

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

LICENSING AND APPEALS BOARD – PANEL HEARING

**Minutes of a Meeting of a Panel on
Tuesday 30th October 2012 at 1pm
in the Wembley Room, Lynnsport & Leisure Park, Greenpark Avenue,
King's Lynn, Norfolk. PE30 2NB**

PRESENT:

Councillor G Sandell (Chairman), Councillor C Manning and Councillor D Tyler

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Emma Duncan

CASE NUMBER – LAB008/12

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. Renewal of a Combined Driver's Licence & Review of Hackney Carriage Proprietor's 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 accompanied by two fellow taxi drivers all of whom introduced themselves. It was explained that Marie Malt was present to provide clarification if required but otherwise would take no part in the hearing as the driver had subsequently admitted to the offence outlined in the report. A further letter had been tabled by the licensed driver which was circulated to Members of the Panel.

The Legal Advisor outlined the procedure that would be followed at the hearing. There were no questions in relation to the procedure.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver had held a Borough Council of King's Lynn &

West Norfolk Combined Drivers Licence for a number of years. Their current driver's licence would expire on the 31st October 2012 and they had held a DVLA licence since 1988. They also held a Hackney Carriage Vehicle Licence which would expire on the 30th April 2013.

The Licensing Manager explained that the report was for Members to consider whether to renew the driver's Combined Driver's Licence as a result of him submitting false information in connection with a previous application. In addition to their Combined Driver's Licence, the Panel may also consider it appropriate to review their continued suitability to hold a Hackney Carriage Proprietor's Licence.

The Licensing Manager explained that condition 3.11 of the Hackney Carriage and Private Hire Licensing Procedures & Conditions stated:

'All Hackney Carriage and Private Hire Vehicles will not normally be considered for licensing unless they are under 5 years of age from date of first registration (date as shown on DVLA registration document) and accrued less than 60,000 miles.'

In October 2012, Mrs Marie Malt, Senior Licensing Enforcement Officer received information about the vehicle licensed by the driver. The Licensing Manager outlined details in relation to the vehicle.

The Licensing Manager advised the Panel that Condition 2.18 of the Hackney Carriage and Private Hire Licensing Procedures & Conditions required that all vehicles must be inspected by one of the Borough Council's approved testing stations prior to licensing. The vehicle in question was inspected by AVR, Hardwick Narrows, King's Lynn in July 2012. He also outlined details that had been established by Mrs Malt in October and the discussion she had had with the driver.

Attached at Appendix 1 to the report was a statement dated the 11th October 2012 made by Mrs Malt covering her dealings with the matter.

The Licensing Manager further explained that on the 8th October 2012, the driver had attended the council offices and asked to speak to licensing in private. Mr John Gilbraith, Licensing Manager and Mr Brian Isted, Licensing Enforcement Officer held a meeting with the driver. He outlined a brief summary of the meeting.

On the 15th October 2012 the driver had provided a written account which had been attached to the report at Appendix 2.

The Licensing Manager referred to the Addendum to the Report which had been issued after the publication of the Agenda. The licensed driver stated that he had not received a copy of the report. The Chairman therefore adjourned the hearing for a period of ten minutes to give the driver and his representatives an opportunity to read the report. They sought clarification

from Marie Malt and to its content and implications in relation to the letter tabled by the driver at the hearing.

The Licensing Manager explained that on the 22nd October 2012, the driver submitted two letters of support in advance of his hearing. He outlined the contents of the letters and explained that there was no record that the driver had informed the Licensing Team that he was suffering from a medical condition which was a breach of the Borough Council's Hackney Carriage and Private Hire Licensing Procedures Conditions (30th June 2011). Condition 7.4 stated:

"If there is a change in a Drivers medical fitness to drive a vehicle, they must notify the Licensing Team as soon as possible or no longer than 72 hours after the change in circumstances".

The licensed driver met with Mrs Marie Malt, Senior Licensing Enforcement Officer and Mr Brian Isted, Licensing Enforcement Officer on the 23rd October 2012 and attached at Appendix 1 to the Addendum was a statement made by the driver.

The Licensing Manager explained that Condition 7.1.2 of the Hackney Carriage and Private Hire Licensing Procedures Conditions (30th June 2011) stated that holders of Combined Driver's Licences must be considered fit enough to meet at least the standards required for the grant of a Group II driving licence as recommended by the Driver Vehicle Licensing Agency. He referred to the DVLA Guidance for Medical Practitioners (May 2012) and read out the particular paragraph which was relevant.

The Licensing Manager referred to Appendix 2 and 3 to the Addendum which were two medical letters which had been provided to Mrs Marie Malt, Senior Licensing Enforcement Officer on the 23rd October 2012. The Licensing Manager outlined details in relation to the appendices.

The Licensing Manager also referred to the NHS Choice website which offered advice which was outlined to the Panel. He explained that the driver had produced a letter from the DVLA dated 1st October which was outlined to the Panel.

In order to protect the inhabitants of the Borough Council of King's Lynn & West Norfolk, Mr Ray Harding, the Borough Council's Chief Executive had used his delegated powers to suspend the driver's Combined Driving Licence from the 23rd October 2012 until such time that confirmation of compliance with treatment had been provided. A copy of the Chief Executive's letter to the driver had been attached to the addendum at Appendix 4.

