

**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  
held on Tuesday 9 September 2014 at 11.00am  
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

**PRESENT:**

Councillor D Tyler (Chairman), Councillor C Manning  
and Councillor A Wright

**OFFICERS PRESENT:**

Kathy Wagg - Democratic Services Officer  
John Gilbraith - Licensing Manager  
Marie Malt - Senior Licensing Enforcement Officer

**LEGAL ADVISOR:** - Peter Cox

**CASE NUMBER – LAB019/14**

**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**

**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 Licence Holder's Combined Driver's Licence. He introduced the Panel Members, Officers and the Legal Advisor. The

License Holder was present at the hearing and introduced himself, accompanied by someone to support him. A witness (the Complainant), on behalf of the Borough Council was also present (accompanied by someone to support her but who would not take part in any of the proceedings).

## **5.2 The Procedure**

The Legal Advisor outlined the procedure that would be followed at the hearing.

## **6. The Licensing Manager's Report/Questions**

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the Licence Holder had held a Borough Council of King's Lynn & West Norfolk Driver's Licence for a number of years. His current Combined Driver's licence expired on the 31 October 2014.

The report was for Members of the Licensing & Appeals Board to review the Licence Holder's continued suitability to hold a combined driver's licence following the receipt of a complaint.

On 16<sup>th</sup> May 2014 a complaint had been received from a member of the public in which it was alleged that the Licence Holder stopped his vehicle in front of the Complainant, approached the door of the Complainant's car in such a manner as to cause the Complainant alarm and then directed abusive and bad language towards the Complainant. A copy of a Statement obtained from the Complainant on 19<sup>th</sup> May 2014 was attached to the report at Appendix 1.

As a matter of procedure the Senior Licensing Officer Mrs Marie Malt wrote to the Licence Holder regarding the complaint, requesting comments within 7 days. A copy of her letter was attached to the report at Appendix 2 and a copy of the Licence Holder's email response received on 20 May 2014 was attached at Appendix 3.

As the complainant stated that children had been in the taxi, Mrs Malt made enquiries with Passenger Transport at Norfolk County Council to make them aware of the complaint. It was confirmed that the Licence Holder was undertaking a school contract at the time and was subsequently invited to a meeting at County Hall on 17 July 2014 where he was issued with an official warning. A copy of the letter sent to the Licence Holder from Norfolk County Council was attached to the report at Appendix 4.

The Senior Licensing Enforcement Officer Mrs Marie Malt produced a file note summarising her dealings with the matter and this was attached to the report at Appendix 5.

The Licensing Manager then called the Complainant. The Complainant confirmed that the statement made on 19 May 2014 was a true reflection of the incident on the 16 May 2014 on Gayton Road, King's Lynn. The Complainant then gave an account of the events. The Complainant also confirmed that she recognised the Licence Holder (at the hearing) who approached her. The Complainant clarified details with regard to the incident and how she had felt. In addition, the

Complainant explained that the incident at the time had been upsetting for her eldest daughter who had been in the car with her together with her young son.

There were no questions from the Members of the Panel to the Complainant.

The Licence Holder had no questions for the complainant.

The Complainant left the hearing.

The Licensing Manager resumed presenting his report and informed the Panel that on 20<sup>th</sup> October 2009 the license Holder had been issued with six Borough Council penalty points for breaching licence condition 7.15. Condition 7.15 required a driver to notify of convictions etc. within seven days which the License Holder failed to do so when he received three points on his DVLA driving licence on 18<sup>th</sup> August 2009. The Panel was informed that the License Holder had no current endorsements on his 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 Act of 1847 or of the Act of 1976; or
- (b) Any reasonable cause.

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

The Borough Council should only authorise hackney 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’.

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

- (a) Take no action;
- (b) Issue a warning;
- (c) Suspend their combined driver’s licence;
- (d) Revoke their combined driver’s licence; or
- (e) Any other action deemed appropriate.

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

Members of the Panel had no questions for the Licensing Manager on the contents of his report.

The License Holder had no questions for the Licensing Manager on the contents of his report.

## **7. The License Holder's Case/Questions**

The License Holder presented his case. He gave his version of the incident previously described by the Complainant. He accepted that he had stopped, got out of the vehicle and approached the Complainant and explained the reasons why he did this. He also gave a demonstration to the Panel of his actions (he pointed that it was a roundabout and that he had the right of way) when he approached the Complainant's car. He stated that he did not speed away as the traffic was at a standstill. The License Holder completely denied the allegations made in relation to his behaviour by the Complainant.

In response to questions from the Licensing Manager, the License Holder explained that he had received the letter from Norfolk County Council. The Licensing Manager asked why the Panel should be minded to take his version of events rather than the Complainants. In response the License Holder explained that he does not swear and was not abusive to the Complainant. The License Holder admitted that leaving the school children in the car was not an appropriate course of action from a professional driver but the Complainant kept on beeping her horn at him and making gestures with her fingers. He accepted that he was annoyed, that the Complainant had "hit a nerve" and that he had 'lost it'. He added that he had never done that before and never had any cause to. He repeated that he denied that he approached the Complainant's vehicle in an aggressive manner or that he had used foul and abusive language towards the Complainant.

