

**LICENSING BOARD  
28 January 2016**

**PRESENT:** Councillor David Kelsey - in the Chair; Councillors Mark Battistini (part), Norman Decent (part), Beverley Dunlop.

**ALSO PRESENT:** Councillor Jackie Edwards (observing)

The meeting commenced at 9.48am.

**SECTION I - BUSINESS RECOMMENDED TO THE COUNCIL**

No items

**SECTION II - BUSINESS DECIDED UNDER DELEGATED POWERS**

**6. DECLARATIONS OF INTERESTS**

There were no declarations of any disclosable pecuniary interests by Members of the Board

**7. PUBLIC ITEMS**

There were no public questions or deputation requests received for the meeting.

**8. EXCLUSION OF THE PRESS AND PUBLIC**

**DECISION MADE:**

That the press and public be excluded for the following items of business under Section 100(A)(4) of the Local Government Act 1972 as it involves the likely disclosure of exempt information as defined in paragraphs 1 and 2 in Part 1 of Schedule 12A of the Act, and the public interest in withholding the information outweighs the public interest in disclosing the information .

**9. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chairman welcomed the driver named in report '5f', made introductions and explained the process of the hearing and that it was being held in non public session. He confirmed with the named driver that they were happy to proceed on the basis outlined.

## Licensing Sub Committee, 28 January 2016

The report at '5f' was introduced by the Taxi Licensing Officer who explained that the Traffic Regulation Order (TRO) in place in the Horseshoe Common area imposed a road closure for vehicular traffic between Midnight and 5.00am. The Licensing Officer advised that the background documents listed at item 5 of the agenda referred to all 6 cases being considered. During a routine licensing visit in the Town Centre on the night of the 24 November 2015 an Environmental Health Officer observed the Hackney Carriage of which the named driver had been identified as driving, driving through the restricted area at 1.30am in breach of the Order. The witness statement reported that he had driven through Old Christchurch Road.

The Taxi Licensing Officer reported that all licensed drivers had been sent general advisory letters from the Council about the TRO on 14 May and 14 July 2015. In addition the Council had written individual warning letters to the named driver regarding similar breaches of the original TRO on 22 February 2015 and on 14 March regarding a similar breaches of the original TRO. It was also noted that one of the previous warning letters was addressed to the owner of the vehicle rather than the named driver but the named driver confirmed by letter that he had in fact been the driver of the vehicle at the time of the breach.

In considering whether the named driver's actions were consistent with that of a 'fit and proper' person holding a Hackney Carriage driver's licence, the Sub-Committee also had regard to the following:

- The individual warning letters regarding similar incidents had advised the driver of the serious consequences of any further breach of the Order.
- The danger and risk to public safety of a motorised vehicle unexpectedly entering a pedestrianised zone, when the main purpose of the TRO was to create a safe environment for pedestrians using the Horseshoe Common area after midnight.
- The verbal evidence of the driver, who admitted to breaching the Order on those occasions identified. He explained that he owned a takeaway business in Old Christchurch Road and under the previous TRO there was an exemption in place for residents and those who had businesses in the restricted area to access their properties. The driver explained that the exemptions to the restriction were confusing and police would often let vehicles through the barrier to access properties in the area.
- Whilst the driver had now sold the business in the restricted area he still on occasion needed to collect his sons from the business (which was now owned by a relative). The driver also explained that he was advised at a meeting that business could access the area, although he acknowledged that as the licensed driver it was his responsibility to ensure he was operating appropriately.

The Sub-Committee retired to make its decision.

## Licensing Sub Committee, 28 January 2016

### DECISION MADE:

That the named driver in report '5f' be deemed a 'fit and proper person' to hold a hackney carriage drivers licence but be issued with a final written caution regarding his behaviour.

