

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 30th July 2013 at 9.30am
in the Committee Suite, King's Court, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor A Lovett
and Councillor M Tilbury

OFFICERS PRESENT:

Rachael Edwards - Senior Democratic Services Officer
John Gilbraith - Licensing Manager
Marie Malt - Licensing Enforcement Officer

LEGAL ADVISOR: - Cara Jordan

CASE NUMBER – LAB008/13

1. Apologies for Absence

There were no apologies for absence.

2. Items of Urgent Business

There were no items of urgent business.

3. Declarations of Interest

There were no declarations of interest.

4. 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."

5. Review of Combined Drivers Licence

The Chairman welcomed everyone to the meeting stating that the purpose of the hearing was to review the driver's Combined Driver's Licence. He introduced the Panel, officers and the Legal Advisor. The licensed driver was present at the hearing, accompanied by his representative who introduced themselves. They confirmed that they would not be calling any witnesses.

The Legal Advisor outlined the procedure that would be followed at the hearing and in doing so, explained that it was for the Panel to determine whether they deemed the driver a fit and proper person to continue to hold a Combined Driver's Licence. The licensed driver confirmed that he understood the procedure and had no questions.

At the invitation of the Chairman, the Licensing Manager presented his report and in doing so, questioned the driver as to whether he had received and read a copy of the Agenda. The driver confirmed that he had. The Licensing Manager explained that he would be calling at least one witness, Mrs Malt, Licensing Enforcement Officer who would be presenting the CCTV evidence. If appropriate, a second witness maybe called if the evidence contained within the report was challenged in any way by the driver.

The Licensing Manager explained that the driver was first licensed to drive either a Hackney Carriage or Private Hire Vehicle on 4th November 2010 and his current Combined Driver's Licence expired on the 3rd November 2013. The report was for Members of the Licensing Panel to review his continued suitability to hold a Combined Drivers Licence following the receipt of a complaint from a member of the public.

The Licensing Manager outlined the nature of the complaint that had been received. A copy of the complainant's statement had been attached to the report at Appendix 1 which included a photograph. The driver confirmed that the vehicle in the photograph was his vehicle. On 14th June 2013, Senior Licensing Enforcement Officer Mrs Marie Malt wrote to him regarding the complaint requesting comments within 14 days. A copy of her letter had been attached to the report at Appendix 2 and a copy of the driver's email response received on the 27th June 2013 had been attached at Appendix 3.

On the 25th June 2013, Mrs Marie Malt obtained CCTV footage of the Tuesday Market Place which showed a different version of events to that described by the driver in his email. The CCTV footage was presented and viewed by Members of the Panel (the footage was shown twice). Both the driver (and his representative) and Members of the Panel were offered an opportunity to ask any questions in relation to the CCTV footage. In response to a question raised by the driver, it was confirmed that no CCTV was available on the route in the lead up to the incident. There were no questions from Members of the Panel.

The Licensing Manager outlined a number of complaints and other matters to the Panel that were on the driver's file including a file note submitted by Mrs Lucy Hartley, Administration Officer within the Licensing Team. The Licensing Manager questioned the driver as to whether he wished for Mrs Hartley to be called as a witness in order to give the driver an opportunity to question what was contained in the file note. The driver confirmed that he did want the witness to be called.

In response to questions from the Licensing Manager, Mrs Hartley confirmed that the details contained within the file note were a true reflection of the telephone conversation she had had with the driver. Mrs Hartley read out the details

contained within the file note and expanded on why she had felt that the driver had been “argumentative and aggressive”.

The driver explained that in his opinion he had been “inquisitive” and asked a number of questions including why his licence was being revoked but had not sworn or raised his voice. Mrs Hartley acknowledged that the driver had not sworn but that his tone had been argumentative and aggressive. She also explained that at no time did she inform the driver that his licence would be revoked.

There were no questions from Members of the Panel. The witness left the hearing.

The Licensing Manager referred back to his report and outlined the current endorsement that was shown on the driver’s DVLA driving licence.

The Licensing Manager advised that 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.

Section 52 of The Road Safety Act 2006 gave licensing authorities the power to suspend or revoke a hackney carriage or private hire driver’s licence with immediate effect when they were of the opinion that the interests of public safety required such action.

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.

