

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 Friday 21st February 2014 at 9.30am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor G McGuinness
and Councillor M Tilbury

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Cara Jordan

CASE NUMBER – LAB015/14

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 driver's Combined Driver's Licence. He introduced the Panel, officers and the Legal Advisor. The licensed driver was

present at the hearing, accompanied by their representative who would be presenting their case on their behalf. A witness (the complainant), on behalf of the Borough Council was also present (accompanied by someone to support him 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 and in doing so, explained that it was for the Panel to determine whether they deemed the driver a fit and proper person to continue to hold a Combined Driver's Licence. The witness left 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 driver had held a Borough Council Combined Driver's Licence since January 2013 and that their current licence expired in January 2015. A Combined Driver's Licence entitled the holder to drive a hackney carriage or private hire vehicle provided that the vehicle was licensed by the Authority.

The report was for Members of the Panel of the Licensing & Appeals Board to review the driver's continued suitability to hold a Combined Driver's Licence following the receipt of a complaint concerning their standard of driving.

The Licensing Manager explained that in January 2014, a complaint had been received regarding the driver's standard of driving. He outlined details of the complaint.

As a matter of procedure, Senior Licensing Officer Mrs Marie Malt wrote to the driver to make them aware of the complaint and asked them for their written comments within 14 days. A copy of Mrs Malt's letter had been attached to the report at Appendix 2 and a copy of the driver's response had been attached at Appendix 3. A copy of the jobs undertaken by the driver for a set period of time and a copy of the booking information relating to a job involving the complainant had also been obtained. Mrs Malt had provided a statement covering her dealings with the matter which had been attached to the report at Appendix 4.

The Licensing Manager called the witness. The witness responded to questions from the Licensing Manager. He confirmed that the statement he had made on the 30th January 2014 was a true reflection of his experiences whilst travelling in a private hire vehicle from King's Lynn Railway Station to Cambridge Railway Station on 11th January 2014. He gave an overview of the events surrounding his statement. He also confirmed he recognised the licensed driver (at the hearing) as the driver of the private hire vehicle. The witness clarified details with regard to the timing of specific events. In conclusion, he outlined how the journey had made him feel.

The witness responded to questions from the licensed driver's representative and Members of the Panel.

The witness left the hearing.

The Licensing Manager resumed presenting his report and outlined details on the driver's DVLA Driving Licence. He also explained that Norfolk County Council Passenger Travel & Transport Services had suspended the driver for breaching their conditions of contract. Following further investigations, which were outlined to the Panel, the driver's identity badge had been revoked in May 2013. The driver had the option to appeal against the decision but had not done so. The two emails sent from Norfolk County Council to Mrs Malt giving further details about the matter had been attached to the report at Appendix 5.

Since the driver had been licensed as a combined driver, they had worked under the control of three private hire operators.

Condition 7.13 of the Borough Council's Hackney Carriage and Private Hire Licensing Conditions stated:

The driver shall notify the Borough Council in writing of any change in the private hire operator he is working under the control of within 7 days of the change taking place.

There was no record that the driver had complied with the condition for any of their changes of private hire operator.

The Licensing Manager reminded the Panel 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.

Section 52 of The Road Safety Act 2006 amended Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and gave licensing authorities the power to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect when they were of the opinion that the interests of public safety required such action.

The Licensing Manager also reminded the Panel that the reason for the licensing of hackney carriage and private hire drivers was that the driver was in a position of trust and responsibility for their passengers. Consequently, it was reasonable to expect that such professional drivers should have a standard of care and driving that exceeded that of a private motorist.

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 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 the 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 requested that the Panel consider the contents of the report, including any submissions put forward by the driver (and their representative) and dispose of the matter by using one of the following options:

- Take no action;
- Issue a warning;
- Suspend their Combined Driver’s Licence;
- Revoke their Combined Driver’s Licence; or
- Any other action deemed appropriate which could include the requirement to undertake a Driver Standards Agency (DSA) test and/or the Borough Council’s Knowledge Test.

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.

There were no questions from the licensed driver or their representative in relation to the report.

