

**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 Wednesday 6<sup>th</sup> February 2013 at 1.30pm  
in the Committee Suite, King's Court, King's Lynn**

**PRESENT:**

Councillor Roy Groom (Chairman), Councillor Richard Bird  
and Councillor Mrs Stephanie Smeaton

**OFFICERS PRESENT:**

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

**LEGAL ADVISOR:** - Cara Jordan

**CASE NUMBER – LAB002/13**

**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 and Private Hire Vehicle 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 his employer, however it was clarified that the driver would be representing himself. Both the driver and his employer confirmed that they had no objection to the Portfolio Holder for Community (which covered the licensing function) remaining in the room to observe the hearing. The witness, on behalf of the Council, introduced herself.

The Legal Advisor outlined the procedure that would be followed at the hearing. In doing so, she explained that Councillor Bird had informed her that in his capacity as a Borough Councillor, he had on occasions the need to liaise/meet with the witness (who was an employee of the Borough Council) in her role as a Neighbourhood Officer. Both the licensed driver and his employer confirmed that they were happy for Councillor Bird to remain as a Member of the Panel.

The Panel Members confirmed that they had received and read the documentation submitted by the licensed driver.

There were no questions from the licensed driver in relation to the procedure. The witness left the hearing and it was explained that she would be called to give evidence at the appropriate stage during the hearing. The licensed driver confirmed that he would not be calling any witnesses.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver currently held a licence to drive both a Hackney Carriage and Private Hire Vehicle which would expire in November 2013. He also held a Private Hire Vehicle licence which would also expire in November 2013.

The report was for Members of the Panel to review the driver's continued suitability to hold a Combined Drivers Licence and Private Hire Vehicle Licence following complaints made against him.

The Borough Council had received two recent complaints regarding the licensed driver's behaviour; details of which were outlined by the Licensing Manager to the Panel.

On the 18<sup>th</sup> December 2012, Senior Licensing Enforcement Officer Mrs Marie Malt wrote to the driver regarding these complaints requesting a response in writing within 14 days. A copy of Mrs Malt's letter had been attached to the report at Appendix 3 (page 11) and a copy of the driver's response had been attached at Appendix 4 (page 12). (It was highlighted that due to a printing error, the appropriate Appendix number was not marked on the paperwork, therefore pages numbers would be referred to).

The Licensing Manager explained that on the 1<sup>st</sup> February 2010, the driver had appeared before a Panel of the Licensing & Appeals Board following a conviction at King's Lynn Magistrates' Court of an offence under Section 5 of the Public Order Act. The decision of the Panel was to issue a six-month warning. A copy of the agenda and decision sheet from the hearing had been attached to the report at Appendices 5 and 6 respectively (pages 16 – 29).

The Licensing Manager explained that in November 2011, the driver had received a police caution, the details of which were outlined to the Panel. In addition to the police caution, the driver had been awarded three Borough Council penalty points for breaching licensing conditions in that he failed to notify the Borough Council about the caution. Condition 7.15 of the Hackney Carriage and Private Hire Licensing Procedures & Conditions stated:

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

- *Offence/alleged offence*
- *Date, place & time offence/alleged offence*
- *Whether acting as a hackney/private hire*
- *If motoring offence:*
  - *Whether paying passengers carried*
  - *Speed or alleged speed*

- o *Speed limit for road*

The Licensing Manager explained that a police caution (or simple caution) was a formal alternative to prosecution and was a formal warning given to adults who had admitted that they were guilty of a first-time minor offence. It was commonly used to resolve cases where full prosecution was not seen as the most appropriate solution.

The Licensing Manager referred to other matters where a complaint had been received from a passenger that she had been over-charged by the driver for a journey in December. Investigations showed that whilst the £5 fare was correct, the journey was unlawful in that it was in a private hire vehicle and not pre-booked through a private hire operator. The driver claimed at the time that he did the right thing from a customer's perspective but admitted that they had broken the law. Plying for hire without a Hackney Carriage Licence was an offence under Section 45 of the Town Police Clauses Act 1847.

The driver's file also showed a number of occasions when incidents had been reported to the licensing team by the driver himself. The Licensing Manager outlined these to the Panel.

The Licensing Manager called his witness (she was accompanied by Marie Malt, Senior Licensing Enforcement Officer). In response to questions from the Licensing Manager, the witness confirmed that the statement consisting of two pages that she had made on the 4<sup>th</sup> December 2012 was a true reflection of her dealings with the taxi firm in question on 2<sup>nd</sup> December 2012. The witness gave a short account of these events. She confirmed that the statement was made in her capacity as a private individual (and not in her role as a Neighbourhood Officer at the Borough Council). The witness confirmed her address and also confirmed that she did not understand the question that she had been asked by the operator as to whether she "lived with Brian". The witness further explained the circumstances concerning her booking and subsequent events thereafter including an overheard conversation between the driver and the controller. She also stated that she did not want the same driver to return to pick her and her child up as she would have felt unsafe. The witness explained how she found out the identification/name of the driver in question.

In response to questions raised by the driver, the witness acknowledged that she had informed the operator that she worked for the Borough Council. She also explained that the intercom system at her address was working and at no time did she speak or see the driver via the intercom.

In response to questions raised by Members of the Panel, the witness confirmed that she had used the services of the taxi company in question for a period of approximately two weeks while our own vehicle was being repaired and that prior to the incident in question had found the service provided by the company to be on-time and the drivers pleasant and friendly. She also confirmed that there was only one access point in to her flat and in her opinion it was not possible for the driver to have waited at the wrong address.

The witness left the hearing. The licensed driver and his employer confirmed that they had no objection to Marie Malt, Senior Licensing Enforcement Officer remaining in the room.

The Licensing Manager referred back to his report and explained that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 the Borough Council could suspend, revoke or refuse to renew a licence of a driver on any of the following grounds;

- 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
- any reasonable cause.

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

- that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
- 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
- any other reasonable cause.

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

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 were made 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 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 licensed driver stated and explained why he disagreed with the report in relation to the police caution he had received. The Licensing Manager clarified that it was a formal alternative to prosecution and was a formal warning given to adults who admitted that they were guilty of a first-time minor offence. It was not the role of the Panel to “look behind” the details in relation to the police caution. The licensed driver explained that he had accepted the caution because at the time he had been under considerable personal pressure, details of which he outlined to the Panel. He also explained that he had tried to obtain a copy of the recording of his Police interview as evidence for the hearing but the timeframe had not made this possible.

The Legal Advisor reiterated the advice given by the Licensing Manager in that it was not for the Panel to look behind the reason for the police caution and in accepting it, the driver had admitted that he was guilty of a first-time minor offence. The alternative would have been for the Police to prosecute. She advised that the Panel would, however, take into consideration the licensed driver’s submissions in relation to the incident.

The licensed driver confirmed that he had no further questions in relation to the Licensing Manager’s report.

The licensed driver presented his case and further explained details in relation to the police caution that he had received and his personal circumstances both at the time of the incident and his current situation. He referred to a letter that he had submitted as evidence from a Doctor in relation to his wife’s medical history. The driver also explained the circumstances in relation to the complaint that had been received about a journey in December 2010 and details surrounding the installation of CCTV in his vehicle. He also provided further details about the prosecution which occurred in 2009 and subsequent confirmation of the outcome in January 2010. He also referred to another incident in which he had been subject to an attack and consequently resulted in considerable damage to his vehicle. The licensed driver also outlined his version of events in relation to the two recent complaints that had been received. He also referred to a letter that had been submitted by his Office Manager which detailed their company policy on bookings/pick-ups along with a number of character references.

The licensed driver reiterated details in relation to his personal circumstances and also explained that he enjoyed his job and it was his family’s only form of income.

The Licensing Manager referred to the letter submitted by the driver on 20<sup>th</sup> December 2012 in response to the Senior Licensing Enforcement Officer’s letter of 18<sup>th</sup> December and questioned the discrepancies in relation to the date and time outlined in this letter and that submitted by another witness. The licensed driver stated that the witness must have incorrectly stated the date and time but confirmed that it was in relation to the same incident. In response to further questions from the Licensing Manager in relation to this incident, the licensed driver provided further details.

The Licensing Manager referred to the second complaint that had been received and highlighted that the issue in question was not whether the driver turned up or

not but subsequent events that had occurred, in particularly a conversation the witness had overheard between the driver and the controller.

In response to questions from the Panel, the licensed driver further clarified details in relation to the second complaint. The licensed driver's employer also provided details on procedures/tracking devices in relation to bookings.

In response to questions from the Legal Advisor, the driver confirmed that he also did not understand the question that the witness had been asked from the operator as to whether she "lived with Brian". The Legal Advisor questioned the details in relation to the booking confirmation form and booking audit trail screen image that had been submitted as evidence by the driver to which the driver responded to. However, both the licensed driver and his employer acknowledged that the booking confirmation and booking audit trail screen image did not provide any evidence to confirm that the driver had actually turned up at the witness's address or the amount of time he had actually waited at the address.

The licensed driver also responded to questions from the Legal Advisor in relation to the first complaint that had been received.

In response to a question from the Chairman, the licensed driver explained that he had tried to obtain the services of a solicitor to represent him at the hearing but due to the timeframe and costs involved, this had not been possible.

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 Drivers Licence and Private Hire Vehicle Licence as a result of two recent complaints that had been received. He highlighted that the driver had appeared before a Panel previously and outlined the decision at that time. The Licensing Manager advised that it was not for the Panel to "look behind" the reason for the police caution. He reminded the Panel of their powers under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 in that the Borough Council could suspend, revoke or refuse to renew a licence of a driver on any of the following grounds;

- 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
- any reasonable cause.

The Licensing Manager also reiterated that under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 the Borough Council could suspend, revoke or refuse to renew a hackney carriage or private hire vehicle licence on any of the following grounds;

- that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;

- 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
- any other reasonable cause.

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

The Licensing Manager requested that the Panel consider the contents of the report, including any submissions put forward by the Council's witness and the driver and dispose of the matter by using one of 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.
- (b) In relation to the review of their Private Hire Vehicle Licence either:
  - i. Take no action;
  - ii. Issue a warning;
  - iii. Suspension;
  - iv. Revocation.

The Panel were reminded 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 and reiterated that he enjoyed his job and had been employed by his current employer for a period of approximately 3 months. His employer confirmed that during this period no complaints had been received directly to the company. In relation to the first complaint, the driver acknowledged that he did park his private hire vehicle inappropriately in the bus stop. In relation to the second complaint, he however reiterated that he had no reason not to turn up to collect the witness from her home address.

The Legal Advisor addressed the Panel and also reiterated that the Panel had to review the driver's continued suitability to hold a Combined Drivers Licence and Private Hire Vehicle Licence following complaints made against him. She advised the Panel that they also needed to consider the issue of public protection as the driver was in a position of trust. The driver would also be expected to be able to deal with difficult and challenging situations as well as potentially vulnerable passengers. The Legal Advisor stated that the Panel had to be satisfied, on the balance of probability, that the driver was a "fit and proper" person to hold a Combined Driver's Licence. She referred to the previous test 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 other person for whom they cared for, to get into a vehicle with the driver alone. This however, had to be balanced with a person's right to work and earn a living. The Legal Advisor also advised the Panel that a police caution was a formal alternative to prosecution and not a criminal conviction but a person must admit that they were guilty of the offence. She acknowledged that the driver disputed the details and wording in relation to the caution. The Legal Advisor referred to the letter of the 31<sup>st</sup> January 2013, submitted by the driver from his wife's doctor and advised that this did not specifically refer to the incident that had resulted in the police caution and was more on a general basis.

In response to a question raised by a Member of the Panel, it was reiterated that there was no specific evidence that had been provided to confirm that the driver had actually turned up at the witness's address or the amount of time he had actually waited at the address.

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 no part in the decision making process). On reconvening the hearing, 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 had not offered any further legal advice to the Panel and once they had made their decision she had assisted them with the formulation of their reasons.

## **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 5.25pm**