### REASON FOR DECISION

The Chairman explained that the Sub-Committee had carefully considered all the written and verbal evidence provided. The Sub-Committee was mindful that the driver may have had a legitimate reason for accessing the pedestrianised zone when the two previous individual letters were issued and under the exemptions that were allowed in the previous TRO prior to the changes which were made in July 2015. The Sub-Committee also considered that the driver had been sent two general advisory letters from the Council regarding the Order. However there was evidence to suggest that on the previous occasions the driver did not realise that he could not legitimately access the area. Although the driver had knowingly entered the restricted area on this occasion, through his answers to various questions it was apparent that he had recognised his mistake and went on to apologise for his actions. He understood that driving in the restricted area was a serious risk to public safety. The Sub-Committee was confident that he would not breach the TRO again and appreciated his commitment to advising other drivers to take the road closures seriously.

## 10. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Chairman welcomed the driver named in report '5d', made introductions and explained the process of the hearing and the reason why it was being held in non public session. He confirmed with the named driver that they were happy to proceed on the basis outlined.

The report at '5d' was introduced by the Taxi Licensing Officer who explained that the Traffic Regulation Order (TRO) in place in the Horseshoe Common area imposed a road closure for vehicular traffic between Midnight and 5.00am. The Licensing Officer advised that the background documents listed at item 5 of the agenda referred to all 6 cases being considered. During a routine licensing visit in the Town Centre on the night of the 24 November 2015 Environmental Protection Officers observed the Hackney Carriage of which the named driver had been identified as driving, driving through the restricted area at 1.30am in breach of the Order. The witness statements reported that he had driven through Old Christchurch Road.

The Taxi Licensing Officer reported that all licensed drivers had been sent general advisory letters from the Council about the TRO on 14 May and 14 July 2015. In addition the Council had written an individual warning letter to the named driver on 31 March regarding a similar breach of the original TRO on 14 March 2015.

The driver provided evidence to show that he was not in the restricted area at the time and date outlined in the report. It was clarified that the date in the report

## Licensing Sub Committee, 28 January 2016

should have referred to the time in question as being on Wednesday 25 November. The witness statements confirm that they were in the area on the night of the 24 November and refer to times early in the morning which would mean the date in question was 25 November. All parties acknowledged this and agreed that the incident which was being dealt with occurred on 25 November.

In considering whether the named driver's actions were consistent with that of a 'fit and proper' person holding a Hackney Carriage driver's licence, the Sub-Committee also had regard to the following:

- The verbal evidence of the driver who explained that he had a booked job to collect a passenger from Russell Coates Road and deliver her to the Railway Station. It was only when the driver advised the passenger that there would not be any trains going from or any access to a waiting room at the station at that time in the morning that the passenger asked to go to a night cafe located on Old Christchurch Road. The passenger had two large suitcases and the driver considered the passenger in question to be a vulnerable person.
- The driver explained that he had been acting on advice received from his Taxi Operator and that he was under the misapprehension that he could access the restricted zone for journeys connected with the Travel Interchange or Airport and in order to drop people off rather than 'ranking' in the area.
- He demonstrated an understanding of the Order and why it had been introduced, and recognised that his actions in entering the pedestrianised area had put public safety at risk. He apologised and stated that it would not happen again and that he would actively discourage other drivers from breaching the Order from now on.
- The individual warning letters regarding a similar incident had advised the driver of the serious consequences of any further breach of the Order.
- The danger and risk to public safety of a motorised vehicle unexpectedly entering a pedestrianised zone, when the main purpose of the TRO was to create a safe environment for pedestrians using the Horseshoe Common area after Midnight.

The Sub-Committee retired to make its decision.

### DECISION MADE:

That the named driver in report '5d' be deemed a 'fit and proper person' to hold a hackney carriage drivers licence but be issued with a written caution regarding his behaviour.