In response to questions raised by Councillor Tilbury, the Licensing Manager explained that the driver had been in breach of the Borough Council’s Hackney Carriage and Private Hire Licensing Conditions in failing to notify the licensing team of a change in private hire operators. As a matter of procedure and if there were no other issues that required consideration, a letter would be sent to the driver in question and remind them of their obligation to adhere to the Council’s licensing conditions. If this letter failed to receive the appropriate response, consideration would be given to taking further action.

In relation to a further question from Councillor Tilbury as to how the Borough Council (Licensing Team) became aware of the complaint, the Licensing Manager explained that the complainant had complained to Cabfind, an independent organisation, who had in turned informed the driver’s private hire operator. The operator had themselves then contacted the Licensing Team to inform them of the complaint which had subsequently been investigated. The Licensing Manager also provided clarification in relation to the dates when the incident was initially

reported to Cabfind, when the Council was informed and when the driver had provided a response to the alleged incident.

In response to a question raised by the Chairman as to when the Borough Council were informed about the matter involving Norfolk County Council, the Licensing Manager explained that there was no Service Level Agreement with Norfolk County Council to inform the Borough Council of such matters, albeit the Borough Council did inform the County Council of any appropriate issues about drivers who were licensed with the Borough Council. The matter had not come to light until investigations had been undertaken as a result of the Council being notified of the complaint in January 2014. The Chairman questioned whether if the Council had been made aware of the matter in March/May 2013, would the driver had been referred to a Panel of the Licensing & Appeals Board. The Licensing Manager explained that further facts would have been obtained and it would have been likely that the matter would have been referred to a Panel of the Licensing & Appeals Board. He further explained that the Police were obliged to inform the Council of any such matters but there was currently no obligation on the County Council to do so.

7. The Licensed Driver's Case/Questions

The licensed driver's representative presented their case and explained the circumstances surrounding the matter with Norfolk County Council stating that the driver had not been informed of the outcome of the matter but had handed their County Council identify badge to their operator. Further details were provided about the matter.

The licensed driver's representative explained the driver was liked by their customers and was a "decent driver for their age". He referred to the complaint that had been received and provided further details stating that at no time had the complainant raised any concerns during the journey and had in fact engaged in conversation with the driver. The driver also denied the information relating to their standard of driving that had been detailed by the complainant, both in his written statement and verbally, at the hearing.

The licensed driver's representative outlined details of the personal circumstances of the driver. He requested that if the Panel deemed it necessary to impose any "punishment" against the driver, a three month probationary period should be applied in order to allow a period for their standard of driving to be monitored.

In response to a number of questions from the Licensing Manager, the licensed driver explained in more detail how the booking system used by the operator worked. They also provided clarification in relation to the time that they were available to and actually started work along with the actual time they finished on the day when the journey had taken place. The Licensing Manager questioned the driver as to the details outlined in the complainant's statement, to which the driver stated were untrue both in relation to a remark they had made on the length of time they had been working and on their standard of driving.

In response to questions on the breach of conditions relating to their Norfolk County Council contract and the subsequent consequences, the driver stated that they had never received a formal letter from Norfolk County Council informing them of any action or any details in relation to the matter. They explained that they had given their Norfolk County Council identity badge to their operator.

In response to a question as to whether they would have appealed against the decision if they had been informed about it, the licensed driver confirmed they would have done so. The driver provided further details as to the nature of the breach of conditions.

The Licensing Manager highlighted that the driver had passed the Council's knowledge test and therefore should have been aware of the requirement in the Licensing Procedures and Conditions to notify the Borough Council in writing of any change in the private hire operator they were working under the control of within seven days of the change taking place.

The Licensing Manager questioned the driver as whether he was familiar with the terms and conditions of Cabfind. The driver stated that it was a booklet that detailed the rules and regulations that needed to be adhered too with customer safety being the most important.

In response to a final question from the Licensing Manager as to how the driver became aware of the complaint against them, the driver explained that they were informed by the operator.

