

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

LICENSING AND APPEALS BOARD – PANEL HEARING

**Minutes of a Meeting of a Panel on
Tuesday 18th September 2012 at 10am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Councillor Garry Sandell (Chairman), Councillor Chris Crofts
and Councillor Colin Sampson

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Emma Duncan

CASE NUMBER – LAB003/12

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. Review of Combined Drivers 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 representative and his employer (who would take no part in the hearing).

The Legal Advisor outlined the procedure that would be followed at the hearing. She highlighted need for the hearing to be conducted in a respectful manner. 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, since the issue of the Agenda had subsequently surrendered his Private Hire Vehicle Proprietor's Licence. The hearing was therefore to consider a review of his Combined Driver's Licence only.

The report was for Panel Members to review the driver's continued suitability to hold a Combined Driver's licence following a complaint of dangerous driving.

The Licensing Manager outlined the nature of the complaint against the driver which related to their standard of driving. Two witnesses, travelling in the same vehicle have made statements which had been attached to the report at Appendix One and Appendix Two. The witnesses were called individually to give evidence at the hearing. Both confirmed that their statements that they had made on 6th July 2012 were a true reflection of the incident that they had witnessed. The witnesses responded to a number of questions from the Licensing Manager, the licensed driver's representative and Members of the Panel. The witnesses left the hearing after submitting their evidence.

The Licensing Manager explained that an initial enquiry was made by Mrs Malt, Senior Licensing Enforcement Officer with the driver's employer. A copy of the email received dated the 6th July 2012 had been attached to the report at Appendix 3.

Mrs Marie Malt, Senior Licensing Enforcement Officer wrote to the driver informing him of the complaint and requesting a response in writing. A copy of Mrs Malt's letter, dated 6th July 2012 had been attached to the report at Appendix 4 and a copy of the driver's response dated the 9th July 2012 had been attached at Appendix 5.

The Licensing Manager advised the Panel that they may find the following extracts from the Highway Code useful:

Rule 268 stated:

Do not overtake on the left or move to a lane on your left to overtake. In congested conditions, where adjacent lanes of traffic are moving at similar speeds, traffic in left-hand lanes may sometimes be moving faster than traffic to the right. In these conditions you may keep up with the traffic in your lane even if this means passing traffic in the lane to your right. Do not weave in and out of lanes to overtake.

In relation to Stopping Distances Rule 126 advised:

Drive at a speed that will allow you to stop well within the distance you can see to be clear. You should:

- leave enough space between you and the vehicle in front so that you can pull up safely if it suddenly slows down or stops. The safe rule is never to get closer than the overall stopping distance.
- allow at least a two-second gap between you and the vehicle in front on roads carrying faster-moving traffic and in tunnels where visibility is reduced. The gap should be at least doubled on wet roads and increased still further on icy roads.

The Licensing Manager explained in June 2009 the driver had appeared before a Panel of the Licensing and Appeals Board to review his continued

suitability to hold a Combined Hackney Carriage / Private Hire Driver's Licence. A copy of the Report from the hearing had been attached at Appendix 6 and a copy of the decision sheet had been attached at Appendix 7.

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 Acts; or
- (b) any reasonable cause.

Under Section 52 of The Road Safety Act 2006, the Borough Council had 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 overriding reason for hackney carriage and private hire licensing was public safety and the Borough Council should only issue licences when they were satisfied that the applicant was "fit and proper" to hold such licences.

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

- Taking no action;
- Issue a warning in relation to his drivers or vehicle licence, or both;
- Suspension of his drivers or vehicle licence, or both;
- Revocation of his drivers or vehicle licence, or both.

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

In response to a question from a Member of the Panel, it was confirmed that the driver had complied with the previous decision of the Panel in June 2009.

The licensed driver's representative presented his case and explained that the driver could not recall the incident. He outlined further details in relation to the driver's normal journey.

The licensed driver's representative and the driver responded to questions from the Licensing Manager, the Legal Advisor and 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 continue to hold a Combined Driver's Licence. The driver's Private Hire Vehicle Proprietor's Licence had been surrendered and therefore the licence was not up for review.

The licensed driver's representative summed up their case and reiterated that they could not recall the details of the incident but respectively requested that even if proven, the incident only merited a warning as opposed to revocation or suspension.

The Legal Advisor addressed the Panel and referred to page 4 and 5 of the Agenda which set out the legal powers available to the Panel. She advised that they could consider no action, issuing a warning, suspension or revocation but had to consider the issue of public safety. They had to consider on the basis of probability whether the incident had occurred and how they viewed the seriousness of the incident.

The Chairman advised that the Panel would retire to consider their decision, with the Legal Advisor and Senior Democratic Services Officer (for administrative 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 had advised the Panel on the procedure in relation to immediate suspension and had also assisted them with their wording for 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 11.40am