

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 9th January 2013 at 10am
in the Committee Suite, King's Court, King's Lynn**

PRESENT:

Councillor Garry Sandell (Chairman), Councillor Michael Langwade
and Councillor Laurence Scott

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Emma Duncan

CASE NUMBER – LAB001/13

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. An additional statement, in support of the licensed driver was tabled, together with two pages that had been inadvertently omitted from the original Agenda.

The Legal Advisor outlined the procedure that would be followed at the hearing. There were no questions from the licensed driver in relation to the procedure.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver currently held a Combined Drivers Licence, which was due to expire on 31st October 2013. He also held a Private Hire Vehicle licence which was due to expire on 5th March 2013.

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

The Licensing Manager outlined the nature of the complaint against the driver which related to their behaviour in relation to an incident that had occurred on 16th October 2012.

The Licensing Manager explained that following receipt of the first complaint, Mrs Marie Malt, Senior Licensing Enforcement Officer had written to the driver informing them of the complaint and requesting a response in writing. A copy of Mrs Malt's letter, dated 25th October 2012 had been attached to the report at Appendix 2. The driver failed to respond to this letter.

On 14th November 2012, the driver revealed in a telephone conversation with the Licensing Enforcement Officer, Brian Isted, that they had been involved in an exchange of words earlier that day. A copy of Mr Isted's statement detailing the telephone conversation with the driver had been attached to the report at Appendix 3. Further investigations regarding this incident suggested that the driver had used inappropriate language in the presence of the public, and in particular two children. Copies of witness statements provided by two employees of the taxi company had been attached to the report at Appendices 4 and 5. It was noted that Appendix 5 also made reference to the first complaint.

On 22nd November a letter was sent to the driver regarding the incident on 14th November. Copies of the letter and the driver's response had been attached to the report at Appendices 6 and 7.

The Licensing Manager explained that the driver had appeared before the Panel of the Licensing and Appeals Board on two previous occasions and gave details of these hearings and subsequent decisions. Copies of the report and decision sheet from the hearing on 28th September 2007 had been attached to the report at Appendices 8 and 9. Copies of the report and decision sheet from the hearing on 11th December 2008 had been attached to the report at Appendices 10 and 11.

The Licensing Manager advised the Panel that on 11th February 2010 the driver had received three Borough Council penalty points for failing to display private hire signage on a private hire vehicle between 26th May 2009 and 10th February 2010. He then detailed further complaints which had been received against the driver on 23rd February 2010 and 19th August 2011 concerning the standard of their driving. Copies of two letters sent to the driver regarding these complaints and their single response to both letters had also been attached to the report at Appendices 12, 13 and 14.

The Licensing Manager then outlined the driver's history of endorsements for speeding offences during the period from 13th August 2001 to 18th December 2010.

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.

The Licensing Manager also advised that 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.

The Licensing Manager explained that in the incident mentioned in paragraph 4 of his report, it was alleged that the driver reversed his vehicle a distance of approximately 30 metres along Norfolk Street, which could be considered an offence. Regulation 106 Road Vehicles (Construction & Use) Regulations 1986 stated that:

'No person shall drive, or cause or permit to be driven, a motor vehicle backwards on a road further than may be requisite for the safety or reasonable convenience of the occupants of the vehicle or other traffic, unless it is a road roller or is engaged in the construction, maintenance or repair of the road.'

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 should be 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 might 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 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.

There were no questions for the Licensing Manager.

The licensed driver presented their case and explained their version of events in relation to the incident that had occurred on 16th October 2012, some of which conflicted with the statements made by the witnesses. They also provided clarification and further explanation in relation to the incident that had occurred on 14th November 2012. They acknowledged that they had lost their temper and apologised for their actions, particularly for their inappropriate language in front of children.

The licensed driver responded to questions from the Licensing Manager and confirmed that he had read the statements provided by the witnesses but stated that they did dispute some elements of the witnesses version of events although they acknowledged they had lost their temper and again reiterated their apologies.