In response to questions raised by Members of the Panel, the driver explained why, having worked for over twelve hours, they had accepted the job to take the witness from King's Lynn to Cambridge. They also confirmed the total number of jobs undertaken on the day in question. The Licensing Manager advised that there was no condition that restricted the number of hours that a licensed driver could work.

In response to further questions, the licenced driver's representative outlined the application process/requirements in order to be granted a Norfolk County Council identity badge. He also further explained the process in terms of accepting or refusing jobs that may be offered to the driver by the operator.

In response to questions from the Chairman, the driver confirmed that they had not received a letter from Norfolk County Council informing them of the outcome of any investigation that they had undertaken. The driver confirmed the address that they were living at the time the letter would have been sent. The Licensing Manager highlighted that an extract from the letter had been provided by Norfolk County Council and had been attached to the report at Appendix Five.

The Chairman requested that immediate enquiries should be made to ascertain which address the letter was sent to and to also obtain a full copy of the letter. He therefore adjourned the hearing for a period of thirty minutes in order for the Licensing Manager to obtain the necessary information. (10.40am).

On reconvening the hearing (11.10am), the Licensing Manager explained that he had telephoned Norfolk County Council and the officer who had provided the original information was not available. However, a colleague had confirmed that the letter had been sent on 13 May 2013 and to which address it had been sent too. They had also confirmed that it was normal procedure to ask the operator to hold on to a driver's identity badge whilst under investigation, but the operator would not have necessarily been informed of the nature of the investigation. The Licensing Manager also explained that subsequently, Norfolk County Council had amended their Terms & Conditions and procedure which now included providing any potential driver with guidance leaflets and on-line tuition, particularly when dealing with vulnerable people. He also reported that a note had been made on the driver's file stipulating that if he applied for a badge in the future, this was to be refused.

In light of the above the Licensing Manager questioned the driver again as to whether they accepted that they had in fact made "inappropriate contact" which had resulted in their identity badge being withdrawn by Norfolk County Council. The driver did accept this fact and explained the nature of that contact.

8. Summing Up

8.1 Summing Up - The Licensing Manager

The Licensing Manager summed up his case and reiterated that the Panel were requested to consider the continued suitability of the driver to hold a Combined Driver's licence. He referred to the complaint that had been received highlighting that there were discrepancies between the evidence of the witness and that given by the driver. He referred to the matter in relation to Norfolk County Council as well as the minor breach of the Borough Council's Licensing Procedures and Conditions. He reiterated that Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 gave licensing authorities the power to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect when 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 witness, the driver and their representative 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 which could include the requirement to undertake a Driver Standards Agency (DSA) test and/or the Borough Council's Knowledge Test.

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.

8.2 Summing Up - The Licensed Driver

The licensed driver's representative summed up their case stating that there were inconsistencies in the witness's evidence in relation the timings of the journey in question.

9 Legal Advice

The Legal Advisor addressed the Panel and also reiterated that the Panel had to review the driver's continued suitability to hold a Combined Drivers Licence. The Panel had to determine whether they deemed the driver to be "fit and proper" to continue to hold the licence. Members of the public also needed to be satisfied that they would be driven safely and in accordance with the law. She referred to the test for fitness and propriety as outlined previously by the Licensing Manager as whether the Panel would allow a person that they cared about to get into a vehicle with the driver alone.

The Legal Advisor advised that if the Panel were minded to suspend or revoke the driver's licence, they needed to give consideration as whether they deemed it necessary to do so with immediate effect.

She advised the Panel to give consideration to the Licensing Manager's report, the evidence from the witness, both written and verbal and the submission put forward by the driver and their representative. In conclusion, the Legal Advisor advised that the Panel had to consider, when coming to their decision, the Borough Council's own Licensing Policy along with the Human Rights Act, which balanced a person's right to earn a living against the protection of the public.

10. Determination

The Chairman advised that the Panel would retire to consider their decision accompanied by the Legal Advisor and Senior 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. On reconvening, Chairman read out the Panel's decision and reasons for their decision.

It should be noted, that Councillor Tilbury requested that it was recorded that he was not in accordance with the 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 1.35pm