### REASON FOR DECISION

The Chairman explained that the Sub-Committee had carefully considered all the written and verbal evidence provided. The Sub-Committee was mindful that the driver had been sent two general advisory letters from the Council regarding the Order and one individual warning letter in March 2015. The sub-Committee took into

## Licensing Sub Committee, 28 January 2016

consideration the evidence that the driver provided regarding the advice that he had received from the taxi operator and whilst acknowledging that it was the drivers' responsibility to ensure that they were operating appropriately did consider that this could lead to some confusion for drivers. The driver recognised that he had misinterpreted the information received and had made a mistake by entering the Restricted area and had apologised for his actions. He understood that driving in the restricted area was a serious risk to public safety. The Sub Committee was confident that he would not breach the TRO again and appreciated his commitment to advising other drivers to take the road closures seriously.

### 11. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Chairman welcomed the driver named in report '5a', made introductions and explained the process of the hearing and that it was being held in non public session. He confirmed with the named driver that they were happy to proceed on the basis outlined.

The report at '5a' was introduced by the Taxi Licensing Officer who explained that the Traffic Regulation Order (TRO) in place in the Horseshoe Common area imposed a road closure for vehicular traffic between Midnight and 5.00am. The Licensing Officer advised that the background documents listed at item 5 of the agenda referred to all 6 cases being considered. During a routine licensing visit in the Town Centre on the night of the 24 November 2015 Environmental Protection Officers observed the Hackney Carriage of which the named driver had been identified as driving, driving through the restricted area at 1.30am in breach of the Order. The witness statements reported that he had driven through Old Christchurch Road.

The Taxi Licensing Officer reported that all licensed drivers had been sent general advisory letters from the Council about the TRO on 14 May and 14 July 2015. In addition the Council had written individual warning letters to the named driver on 4 March and 24 March regarding similar breaches of the original TRO on 21 February and 14 March 2015 respectively.

In considering whether the named driver's actions were consistent with that of a 'fit and proper' person holding a Hackney Carriage driver's licence, the Sub-Committee also had regard to the following:

- The verbal evidence of the driver who explained that he had followed other licensed vehicles into the pedestrianised area in order to 'rank' with other drivers. He acknowledged this was a mistake and admitted that he was in the wrong, but he had been under a lot of financial pressure with lots of bills to pay and had followed other drivers into the restricted area to collect fares. He also admitted breaching the Order previously.
- The individual warning letters dated 4 March and 24 March 2015 regarding a similar incident had advised the driver of the serious consequences of any further breach of the Order.

## Licensing Sub Committee, 28 January 2016

- The danger and risk to public safety of a motorised vehicle unexpectedly entering a pedestrianised zone, when the main purpose of the TRO was to create a safe environment for pedestrians using the Horseshoe Common area after Midnight.

The Sub-Committee retired to make its decision.

### DECISION MADE:

That the named driver in report '5a' be deemed not a 'fit and proper person' at the present time to hold a hackney carriage drivers licence and, in accordance with the section 61 Local Government (Miscellaneous Provisions) Act 1976, his licence be suspended for a period of 28 days in order for him to reflect on the seriousness of the matter and familiarise himself with the details of the restrictions.

### REASON FOR DECISION

The Chairman explained that the Sub-Committee had carefully considered all the written and verbal evidence provided. The Sub-Committee was concerned that the named driver had breached the Traffic Regulation Order on a number of occasions despite being aware of the road closures. The Sub-Committee was mindful that the driver had been sent two general advisory letters from the Council regarding the TRO and in addition he had received a 2 specific cautionary letter after he had been observed breaching the TRO. Both of which clearly set out the serious consequences in respect of his licence should there be any further breaches.

The driver had knowingly entered an area which the Council had pedestrianised to improve public safety and by ignoring the TRO he was openly challenging the authority of the Council. The driver initially advised that he did not know why the TRO had been put in place and was confused by the restrictions. He thought that it was ok to drive through the area on weekdays and if he had a booking. The Sub-Committee accepted that the driver may have been confused but in any event It was noted that the driver deliberately entered the area to ply for trade. In this instance the Sub-Committee felt that the driver blatantly and deliberately disregarded the rules and the driver would benefit from a period of time to reflect on the importance of pedestrian safety and ensure that he was sufficiently aware of the rules of the road.