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) Take no action;
- b) Issue a warning;
- c) Suspension;
- d) Revocation;
- e) Any other action deemed appropriate, such as taking a Drivers Standards Agency test (DSA), the Council's own Knowledge Test or attending an anger management course.

The Panel was reminded that grounds for their decision must be given as there was provision for appeal to the Magistrates' Court against the decision.

There were no questions raised by the licensed driver or by Members of the Panel.

The licensed driver presented his case and referred to the most recent incident and read out his response (Appendix 3) to the complaint that had been made against him. He suggested that the complainant was "judging his driving" when he, himself, had broken the law by using a mobile phone whilst driving. The driver also explained events in the lead up to the incident and explained that as a taxi driver he was subjected every day to gestures, being sworn at etc from other road users. He did however acknowledge that he should not have "parked" on the Tuesday Market Place and that his attitude looked "obnoxious". The driver also apologised and stated that they should not have approached the other vehicle.

The driver referred to page 3, paragraph 6 (reference 21st January 2011) of the Licensing Manager's report in relation to a complaint received about the number of passengers he was carrying in his vehicle, three of which were babies and explained that he was not aware of the legislation in relation to "overloading". He referred to the reference in the report to the www.gov.uk website stating that it was only advice rather law. He also explained that he had only been driving a taxi for about a month and that all the passengers had felt safe in the vehicle.

In relation to paragraph 7 (page 4, reference 16th October 2011), the driver explained that the accident had happened on private property and that his vehicle had rolled back and caused damage to another vehicle's number plate. He explained that he had sought advice from the owner of his vehicle, who was an experienced taxi driver, as to what action he should take, including whether he should report the incident. He had been advised that he did not have to report the incident to the Council and an arrangement for the settlement of the claim had been made. The driver stated that he had left his relevant details with the other driver at the time of the accident.

The driver referred to page 4, paragraph 9 (reference 21st November 2011) explaining that he was never "suspended" from a school contract but Norfolk County Council had advised the owner of the vehicle that he drove to change the driver of that particular contract. He referred to a dispute that he had with the

owner of the vehicle stating that he had to engage a solicitor to obtain a sum of money he had been owed.

In relation to paragraph 10 (page 4 – reference 18th January 2012), the driver stated that he had not quoted the passengers in question the fee of £10 and that he never charged more than the “metered” fare. He also outlined details in relation to a complaint he had made (page 5 – paragraph 11, reference 13th February 2013) against another licensed driver.

In conclusion, the driver explained that he had driven a taxi for a period of four years and had received no convictions and involved in no accidents although a lorry had recently hit him but it had been the other drivers fault.

In response to a point of clarification raised by a Member of the Panel as to whether the Council had evidence to support the claim that the driver had been suspended from the school contract by Norfolk County Council, the Licensing Enforcement Officer explained as a matter of course, both authorities shared a range of information and that she had had a telephone conversation with the relevant officer and the driver had not been suspended but a request had been received to take the driver off that particular contract. In response to a further query raised by a Member of the Panel in relation to whether he had been carrying a passenger at the time of the most recent incident, the driver had confirmed that he had a young adult in the vehicle. The Member of the Panel also referred to the fact that the driver had stated that he had “parked” on the Tuesday Market Place in his response which was not consistent with the CCTV evidence that had been presented. The driver acknowledged that he had not parked in a designated bay but the vehicle was not in gear.

The Licensing Manager highlighted that if the driver had left the vehicle in that position he would have been issued with a car parking ticket. The driver acknowledged that he had not parked it properly. The Licensing Manager disputed the description of the vehicle being “parked” and suggested that the vehicle had been “abandoned” and was blocking other road users. The driver was also some 10ft away from his vehicle. The driver explained that the vehicle automatically locked and that there was no other way of describing it other than that the vehicle had been “parked”. The driver responded to further questions in relation to the incident.

The Licensing Manager questioned why the driver had not reported the incident (page 4, paragraph 7, reference 16th October 2011) involving a road traffic accident to the Council which was contrary to the Council’s Licensing Conditions and Procedures. The driver explained that he had not been driving that long and sought advice from the owner of his vehicle, who was a much more experienced taxi driver who had advised him that there was no requirement to report the incident to the Council. He also referred to the fact that the incident had occurred on 18th October 2011, settlement of the claim had been made on 20th October 2011, but the owner of the vehicle had not reported the incident to the Council until 21st November 2011. The driver confirmed that he had given his details to the driver of the other vehicle at the time of the accident.

