

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 11 November 2014 at 10.00am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor M Hopkins
and Councillor J Loveless.

OFFICERS PRESENT:

Rebecca Parker - Democratic Services Officer
John Gilbraith - Licensing Manager

LEGAL ADVISOR: - Peter Cox

OBSERVING: - Councillor Mrs S Young

CASE NUMBER – LAB020/14

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

The Chairman explained that Councillor Mrs Young was observing the meeting for training purposes and would take no part in the proceedings. The Licence Holder and his representative confirmed that they had no objections to Councillor Young observing the Hearing.

5.2 The Procedure

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

- 5.3** The Licence Holder informed those present that he had not received a copy of the agenda for the meeting. The Democratic Services Officer confirmed that a copy of the agenda had been sent to the Licence Holder on 31st October 2014. The Chairman adjourned the meeting at 10.04am so that the Licence Holder and his representative could read through the paperwork for the meeting.

The Panel reconvened at 10.17am. In response to a question from the Chairman, the Licence Holder and his representative confirmed that they had had sufficient time to read through the agenda and were content to continue with 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 since 12th February 2013. His current combined Driver's Licence expired on 11th February 2015. The Licence Holder also held a Private Hire Operator's Licence which expired on 15 July 2015 and a Private Hire Vehicle Licence which expired on 18th August 2015.

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 as a result of him accruing nine penalty points on his DVLA Driving Licence. The Licensing Manager explained that Condition 7.7 of the Borough Council's Hackney Carriage and Private Hire Licensing Procedures and Conditions stated that if a Driver accrued nine or more points within a three year period on his/her DVLA driving licence, they would be required to appear before a Panel of the Licensing and Appeals Board in order for their continued suitability to hold a licence to be assessed.

The Licensing Manager presented the Panel with details of the current entries on the License Holder's DVLA driving licence.

The Licensing Manager provided the Panel with details of the initial application to become a Licensed Hackney Carriage/Private Hire Driver. The initial application had been referred to a Panel of the Licensing and Appeals Board because of a matter revealed on his Disclosure and Barring Service (DBS) disclosure.

The Licensing Manager outlined the details of a previous complaint against the Licence Holder which had been made by another member of the trade.

The Panel was informed of the Government advice in relation to speeding, published on the Government GOV.UK website as follows:

- The difference of a few miles per hour can mean the difference between life and death. The faster someone is driving, the less time they have to stop if something unexpected happens.
- If you kill someone while speeding, you will have to live with the long-term emotional consequences.
- Speed limits are there for a reason.

The Licensing Manager provided the Panel with some facts from the GOV.UK website as follows:

- Speed is one of the main factors in fatal road accidents.
- In 2013, 3,064 people were killed or seriously injured in crashes where speed was a factor.
- The risk of death is approximately four times higher when a pedestrian is hit at 40mph than at 30mph.
- Fatal accidents are four times more likely on rural 'A' roads as urban 'A' roads.

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 hackney carriage or private hire 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 amended Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and provided licensing authorities with 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 requested that the Panel consider the contents of the report, including any submissions put forward by the Licensed Driver and his representative and dispose of the matter by using the following options:

- (i) Take no action.
- (ii) Issue a warning.
- (iii) Suspension.
- (iv) Revocation.
- (v) 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.

The Licence Holder and his representative had no questions for the Licensing Manager on the content of his report.

In response to a question from Councillor Loveless, the Licensing Manager confirmed that the Licence Holder had provided information on the entries on his DVLA driving licence which had been included in the agenda. The Licensing Manager explained that the offence on 9th September 2014 had occurred in the afternoon as indicated by the Licence Holder.

The Licensing Manager confirmed that the incident which had resulted in a complaint being made against the Licence Holder from another member of the trade occurred in September 2013.

7. The License Holder's Case/Questions

The Licence Holder's representative presented his case. He reminded the Panel that the driver had been licensed with the Borough Council since 2013 and had accrued nine points on his DVLA licence. The Licence Holder's representative explained that the Licence Holder acknowledged that this was not a good record and he was not proud of his actions. He explained that the second incident had occurred in the early hours of a Sunday morning at the A47 roadworks in King's Lynn. He reminded those present that thousands of motorists had been caught by the temporary average speed cameras.

The Licence Holder's representative provided information on the speeding offence which occurred on 9th September 2014. He explained that the Licence Holder was picking up a patient from Norfolk and Norwich Hospital, who had been waiting three and a half hours for a taxi, which had subsequently let her down. The patient was distressed.

