

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

LICENSING AND APPEALS BOARD – PANEL HEARING

**Minutes of a Meeting of a Panel of the Licensing & Appeals Board
on Tuesday 28th May 2013 at 11.30am
in the Committee Suite, King's Court, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor C J Crofts
and Councillor A Lovett

OFFICERS PRESENT:

Rachael Edwards - Senior Democratic Services Officer
John Gilbraith - Licensing Manager

LEGAL ADVISOR: - Emma Duncan

CASE NUMBER – LAB006/13

1. Exclusion of Press and Public

RESOLVED "That under Section 100(A)(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Act."

2. Review of Combined Drivers Licence

The Chairman welcomed everyone to the meeting and introduced the Panel, officers and the Legal Advisor. The licensed driver was present at the hearing.

The Legal Advisor outlined the procedure that would be followed at the hearing. The licensed driver confirmed that they understood the procedure and had no questions.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver had held a licence to drive a hackney carriage or private hire vehicle for a number of years and their current licence expired in October 2013. They also held a Private Hire Vehicle licence which expired in March 2014.

The report was for Members of the Licensing & Appeals Board to review the driver's continued suitability to hold a combined drivers and private hire vehicle licence following a complaint regarding their driving. The Licensing Manager outlined details of the complaint that had been received. He explained that unfortunately the two witnesses in question (PSCOs) were unable to attend the

hearing therefore the Licensing Manager referred to the details in their statements that had been attached to the report at Appendices 1 and 2 respectively.

On the 1st May 2013 Mrs Marie Malt, Senior Licensing Enforcement Officer wrote to the driver regarding the complaint and invited written comments within 7 days. She had also pointed out that the driver had breached licensing conditions which required drivers to notify the Borough Council in writing within 7 days of any penalty points etc. A copy of Mrs Malt's letter dated the 1st May 2013 had been attached to the report at Appendix 3.

The Licensing Manager explained that the driver had provided a letter on the 3rd May 2013 (attached to the report at Appendix 4) stating that they had been awarded six penalty points but no comments had been received regarding the incident on the 3rd April 2013 or the circumstances in which they were awarded these points. Despite the reminder in Mrs Malt's letter, the driver had still not fully complied with licensing condition 7.14.

Condition 7.14 of the Hackney Carriage & Private Hire Licensing Procedures & Conditions (June 2011) stated that:

"The driver shall notify the Borough Council in writing if he/she receives any summons, charge, conviction, caution, formal notice or fixed penalty notice within seven days of receiving such. The written notification should include the following details:

- *Offence / alleged offence;*
- *Date, place & time of offence/alleged offence;*
- *Whether acting as a hackney/private hire;*
- *If motoring offence:*
 - *whether paying passengers carried;*
 - *speed or alleged speed;*
 - *speed limit for road;*
 - *Punishment e.g. amount of fine, number of penalty points issued etc."*

The Licensing Manager explained that in 2009 the licensing section had reason to write to the driver in relation to complaints over parking. The driver had been invited to submit written comments about this matter but had chosen not to do so.

The Licensing Manager also outlined details on the driver's DVLA driving licence.

Under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 the Borough Council may suspend, revoke or refuse to renew a licence of a driver on any of the following grounds;

- (a) That he has since the grant of the licence –
 - (i) been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) been convicted of an offence under or has failed to comply with the provisions of the Acts; or
- (b) any reasonable cause.

Under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 the Borough Council may suspend, revoke or refuse to renew a hackney carriage or private hire vehicle licence on any of the following grounds;

- (a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
- (b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the operator or driver; or
- (c) any other reasonable cause.

The Licensing Manager reminded the Panel that the Borough Council should only authorise hackney carriage and private hire licences when they were satisfied that the applicant was “fit and proper” to hold such a licence. The Panel should be aware that any matter could be taken into consideration when determining ‘fit and proper’. Whilst there was no judicially approved test for fitness and propriety the Panel may find the following test useful:

‘Would you (as a member of the Licensing & Appeals Board charged with the ability to authorise a combined driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or grand-daughter or any other person for whom you care, to get into a vehicle with this person alone?’