In response to a further question in reference to a complaint from a pupil's mother (Appendix 9 - page 18), the driver explained that he picked up the pupil at the required time as stipulated by Norfolk County Council.

The Licensing Manager referred the driver to the options available to the Members of the Panel in determining the review and questioned the driver as to what action he thought was the most appropriate. The driver stated that his job was his livelihood and he did not want to lose it and that it was the first time a member of the public had made a complaint against him. He acknowledged that he should not have parked his vehicle in the manner that he had done which had not looked very professional. The driver also stated that he currently rented his vehicle from another operator and that if his licence was suspended (say for a period of 1 week) he would not be able to claim any form of benefits. He explained that he had learnt his lesson and felt that a warning from the Panel was the most appropriate form of action.

The Licensing Manager referred to the earlier reference in that the driver's account of the most recent incident was at odds with the CCTV evidence particularly in light of the driver's response in which he had stated "I do remember it exactly" and questioned whether he accepted that the evidence clearly showed him walking towards the vehicle of the complainant. The driver stated that "it wasn't against the law to walk towards a vehicle".

With the agreement of the Chairman, the Legal Advisor questioned the driver as to whether he accepted (as per the CCTV evidence) that he had entered the Tuesday Market Place via a "no entry" lane. The driver stated that he had no reason to question the evidence but that not all the entrances were clearly marked. The Legal Advisor reiterated that as a taxi driver, the driver should know the layout etc of the Tuesday Market Place and therefore would be aware that he had entered the car park the wrong way. The driver stated "I believe so, yes". The Legal Advisor also referred to the CCTV footage in relation to the driver's vehicle door being left open when he had approached the complainant. The driver stated that he could not remember.

The Legal Advisor also referred to the road traffic accident (reference 16th October 2011) and sought confirmation that the driver acknowledged that he had not but should have reported the incident personally to the Police. The driver explained that he was aware that the incident had been reported to the Police (by the owner of his vehicle) but acknowledged that he should have personally reported it.

There were no further questions from Members of the Panel.

The Licensing Manager summed up his case and reiterated that the hearing was to determine the suitability of the licensed driver to continue to hold a Combined Driver's Licence in light of receiving a complaint in relation to an incident with regard to his standard of driving and confrontational manner. He referred to the response to the incident submitted by the driver which was contrary to the CCTV footage. There were also a number of other matters in relation to the driver that could be taken into consideration. The Licensing Manager reminded the Panel that they had a number of options that they could consider when disposing of the

matters which included taking no action; issuing a warning; suspension, revocation or any other action deemed appropriate. He also advised that under Section 52 of The Road Safety Act 2006, it gave licensing authorities the power to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect where they were of the opinion that the interests of public safety required such action. The Licensing Manager reminded the Panel that full reasons must be given for their decision as there was provision for appeal to the Magistrates' Court.

The Licensed Driver summed up his case stating that the complainant was "judging his driving" when he himself was not aware or abiding by the law (using a mobile phone when driving). He explained that he carried out the same journey about 50 times on average per week in relation to the contract, clocking up approximately 7,500 miles per annum and that this was the first complaint that had been received from a member of the public. If his driving was of such a poor standard, more complaints would have been received. The driver stated that he had a clean licence.

The Legal Advisor addressed the Panel and advised them that they needed to consider the issue of public protection as the driver was in a position of trust and would be expected to be able to deal with difficult and challenging situations both potentially from passengers and other road users. A taxi driver was expected to be able to control their conduct. They were also required to be honest and not overcharge their customers. Members of the public also needed to be satisfied that they would be driven safely and in accordance with the law. The Legal Advisor reiterated that the reason the driver was before the Panel was a result of a receipt complaint from a member of the public along with a series of historical matters. The Panel need to consider on the balance of probability whether the driver was a fit and proper person to hold a licence to drive in the area. In coming to their decision, the Panel should consider the contents of the Licensing Manager's report, the CCTV evidence and the submissions put forward by the driver. They should consider how serious the incident(s) were, how long ago they had occurred and the relevance as to whether the driver was fit and proper to hold a Combined Driver's Licence. In conclusion, the Legal Advisor advised that the Panel had consider the Borough Council's own Licensing Policy along with the Human Rights Act, which balanced a person's right to earn a living against the protection of the public.

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. 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 12.25pm