In response to questions from Members of the Panel, the License Holder explained that he did not leave the car engine running whilst he approached the Complainant's car and when he returned to his car the traffic had hardly moved. He explained that he had taken the children to school every day for 3 years, and they had not tried to escape. The License Holder also explained that he had been driving for the last 36 years.

The Legal Advisor asked questions of the license Holder for clarification purposes.

## **8. Summing Up**

### **8.1 Summing Up – The Licensing Manager**

The Licensing Manager summed up his case and explained that there were two elements for the Panel to consider - the complaint from the Complainant about the License Holder's behaviour towards her (both in terms of the manner of his approach and the language then used) and that he had left his vehicle unattended with vulnerable children inside to approach the vehicle of the Complainant. Norfolk

County Council had dealt with the latter issue by way of a severe warning to the Licence Holder. In relation to the first issue, it was for the Panel to consider which version of events they gave more weight to given the clear conflict in the evidence of the Complainant and of the Licence Holder.

The Licensing Manager reminded Members of the Panel that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, it gave the Council the power to suspend or revoke a driver's licence for any reasonable cause. Section 52 of the Road Safety Act amended Section 61 and gave the power to suspend or revoke with immediate effect if it appeared that the interests of public safety required such action. The Licensing Manager advised that an explanation must be given as to why suspension or revocation was deemed to be with immediate effect.

The Licensing Manager referred to the "fit and proper" test.

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

- (a) Take no action;
- (b) Issue a warning;
- (c) Suspend their combined driver's licence;
- (d) Revoke their combined driver's licence; or
- (e) Any other action deemed appropriate

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

## **8.2 Summing Up - The License Holder**

The Licensed Holder's representative explained that the License Holder had been working for 36 years, and had currently been carrying out the school contract for two and a half years. He further explained that the License Holder fully accepted that he was wrong for leaving the children in the vehicle and fully apologised for his actions. The License Holder had since undergone a training course provided by West Norfolk Community Transport in relation to safeguarding of children. He added that the License Holder did have a passenger assistant with him at the time, and the incident had been a 'one-off' and consequently he had been given a warning for his actions from Norfolk County Council. He confirmed that the License Holder still worked with him and he had full confidence in him.

The License Holder representative stated that the License Holder had an exemplary record over 36 years. The License Holder understood that he had let his employer, himself and the Council down. He added that during the time he had worked with the License Holder he had never heard him swear and he was a fully trusted member of staff.

The Licensed Holder denied the allegations made against him by the Complainant in all respects.

The Legal Advisor asked questions of the license Holder's representative for clarification purposes.

## **9 Legal Advice**

The Legal Advisor addressed the Panel (in the presence of the License Holder and his representative) and summarised the points that the Panel should take into account when making its decision. From what they had heard and considered at the hearing, the License Holder had accepted that he had behaved inappropriately in terms of leaving his vehicle unattended to approach the vehicle of the Complainant. He had apologised for this and indicated that it would not happen again and that he had subsequently been on a training course to assist him.

The Legal Advisor further advised the Panel that from what they had heard and considered at the hearing, there was a clear conflict between the evidence of the Complainant and the evidence of the License Holder both as to the alleged behaviour of the License Holder towards the Complainant when he approached her vehicle and as to the allegation that the License Holder used foul and abusive language towards the Complainant.

In reaching a decision on the matter and judging what action they considered it appropriate to take (and the options in this regard had already been outlined to them in the Licensing Manager's report), Members would need to make a clear finding as to which version of events they accepted in respect of both these elements of the complaint.

If on the evidence the Panel considered that they were unable to do this, then that would need to be made clear and to be reflected in any action that they decided to take. The Panel were properly able to take into account the admissions made by the License Holder when he gave his evidence as to the inappropriateness of his behaviour in leaving his vehicle unattended when he approached the Complainant.

The Legal Advisor explained that public safety was the prime consideration to be taken into account and reminded the Panel that they needed to determine if the Licence Holder remained a fit and proper person to continue to hold a licence.

The Panel was reminded that they had heard the Licensing Manager's report (including the evidence of the Complainant) and the License Holder's explanation and denial of the complaint against him.

The Legal Advisor explained that the licence expired on 31<sup>st</sup> October 2014 so any revocation or suspension could only last until the end of the current licence. The Legal Adviser reminded the Panel that under Section 52 of The Road Safety Act 2006 licensing authorities had the power to suspend or revoke a licence with immediate effect where they were of the opinion that the interests of public safety required such action.

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

## **10. Determination**

The Chairman advised that the Panel would retire to consider their decision accompanied by the Legal Advisor and the 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 having regard to what it had heard and the requirements of the public interest. On reconvening, 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 12.48 pm**