

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 22nd May 2013 at 9.30am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor J Loveless
and Councillor C Manning

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Cara Jordon

CASE NUMBER – LAB004/13

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

The Chairman explained that just prior to the commencement of the hearing, the driver in question had attended the Council offices and handed in his driver's badge along with the paperwork for the hearing. He had informed officers that he would not be attending the hearing. In light of this, the Chairman requested advice from the Legal Advisor. The Legal Advisor explained that under normal circumstances, the driver would be in attendance at a hearing, however the Panel had to give consideration as to whether the appropriate notice had been given to the driver of the date and time of the hearing and whether he had previously informed the Council that he was unable to attend and for what reason. The Panel could consider proceeding in the absence of the driver, particularly if they had been forewarned that this may be the case. The Chairman explained that officers had confirmed that the driver had received the appropriate notice and paperwork for the hearing and also been informed in writing that the case could be heard in his absence. The driver had taken the decision not to attend the hearing. The Panel therefore agreed to proceed and consider the case in the absence of the driver.

The Licensing Manager explained as a result of the information above, he would not be calling any witnesses on behalf of the Council. He also informed the Panel of the brief conversation he had had with the driver in question who had also tried to hand in his Norfolk County Council's driver's badge. The driver had raised issues with the procedures that had been followed by the Council but had been informed by the Licensing Manager that they did have the opportunity to attend the hearing and raise such issues. The driver had chosen not to attend.

The Licensing Manager presented his report and explained that the driver had held a licence to drive a Hackney Carriage and Private Hire Vehicle (Combined Driver's Licence) since August 2012 and their current licence expired in August 2013.

The report was for Members of the Licensing Panel to review the driver's continued suitability to hold a Combined Driver's Licence because of matters raised in the report.

The Licensing Manager explained the background to the case and stated that following a routine check on 3rd April 2013 on the licensing database, it had been identified that a Hackney Carriage Vehicle Licence had expired in March 2013. Subsequent enquiries with the licence holder had revealed that the vehicle had been sold. The new owner of the vehicle had provided a statement which had been attached to the report at Appendix One in which they confirmed that they had acquired the vehicle in question and that they had subsequently leased it out in mid-February 2013. The Licensing Manager outlined the terms of the lease agreement which stipulated that the owner would pay for the hackney licence and vehicle tax and the driver in question would pay to insure the vehicle.

The Licensing Manager explained that on 17th April 2013, Licensing Officer, Mrs Johanna Riches had contacted the owner of the vehicle to advise them that the Borough Council required the Hackney Plate to be returned as the vehicle was no longer licensed. The owner had explained that they were under the impression that the vehicle had been licensed by the new owner and undertook to investigate.

The Licensing Manager explained that the driver had attended King's Court later that day with the intention of making an application to licence the vehicle. However, they did not have the required insurance documentation and stated that they would return the following day (18th April 2013). At the same time, the driver had also stated that they had not used the vehicle since they took possession of it and that it had been parked on their drive. On the 18th April, the vehicle had been recovered from the driver's drive by the owner who had been accompanied by a colleague who had overheard a conversation as to why the driver had not licensed the vehicle. A copy of this statement had been attached to the report at Appendix Two.

Mrs Riches had also provided a statement of her dealings with the matter which had been attached to the report at Appendix 3.

On the 24th April 2013 Mrs Marie Malt, Senior Licensing Enforcement Officer provided a statement in which she had produced copies of booking records. These records showed that the driver had undertaken a number of jobs between

the 9th March 2013 and 30th March 2013. A copy of Mrs Malt's statement had been attached to the report at Appendix 4. Additional relevant statements in relation to the work carried out by the driver had been attached at Appendices 5 and 6.

On the 1st May 2013 Mrs Malt wrote to the driver advising them that the Council had evidence to suggest that they were using an unlicensed vehicle for hire and reward. The letter also invited the driver to attend King's Court on the 9th May 2013 to discuss the matter and bring along their vehicle insurance documents. The driver duly attended on the 9th May 2013 and a copy of the record of the meeting (File Note) had been attached at Appendix 7.

The Panel confirmed that they had received and read a letter of support for the driver from another member of the licensing trade.

The Licensing Manager explained that under Section 143 of the Road Traffic Act 1988 it was an offence to use a motor vehicle without insurance. Section 45 of the Town Police Clauses Act 1947 made it an offence to ply for hire within the controlled district without a current hackney carriage proprietor's licence. Section 46(a) of the Local Government (Miscellaneous Provisions) Act 1976 made it an offence for the proprietor of any vehicle to use or permit the same to be used in a controlled district as a private hire vehicle without having a current vehicle licence.

The Licensing Manager explained that between the vehicle being leased in February 2013 until the vehicle licence expired on the 7th March 2013, the driver had not only driven without insurance but they had also breached licensing condition 4.10 in that they used a licensed vehicle without insurance. Between 8th March 2013 and 18th April 2013, they had also used an unlicensed vehicle for hire and reward without insurance.

The Licensing Manager advised that under Section 80 of the Local Government (Miscellaneous Provisions) Act 1976 it stated that a "proprietor" includes a part-proprietor and, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the vehicle under that agreement.

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.

Section 52 of The Road Safety Act 2006 gave licensing authorities 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 aim of local authority licensing of the Taxi and Private Hire Vehicle (PHV) trades was to protect the public. It was important that somebody using a taxi or PHV to go home alone late at night, or any other time should be confident that the driver does not have a criminal record and that the vehicle was safe. Driving members of the public without insurance was not only an offence but also puts passengers and other road users at unnecessary risk.

The Licensing Manager advised 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 a licence. The Panel should be aware that any matter could 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 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.

The Licensing Manager responded to questions raised by Members of the Panel.

The Legal Advisor addressed the Panel and advised the Panel that they had to be satisfied that the driver on the balance of probability, was a fit and proper person to hold a Combined Driver’s Licence. She stated that the driver had chosen not to attend the hearing which would have given them an opportunity to give evidence and any relevant information for the Panel to consider. However, it was important that the driver had a fair hearing. She referred to the Licensing Manager’s report, the witness statements and relevant exhibits including a letter in support of the driver. The Legal Advisor also referred to the previous test outlined by the Licensing Manager in terms of whether, as a member of the Licensing & Appeals Board, the Panel would allow a relative or any other person for whom they cared for, to get into a vehicle with the driver alone. She also advised that Article 8 of the Human Rights Act stipulated that a person had the right to work and earn a living but this needed to be balanced with the need for public safety. 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 reasonable cause. Reasonable cause was not defined but had a wide context and in the case of *Norwich City Council vs Thurtle and Watchem*, the Judge stated that “the words any other reasonable cause were at large and cover anything and everything which might be regarded as a reasonable reason for depriving a person

of his vehicle licence. It is impossible to define in any general terms what circumstances might arise. Endless possibilities suggest themselves. The all-important word is reasonable”.

The Legal Advisor explained that the Panel did have the option to revoke the licence with immediate effect if they felt there was a need for the protection of the public but reasons for doing this would need to be given.

In response to a question raised by Councillor Loveless, the Legal Advisor explained that the reason the Panel were required to make a determination, despite the driver surrendering his badge, was because no formal notification had been received in writing. There was, therefore the option for them to change their mind or claim it was not their intention to surrender the badge. A formal hearing was also required to consider the serious allegations as outlined in the report. The driver may also in the future apply for a licence with another local authority and it may be necessary for the Council to inform them in order for them to give consideration to any decision made by the Panel. The Licensing Manager also highlighted that the driver still had a right of an appeal to the Magistrates Court.

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.

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 11.18am