The Licensing Manager reiterated that the driver had admitted to the offence referred to in the report.

The Licensing Manager referred back to the original Agenda and explained that the Borough Council's hackney carriage and private hire application forms contained the following declaration which was signed by applicants:

'I have received, read and understood the Borough Council's Licensing Conditions. I understand that I may be liable to prosecution if I have knowingly or recklessly made a false statement or omitted any material particular from this application'.

The Licensing Manager explained that under Section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976, a person commits an offence if he knowingly or recklessly makes a false statement in connection with an application for a hackney carriage or private hire licence. A person guilty of an offence under this section was liable on summary conviction to a fine not exceeding level 2 (currently £1,000) on the standard scale.

He also referred under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Borough Council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle 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 Act of 1847 or of the Act of 1976; or
- (b) Any reasonable cause.

Under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976, the Borough Council has the authority to suspend, revoke or refuse to renew a vehicle licence on any of the following grounds:

- (a) that the hackney carriage or private hire vehicle was 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 reasonable cause

The Borough Council should only authorise hackney and private hire licences when they were satisfied that the applicant was a "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 the question was an unqualified ‘yes’, then the test was probably satisfied. If there are 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 renewal application and review of vehicle licence, including any submissions put forward by the licensed driver and/or his representative and dispose of the matters using the options below:

Renewal Application (CDL):

- Grant the renewal application;
- Refuse the renewal application;
- Grant the application with a warning;
- Grant the application with a requirement to complete and pass the Driver Standards Agency (DSA) test and/or knowledge test;

Vehicle Licence (Hackney Carriage)

- Take no action;
- Issue a warning;
- Suspension;
- Revocation.

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

The Licensing Manager highlighted that the Hackney Carriage Proprietor’s Licence was in joint names but confirmed that there was no evidence that the other person was aware of the offence that had been committed.

The Licensing Manager responded to questions from one of the licensed driver’s representative in respect of the DVLA Guidance for Medical Practitioners (May 2012).

The Licensing Manager highlighted that the letter tabled by the driver at the hearing was hand written and not on NHS letter head. The Legal Advisor advised that the driver’s consultant should be contacted to provide further clarification. In response to a further query from the licensed driver’s representative, the Legal Advisor stated that the driver was obliged under the Council’s licensing procedures and conditions to inform the Council of any change in their medical fitness.

In response to a query raised by the Legal Advisor, the Licensing Manager clarified that the driver had since transferred their plate to another vehicle.

The licensed driver’s representatives presented their case and explained the circumstances surrounding the false information in connection with a previous

application. They explained details in relation to the driver's personal life and circulated some photographs to Members of the Panel. It was explained that the driver was of previous good character and was deeply sorry for his actions.

The licensed driver's responded to a number of questions from the Licensing Manager in relation to the false information that the driver had submitted and his initial explanation and subsequent interview with the Licensing Enforcement Officers. They also responded to questions in relation to the purchase of the vehicle. The Legal Advisor referred to page 15 of the report which was a letter from the licensed driver which outlined that they were aware of the offence that they had committed. The driver also responded to questions in relation to their medical condition, when it was diagnosed and subsequent events that followed. In response to a further question from the Legal Advisor, the licensed driver confirmed that he was familiar with the Council's licensing conditions and procedures.

There were no 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 renew his Combined Driver's Licence and to continue to hold a Hackney Carriage Proprietor's Vehicle Licence in light of them submitting false information in relation to a previous application. He reiterated that the licensed driver had admitted to the offence. The Licensing Manager referred to Section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976, in that a person commits an offence if he knowingly or recklessly makes a false statement in connection with an application for a hackney carriage or private hire licence. He reiterated that the Hackney Carriage Proprietor's Licence was in joint names but confirmed that there was no evidence that the other person was aware of the offence that had been committed. In conclusion, the Licensing Manager requested that the Panel consider the renewal application and review of vehicle licence, including any submissions put forward by the driver and his representatives and dispose of the matters using the options below:

Renewal Application (CDL):

- Grant the renewal application;
- Refuse the renewal application;
- Grant the application with a warning;
- Grant the application with a requirement to complete and pass the Driver Standards Agency (DSA) test and/or knowledge test;

Vehicle Licence (Hackney Carriage)

- Take no action;
- Issue a warning;
- Suspension;
- Revocation.

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

The licensed driver's representatives summed up their case stating that the licensed driver was aware of what they had done was wrong and apologised for their actions. They stated that the driver had an exemplary record for the past 15 years with no penalty points on their DVLA driving licence. The Licensing Manager confirmed that under the Rehabilitation of Offenders Act 1974 no convictions were spent, there was no record on the driver's file of any historic convictions or any prior appearance before a Panel of the Licensing & Appeals Board.

The Legal Advisor addressed the Panel and advised the Panel that they had to be satisfied that the applicant was "fit & proper" to hold licence. The driver had also breached the Council's Licensing Conditions & Procedures.

The Chairman advised that the Panel would retire to consider their decision, with the Legal Advisor who would advise on the law, its practice and procedures and the Senior Democratic Services Officer(for administration purposes only). On returning to the room, the Legal Advisor would announce any advice she had given in closed session.

The Panel retired and considered its decision in private. On returning, the Legal Advisor confirmed that she advised the Panel on the range of options open to them such as revocation, suspension and issuing a warning.

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 14.34pm