The Licensing Manager referred to the other two complaints that had been received and the licensed driver's letter of response (Appendix 14) which had suggested that the complaints were from other drivers in the taxi trade and questioned the driver as to whom he thought the complaints were from. The licensed driver provided the names of two taxi drivers who they believed had made the complaints. The Legal Advisor read out the letter of complaint received on 19th August 2011 and questioned the licensed driver further as to its content and whom they believed had made the complaint.

In response to further questions from the Licensing Manager, the licensed driver stated that the statements (Appendix 4 and 5) were "pretty much" correct. They explained that they had not responded to a letter received from the Senior Licensing Enforcement Officer because they had been busy and had "not got around to it".

In relation to the incident that occurred on 14th November 2012, the licensed driver acknowledged that in hindsight they should have called the Police.

The Licensing Manager referred to the letter sent by the licensed driver (Appendix 14) and questioned whether they believed that the only complaints that mattered were the ones that were given direct to their company who they worked for. The licensed driver stated that they did not believe this but the complaints had been made to cause them "grief". They stated that they had been driving for some 12 years and could provide numerous references from customers. The Licensing Manager questioned as to why the driver had not produced any references as evidence for the hearing. He also referred again to both the incident that had occurred on 14th November when the standard of driving was not appropriate and the number of endorsements for speeding offences on the driver's DVLA driving licence which included a 56 day disqualification. The licensed driver stated that currently they only had 3 points on their DVLA driver's licence which would be spent by the end of the year. All offences had occurred when no passengers were in the vehicle. They further stated that customers often requested their services and that they received numerous tips.

In response to a further question with regard to their temper, the licensed driver described themselves as “the most placid person you could meet”.

The Licensing Manager tabled two CCTV images, which were circulated to the licensed driver and Members of the Panel to view, which showed still footage of the position of the licensed driver’s vehicle (as well as the driver and complainant) in relation to the incident that had occurred on 14th November 2012.

The Legal Advisor also referred to the incident that had occurred on 14th November 2012 and the statement made by the witness (Appendix 5) and questioned the driver as to whether they accepted it to be a true version of events. The licensed driver stated that they did not. The Legal Advisor stated that the statements had been under the Criminal Justice Act and signed to say that it was the truth to the best of the witness’s knowledge and belief and that they would be liable to prosecution if they had wilfully stated in it anything which they knew to be false or did not believe to be true. The licensed driver did however acknowledge that they did use the inappropriate language as quoted in the statement.

In response to questions from the Panel, the licensed driver explained that it was only some drivers within the trade to whom they did not get along with. They explained that they believed this to be down to jealousy issues and reiterated that a number of customers requested their services and that they were “one of the most popular drivers in the town”. They acknowledged that on reflection, they should have walked away from the incidents.

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. He referred to the two complaints that had been received, together with the other matters which were on file and that in the main, the licensed driver had not disputed the facts.

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 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 they had the power, under Section 52 of the Road Safety Act to suspend or revoke the licences with immediate effect. They were

also reminded that full reasons for their decision must be given as there was provision for appeal to the Magistrates' Court against that decision

The licensed driver summed up their case and reiterated that they regretted when had happened and apologised.

The Legal Advisor addressed the Panel and advised that the Panel had to determine whether they considered the driver to be a "fit and proper" person to hold both a Combined Drivers Licence and Private Hire Vehicle Licence. Consideration could be given to such issues as previous convictions, driving standards and their general demeanour. She reiterated that whilst there was no judicially approved test for "fit and proper", the Panel could consider whether they would allow a relative to get into a vehicle with the driver alone. The Legal Advisor referred to the evidence contained in the statements which conflicted with the verbal evidence given by the licensed driver and advised it was for the Panel to determine how much weight they attributed to both.

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 their wording for their reasons and whether she believed the reasons given would be defensible in the Magistrates Court.

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 11.35am