The Senior Solicitor advised all parties that any persons aggrieved by the decision would have the right of appeal to the Magistrates Court, and any such appeal should be lodged within 21 days of receiving the decision letter.

## 12. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Chairman welcomed the driver named in report '5c', made introductions and explained the process of the hearing and the reason why it was being held in non

## Licensing Sub Committee, 28 January 2016

public session. He confirmed with the named driver that he was happy to proceed on the basis outlined.

The report at '5c' was introduced by the Taxi Licensing Officer who explained that the Traffic Regulation Order (TRO) in place in the Horseshoe Common area imposed a road closure for vehicular traffic between Midnight and 5.00am. The Licensing Officer advised that the background documents listed at item 5 of the agenda referred to all 6 cases being considered. During a routine licensing visit in the Town Centre on the night of the 24 November 2015 Environmental Protection Officers observed the Hackney Carriage of which the named driver had been identified as driving, ranking in the restricted area at 00.13am in breach of the Order. The witness statements reported that he had driven through Old Christchurch Road.

The Taxi Licensing Officer reported that all licensed drivers had been sent general advisory letters from the Council about the TRO on 14 May and 14 July 2015. In addition the Council had written individual warning letters to the named driver on 9 March and 28 April regarding similar breaches of the original TRO on 22 February and 22 April 2015 respectively.

In considering whether the named driver's actions were consistent with that of a 'fit and proper' person holding a Hackney Carriage driver's licence, the Sub-Committee also had regard to the following:

- The verbal evidence from the named driver who told the Board that on the previous occasions when he received a warning letter he did not enter the TRO area for 2 months but waited outside. During which time he saw a number of other vehicles entering the restricted area. The driver appreciated that he was wrong to follow other cars into this area on the previous occasions.
- The verbal evidence from the named driver who told the Board that they had entered the area before midnight prior to the restrictions being in place and that they had remained in the area past midnight in error. The driver confirmed that he had left the area immediately when advised that he was breaching the TRO.
- The admission of error by the driver and an expressed regret for the actions that had led to the review. He would actively discourage other drivers from breaching the Order from now on.
- The danger and risk to public safety of a motorised vehicle unexpectedly entering a pedestrianised zone, when the main purpose of the TRO was to create a safe environment for pedestrians using the Horseshoe Common area after Midnight.

The Sub-Committee retired to make its decision.

### **DECISION MADE:**

That the named driver in report '5c' be deemed a 'fit and proper person' to hold a hackney carriage drivers licence but be issued with a written caution regarding his behaviour.

## Licensing Sub Committee, 28 January 2016

### REASON FOR DECISION:

The Chairman explained that the Sub-Committee had carefully considered all the written and verbal evidence provided. The Sub-Committee was mindful that the driver had been sent two general advisory letters from the Council about the TRO and two individual warning letters for previous breaches of the original TRO which clearly set out the serious consequences in respect of his licence should this happen again.

The Sub-Committee had noted that the driver had entered the area prior to the closure and whilst they should have ensured they were not still in the area at the time of closure this was considered to provide mitigation. The Sub-Committee also noted that the driver had acknowledged the error made and promised to uphold the rules of the TRO in future. They were satisfied that the driver understood that to breach the TRO could put the public at risk but they believed he had learnt from this process and would not do it again.

### 13. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Chairman welcomed the driver named in report '5b', made introductions and explained the process of the hearing and that it was being held in non public session. He confirmed with the named driver that he was happy to proceed on the basis outlined.

The report at '5b' was introduced by the Taxi Licensing Officer who explained that the Traffic Regulation Order (TRO) in place in the Horseshoe Common area imposed a road closure for vehicular traffic between Midnight and 5.00am. The Licensing Officer advised that the background documents listed at item 5 of the agenda referred to all 6 cases being considered. During a routine licensing visit in the Town Centre on the night of the 24 November 2015 Environmental Protection Officers observed the Hackney Carriage of which the named driver had been identified as driving, driving through the restricted area at 1.30am in breach of the Order. The witness statements reported that he had driven through Old Christchurch Road.