The Licence Holder's representative reminded the Panel that no fare paying passengers were on board when the three speeding offences occurred.

The Licence Holder's representative explained that he had recently employed the Licence Holder and his driving had been satisfactory since he had been working for him. The Licence Holder's representative stated that he had no reason to be concerned and no complaints had been received.

The Licence Holder's representative explained that the Licence Holder was upset with his driving record and a discussion had been held between the Licence Holder and his employer to discuss the seriousness of speeding, which the Licence Holder acknowledged was totally unacceptable. The Licence Holder had assured his employer that the offences were a 'wake up' call and his driving now reflected that.

The Licence Holder's representative referred to the allegation made by another member of the trade. He explained that it was just 'horseplay' and 'banter' and stated that the Licence Holder was a 'likeable' person. The Licence Holder's representative explained that if the Licence Holder lost his licence he would find it difficult to find employment elsewhere.

With regard to the DBS disclosure, which resulted in the Licence Holder appearing before a Panel of the Licensing and Appeals Board on a previous occasion. The Licence Holder's representative explained that the Licence Holder was working in a challenging environment at the time and took defensive action to protect his female colleagues. He reminded the Panel that previously the Licensing and Appeals Board had not felt that he was a risk and had decided to take no further action.

In response to questions from the Licensing Manager, the Licence Holder's representative provided information on the company that the Licence Holder worked for prior to obtaining a Private Hire Operators Licence. The Licence Holder had also willingly provided additional information on the entries on his DVLA driving licence.

8. Summing Up

8.1 Summing Up – The Licensing Manager

The Licensing Manager summed up his case, reminding the Panel that the Hearing was to review the Licence Holders continued suitability to hold a combined drivers licence as a result of him accruing nine penalty points on his DVLA driving licence. He explained that if a driver accrued twelve points on their licence they would be automatically referred to the Magistrates Court.

The Licensing Manager reminded the Panel that the information on the offences had been provided by the Licence Holder.

The Licensing Manager had provided the Panel with the circumstances surrounding the Licence Holder's previous referral to the Panel.

The Licensing Manager reminded Members of the Panel that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Council had 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 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 Licence Holder

The Licence Holder's representative summed up his case. He thanked the Licensing Manager for the information provided at the Hearing and the Panel for their time. He explained that the Licence Holder was sorry for his actions and recognised that they were serious.

9 Legal Advice

The Legal Advisor addressed the Panel and summarised the points that the Panel should take into account when making its decision.

The Panel was reminded that they had heard the Licensing Manager's report and the submission from the Licence Holder and his representative. The Panel was being pressed by the Council to take three separate issues into account.

The first issue was the three separate instances of exceeding the statutory speed limit. The Legal Advisor reminded the Panel that the Licence Holder had accepted that he had been driving inappropriately and there was a need for a higher standard of driving. He explained that even if one accepted the Licence Holder's submissions that the speed limit had been moderately exceeded there could still be serious consequences as set out on the GOV.UK website. This could properly be taken into account.

The Legal Advisor reminded the Panel that they could properly take into consideration the short time lapse between the three offences.

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 on the evidence they had heard if they considered that the Licence Holder remained a fit and proper person to continue to hold a licence.

The Panel was reminded that the Licence Holder had accepted the offences and regretted them. He referred to the discussion held between the Licence Holder and his representative, who was also his employer, about his standard of driving. The expression "totally unacceptable" had been used in this regard.

The Legal Advisor reminded the Panel that the Licence Holder's representative had explained the circumstances surrounding the offences and had stated that he had not been carrying any passengers at the time. The weight to be given to this was a matter for the Panel.

The Legal Advisor reminded the Panel of their powers under Section 52 of the Road Safety Act 2006, which provided the power to suspend or revoke the licence with immediate effect if it was in the interests of public safety to do so. The Council had not sought to press such action on the Panel.

The second issue was the information that the Panel had received of the complaint made against the Licence Holder by another member of the trade and the response made by the complainant and another witness. The Panel could have

regard to this and they also needed to bear in mind the Licence Holder's explanation and submissions.

The Legal Advisor referred to page 15 of the Agenda which was correspondence from Cambridgeshire Constabulary in relation to the third issue. He reminded the Panel that a previous Panel Hearing had regarded this incident as a 'one off' and had not taken any further action. That was a matter to be taken into account. He explained that the Panel should consider if the matter before them today was a continuation of this pattern of behaviour or if there were different circumstances involved which would be relevant to determining the weight the Panel was minded to give to this matter and the allegation of inappropriate behaviour made against the Licence Holder.

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, 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 12.08pm