However, extensive case law has addressed the 'fit and proper person' test and this is comprehensively and satisfactorily stated in the 2020 Standards at paragraphs 5.12 and 5.13. In essence, the Standards refer the licensing authorities to a specific question: *"[...] would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?"* and they go on to say that such decision shall be taken on the balance of probabilities and therefore made on more than 50/50 criteria, otherwise the individual should not hold a licence.

The Sub-Committee also paid particular attention to crime and disorder issues and the lack of evidence of these being a concern; Human Rights considerations, for example the right to a fair trial under Article 6; Safeguarding matters because, if granted a licence, the applicant would be potentially working with children and vulnerable adults and Equality Act 2010 considerations for both the applicant and passengers alike.

The Sub-Committee heard from the applicant and his referee that, if he were going to attend the Iranian Embassy, he would not be given a Certificate of Good Conduct because Iran does not recognise his refugee status to start with and by entering the Embassy, he is at risk of being arrested and deported back to Iran, and also his family in Iran could be subject to reprisals. This is because the very reason why he left Iran was because he became a Christian which is not permitted by the Iranian State.

Finally, having given due consideration to all the factors above and in particular to the fact that as a refugee, the applicant would put himself potentially at risk by going to the Embassy of the Country he fled from to obtain a Certificate of Good Conduct and due to the fact that, all the other evidence to support a 'fit and proper person' have been provided by the Applicant to this Licensing Authority, the decision of this General Licensing Sub-Committee is to **GRANT** the private hire driver's licence to the applicant Mr AM for the duration of 3 years as provided for by section 53 of the Act. The Sub-Committee noted that the applicant's right to work in the UK is until 15 March 2025 and that this Licensing Authority will be applying to the Home Office before such date, to verify the applicant's new status regarding his right to work and

either revoke or extend the licence to the statutory maximum mentioned above, as the case may be.

The meeting ended at 10.30 am

CHAIRMAN

Date: