

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 Monday 27th January 2014 at 11am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor C Manning
and Councillor C Sampson

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Emma Duncan

CASE NUMBER – LAB014/14

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 Driver's Licence and Hackney Carriage Proprietors Licence

5.1 Introductions

The Chairman welcomed everyone to the meeting and stated that the purpose of the hearing was to consider a review of a driver's Combined Driver's Licence and

Hackney Carriage Proprietors Licence. He introduced the Panel, officers and the Legal Advisor. The licensed driver was present at the hearing and accompanied by a fellow licensed driver (for support purposes only and was not representing him). There were two witnesses on behalf of the Borough Council present at the hearing. One witness was also accompanied for support purposes only. All others present introduced themselves.

5.2 The Procedure

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 and Hackney Carriage Proprietors Licence. The witnesses left the hearing at this stage.

6. The Licensing Manager's Report/Questions

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver held a Borough Council Combined Driver's Licence which had been granted in June 2013 and expired in June 2014. He previously had held a Combined Driver's Licence between the 10th May 2011 and the 9th May 2012. He also held a Hackney Carriage Proprietors (Vehicle) Licence which would expire in November 2014.

The Panel of the Licensing & Appeals Board were requested to review the driver's continued suitability to hold both a Combined Driver's Licence and Hackney Carriage Proprietor's Licence because of matters mentioned in the report.

The details of the complaint was outlined to the Panel. A statement outlining her dealings with this complaint had been made by Mrs Malt, Senior Licensing Enforcement Officer and had been attached to the report at Appendix 1. The complainant had also made a statement in relation to this complaint which had been attached to the report at Appendix 2.

The Licensing Manager explained further investigations into the complaint had revealed that the vehicle leased by the driver from the complainant was involved in two accidents which were outlined to the Panel.

The Licensing Manager explained that Condition 3.41 of the Borough Council's Hackney Carriage And Private Hire Licensing Procedures and Conditions stated that:

"The proprietor of a private hire/hackney carriage vehicle must report to the Borough Council (by way of a prescribed accident notification and vehicle damage form) as soon as possible or in any event within 72 hours, any accident or incident which has caused damage to the vehicle or to any other property (i.e. other vehicle, fence post etc). An example of the accident notification and vehicle damage form is attached at Annex A. Forms for completion can be obtained from the Borough Council".

Section 50(3) of the Local Government (Miscellaneous Provisions) Act 1976 also stated that: *the proprietor of a hackney carriage or of a private hire vehicle licensed by a district council shall report to them as soon as reasonably practicable, and in any case within seventy-two hours of the occurrence thereof, any accident to such hackney carriage or private hire vehicle causing damage materially affecting the safety, performance or appearance of the hackney carriage or private hire vehicle or the comfort or convenience of persons carried therein*".

Section 80(1) of the same Act stated that a 'proprietor' included a part-proprietor and, in relation to a vehicle which was the subject of a hiring agreement or hire-purchase agreement, meant the person in possession of the vehicle under that agreement.

Whilst the driver had reported one accident there was no record that the second accident had been reported.

The Licensing Manager also explained that there was some discrepancy in the timeframe in which the driver had informed the Council and subsequently the licensing team of his change of address.

Condition 7.12 of the Borough Council's Hackney Carriage and Private Hire Licensing Procedures and Conditions stated that:

The driver shall notify The Borough Council in writing of any change of his/her address during the period of the licence within seven days of the change taking place.

A statement outlining her dealings with the matter had been made by Mrs Malt, Senior Licensing Enforcement Officer and had been attached to the report at Appendix 3.

In January 2013, the driver's current licensed vehicle was inspected and a number of observations had been made including scratches, dents and unauthorised signage. Further details in relation to the claims made by the driver in relation to the vehicle had been investigated with a local garage and found not to be true.

A statement detailing Mrs Malt's dealing with this matter had been attached to the report at Appendix 4. The statement also recorded that Mrs Malt received an email from the driver in relation to the complaint.

There were no questions from Members of the Panel at this stage.

The Licensing Manager called Mrs Malt as a witness, who introduced herself and confirmed that the statements she had made on the 9th January (Appendix One), 13th January (Appendix Three) and 15th January (Appendix Four) were true reflections of her dealings with the complaint. She gave an overview of the events surrounding all three statements and responded to subsequent questions. She also outlined to the Panel how long she had spent investigating the complaint and other matters.

There were no questions from the licensed driver or Members of the Panel for the witness. Mrs Malt remained in the room for the duration of the hearing.

The second witness was called by the Licensing Manager, who introduced himself and confirmed that the statement that they had made on the 10th January (Appendix Two) was a true reflection. They outlined details to the Panel in relation to these events. The witness responded to a number of other questions put to him by the Licensing Manager.

The witness also responded to questions from the licensed driver. The witness left the hearing.

The Licensing Manager explained that the driver had appeared before a Panel of the Licensing & Appeals Board on two previous occasions. Details of these previous hearings were outlined to the Panel and subsequent decisions. He had acknowledged and accepted his previous wrongdoings when he was granted his application in June 2013.

A copy of the agenda for the initial hearing held had been attached at Appendix 5 and a copy of the decision sheet had been attached at Appendix 6.

A copy of the agenda for the second hearing held in June 2013 had also been attached at Appendix 7 and a copy of the decision sheet had been attached at Appendix 8.

The Licensing Manager explained 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.

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.

Section 52 of The Road Safety Act 2006 amended Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and gave licensing authorities the power to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect where they are of the opinion that the interests of public safety require such action.

7. The Licensed Driver's Case/Questions

The licensed driver presented his case and explained that he would not go into details about the damage to the vehicle but apologised for the way he had handled the circumstances surrounding the complaint. He explained that he enjoyed his job and was good with customers and had a family to support. The driver acknowledged that he had made some "silly mistakes".

The licensed driver responded to a number of questions from the Licensing Manager in relation to the complaint, the accidents, damage to the vehicle and details provided by a local garage. In relation to the complaint, the driver said that he had "buried his head" in the sand and not dealt with it appropriately. He explained the reasons why there appeared to be a discrepancy in notifying the Council of his change of address.

The driver had submitted a copy of a letter of support as well as a statement in relation to the condition of his tyres on the vehicle.

There were no questions from Members of the Panel.

8. Summing Up

8.1 Summing Up - The Licensing Manager

The Licensing Manager summed up his case and reiterated that the driver had been granted a licence on two previous occasions and had accepted his wrongdoing in order for his application to be granted last year. However within a short space of time a complaint had been received. Further investigations had revealed similar traits as those experienced when they had been previously licenced in terms of dishonesty, problems with the vehicle and breach of conditions.

The Licensing Manager reiterated that the Panel were requested to review the driver's Combined Driver's Licence and Hackney Carriage Proprietors (Vehicle) Licence.

He 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 licences. The Panel should be aware that any matter can be taken into consideration when determining 'fit and proper'.

Whilst there is 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 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 referred to the evidence given by the two witnesses on behalf of the Borough Council and the evidence given by the driver.

The Panel were requested to consider the contents of the report, including any submissions put forward by the driver and dispose of the matters by using the following options:

- (a) In relation to the review of his combined drivers licence either:
 - I. Take no action;
 - II. Issue a warning;
 - III. Suspension;
 - IV. Revocation; and

- (b) In relation to the review of his hackney carriage licence either:
 - V. Take no action;
 - VI. Issue a warning;
 - VII. Suspension;
 - VIII. 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.

8.2 Summing Up - The Licensed Driver

The licensed driver confirmed that he had no further comments to make.

9 Legal Advice

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 Hackney Carriage Proprietors (Vehicle) Licence. The Panel had to determine whether they deemed the driver to be "fit and proper" to continue to hold the licence and could suspend or revoke both licences for "any reasonable cause".

She referred to the witnesses' evidence and the key issues which were in relation to the most recent complaint, damage to the vehicle and breach of the Borough Council's licensing conditions.

10. Determination

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 Legal Advisor explained that she had offered no further legal advice. 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 1.24pm