The Taxi Licensing Officer reported that all licensed drivers had been sent general advisory letters from the Council about the TRO on 14 May and 14 July 2015. In addition the Council had written an individual warning letter to the named driver on 26 March regarding a similar breach of the original TRO on 18 March 2015.

In considering whether the named driver's actions were consistent with that of a 'fit and proper' person holding a Hackney Carriage driver's licence, the Sub-Committee also had regard to the following:

- The verbal evidence from the named driver who told the Board that he had entered the area on the night in question in order to rank along with other drivers.



## Licensing Sub Committee, 28 January 2016

- The honest admission from the driver that he had on many occasions in the past also entered the restricted area, simply following other drivers into rank. He said he could not give any particular reason for doing so except it was a case of 'monkey see monkey do'. He stated that the restrictions are now being taken very seriously by all the drivers particularly since some drivers licences were revoked before Christmas. He was now fully aware that he should not be entering the area and understood that to do so would be to place pedestrian safety at risk. The Driver confirmed that he would not enter the restricted area in future and has not done so since the revocations
- The danger and risk to public safety of a motorised vehicle unexpectedly entering a pedestrianised zone, when the main purpose of the TRO was to create a safe environment for pedestrians using the Horseshoe Common area after Midnight.

### DECISION MADE:

That the named driver in report '5b' be deemed a 'fit and proper person' to hold a hackney carriage drivers licence but be issued with a written caution regarding his behaviour.

### REASON FOR DECISION:

The Chairman explained that the Sub-Committee had carefully considered all the written and verbal evidence provided. The Sub-Committee was mindful that the driver had been sent two letters from the Council to the taxi trade regarding the restricted area and a previous individual warning letter for breaching the original TRO in the area.

The Sub-Committee seriously considered whether a suspension or revocation was required in this instance due to the drivers blatant disregard of the policy and reminded the driver that the reason for abiding by the TRO should be the TRO itself not the perceived consequences of breaching the TRO. However the Sub-Committee noted that the driver had acknowledged the error made and had been entirely honest with his answers to the Sub-Committee's questions. The Chairman expressed the Sub-Committee's disappointment that it required someone else to lose their licence before the driver took the TRO seriously and reminded the driver of his responsibilities as a licence holder. They were however satisfied that he would comply with the rules of the TRO in future and that he remained a fit and proper person to hold a public carriage drivers licence.

## 14. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Sub-Committee considered whether to continue with the hearing for the driver named in report '5e' as he had failed to appear before the Licensing Sub-Committee. It was noted that he was provided with the same information as the other drivers who had attended the Licensing Sub-Committee hearing

Licensing Sub Committee, 28 January 2016

**DECISION MADE:**

It was agreed to defer consideration of report '5e' to the Licensing Board scheduled for Thursday 4 February 2016 to allow the named driver one further opportunity to attend a hearing.

**REASON FOR DECISION:**

The Sub-Committee felt that on reflection it would not be possible to make a fair determination based on the written evidence available in the report and that in this instance the named driver should be given one further opportunity to attend the hearing.

**15. ANY OTHER BUSINESS**

**TRO General Clarification** - The Sub-Committee requested that given some of the apparent discrepancies in the information being provided to drivers that a further letter of clarification be sent to all drivers at an appropriate time (considering the potential further changes to the TRO) confirming exactly what the latest TRO in the horseshoe common area means. It was also suggested that a meeting with operators may be useful to clarify the current situation.

The meeting was adjourned between:

10.28am - 10.38am  
11.15am - 11.28am  
11.32am - 11.37am  
12.00pm - 12.28pm  
12.56pm - 1.02pm  
1.13pm - 1.25pm

Councillor Battistini arrived at 10.25am and left at 12.35pm  
Councillor Decent left the meeting at 10.42am and returned at 12.35  
Councillor Edwards left at 11.32am

The meeting closed at 1.38pm

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