If the answer to this question was an unqualified ‘yes’, then the test was probably satisfied. If there were any doubts, then further consideration should be given as to whether the person was a fit and proper person to hold a combined driver’s licence.

There were no questions from either the licensed driver or Members of the Panel.

The licensed driver presented their case and disputed the facts contained in the statements at Appendices 1 and 2. They did acknowledge that they were angry but had not been argumentative. The driver explained that they had seriously considered contesting the case in court but because of financial reasons had not been in a position to do so. They had therefore reluctantly accepted the penalty points that they had been awarded.

The Legal Advisor advised the Panel that in light of the driver disputing the facts detailed in the statements given by the PSCOs they may wish to consider adjourning the hearing to such a time when the witnesses could attend and be subject to questioning. On conferring, the Panel agreed to continue with the hearing in the absence of the witnesses.

The licensed driver further relayed details in relation to the incident.

In response to questions from the Licensing Manager, the licensed driver confirmed that he did not accept the accuracy of the statements given by the PCSOs and provided further details in relation to the incident. The driver also

explained why in their letter that had been received by the licensing section on 3rd May, they had not taken the opportunity to put forward their version of events. The driver responded to questions about the reference to having a clean driving licence for a period of nine years and how long they believed that points remained on their DVLA licence. They also explained why they had not complied with the Borough Council Licensing Condition 7.14 and in doing so, apologised for the error.

In response to requests for clarification from both Councillor C J Crofts and Councillor A Lovett, the driver provided further details as to their view of the details of the incident.

In relation to a query raised by the driver, the Legal Advisor advised that the Police had the power to pull anyone over if they believed an offence had been committed.

The Licensing Manager summed up the case and reiterated that the hearing was to determine the suitability of the licensed driver to continue to hold a Combined Drivers Licence and Private Hire Vehicle Licence. He referred to the fact that the licensed driver disputed some elements of the facts contained in the statements provided by the PCSOs but reminded the Panel that the driver was also in breach of the Borough Council's own Licensing Conditions and Procedures.

The Licensing Manager requested that the Panel consider the contents of the report, including any submissions put forward by the driver and dispose of the matter by using the following options:

- (a) In relation to the review of their combined drivers licence either:
 - i. Take no action;
 - ii. Issue a warning;
 - iii. Suspension;
 - iv. Revocation; and

- (b) In relation to the review of their private hire vehicle licence either:
 - v. Take no action;
 - vi. Issue a warning;
 - vii. Suspension;
 - viii. Revocation.

The Licensing Manager advised that the Panel could also consider any other options that they deemed to be suitable, for example, the Driving Standards Agency test. He also reminded the Panel that grounds for their decisions must be given as there was provision for appeal to the Magistrates' Court against those decisions.

The licensed driver summed up his case reiterating that they disputed the facts of the incident but acknowledged that they were guilty of non-compliance with the Borough Council's Licensing Conditions and Procedures, again offering their apologies.

The Legal Advisor addressed the Panel and also reiterated that the purpose of the hearing was to review the driver's continued suitability to hold a Combined Drivers

Licence and Private Hire Vehicle Licence following complaints made against them and determine whether they deemed them to be “fit and proper” to continue to hold a licence. She referred to the Licensing Manager’s report and the statements provided by the witnesses together with the evidence that had been given by the driver. The Legal Advisor also referred to the test previously outlined by the Licensing Manager in terms of whether, as a Member of the Licensing & Appeals Board, the Panel would allow a relative or any person for whom they cared for, to get into a vehicle with the driver alone.

The Chairman advised that the Panel would retire to consider their decision with the Legal Advisor and Senior Democratic Services Officer (for legal and administrative purposes only and neither would take any part in the decision making process)

The Panel retired and considered its decision in private. On reconvening, the Chairman read out the Panel’s decision and reasons for their decision.

DECISION

The decision of the Panel was read out.

REASONS FOR DECISION

The reasons for the decision of the Panel were read out.

The meeting closed at 12.40pm