

**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 Tuesday 1<sup>st</sup> April 2014 at 11am  
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

**PRESENT:**

Councillor D Tyler (Chairman), Councillor C Crofts  
and Councillor A Lovett

**OFFICERS PRESENT:**

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

**LEGAL ADVISOR:** - Louise Mantell-Sayer

**CASE NUMBER – LAB016/14**

**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 Members, officers and the Legal Advisor. The licensed driver was present at the hearing and introduced himself.

## **5.2 The Procedure**

The Legal Advisor outlined the procedure that would be followed at the hearing. The driver confirmed he understood the procedure.

## **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 of King's Lynn & West Norfolk Driver's Licence for a number of years. His current Combined Driver's licence expired on the 12<sup>th</sup> October 2014.

The report was for Members of the Licensing & Appeals Board to review the driver's continued suitability to hold a combined driver's licence as a result of him accruing fifteen penalty points on his DVLA driving licence. Condition 7.7 of the Borough Council's Hackney Carriage & Private Hire Licensing Procedures and Conditions stated:

*If a Driver accrues 9 or more points in a 3 year period on his/her DVLA driving licence, they will be required to appear before a Panel of the Licensing & Appeals Board in order for their continued suitability to hold a driver's licence to be assessed.*

The driver advised the Licensing Team that on the 15<sup>th</sup> December 2013 he had been caught speeding at 40mph in a 30mph zone. He had subsequently appeared before Norwich Magistrates' Court and was fined £400 and awarded 6 penalty points. He also had to pay Court costs of £85 and a 'victim surcharge' of £40. The driver had avoided disqualification under totting up due to exceptional hardship on 'children with special needs and wheelchair users'. A copy of the driver's letter advising on the outcome of the Court hearing had been attached to the report at Appendix 1.

The Licensing Manager outlined details on the driver's DVLA driving licence. He explained that penalty points were valid for three years from the date of conviction but could not be removed from the DVLA licence until the fourth anniversary. If a holder amassed 12 points in any 3-year period then the Court's guidelines were that an automatic 6-month disqualification should be imposed although they had the discretion to impose a lesser period. The Court could also opt not to impose a ban if the Court accepted a submission that a ban would cause exceptional hardship. Examples of exceptional hardship included:

- The loss of employment;
- The loss of business;
- The loss of home;
- Use of motor vehicle to care for the elderly or disabled;
- Impact upon family;
- Impact upon employees.

The Licensing Manager explained that records held by the licensing team showed that since May 1999, the driver had accumulated the following on his DVLA driving licence:

- 14 days disqualification;
- A total 27 penalty points;
- A total of £1,390 in fines & costs.

The driver confirmed he had held a Borough Council of King's Lynn & West Norfolk driver's licence for approximately 22 years.

The Licensing Manager also explained that the driver had appeared before a Panel of the Licensing & Appeals Board on three previous occasions; in August 2002 his hackney licence had been suspended for four weeks, in July 2009 he had received a written warning and in October 2012 he had received twenty one days suspension which had been with immediate effect. Details had been attached to the report at Appendix 2 and 3.

A complaint had also been received in August 2013 in relation to the driver going through a "red" traffic light. Senior Licensing Enforcement Officer, Marie Malt had written to the driver inviting comments about the complaint. A copy of the driver's response had been attached at Appendix 4. Following a meeting with the driver concerning the complaint, he had been issued with a written warning. A copy of the warning had been attached to the report at Appendix 5.

The Licensing Manager advised that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Borough Council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle 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 Act of 1847 or of the Act of 1976; 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 reason for the licensing of drivers was that the driver was in a position of trust and responsibility for their passengers. Consequently, it was generally accepted 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 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 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.

There were no questions from the licensed driver or Members of the Panel for the Licensing Manager.

## **7. The Licensed Driver’s Case/Questions**

The licensed driver presented his case and apologised to the Panel and acknowledged that he had acted foolishly. He explained that he would accept whatever decision the Panel deemed was appropriate. The driver drew Members’ attention to the letters of support that had been circulated and explained that he had not prompted any of the comments included in the letters but had merely requested character references. He also explained that he had no passengers in the vehicle at the time of any of the offences and therefore felt that he had not put anyone in danger.

There were no specific questions from the Licensing Manager.

In response to questions from Members of the Panel, the driver explained that the passenger assistant accompanied him on a daily basis. He also outlined the

reasons why his vehicle was deemed to be an unfit vehicle when he appeared before a Panel in July 2009.

## **8. Summing Up**

### **8.1 Summing Up - The Licensing Manager**

The Licensing Manager summed up his case and referred to Condition 7.7 of the Borough Council's Hackney Carriage & Private Hire Licensing Procedures and Conditions which stated that if a driver accrued nine or more points on his DVLA licence they would appear before a Panel of the Licensing & Appeals Board. The driver had accrued fifteen points on his DVLA licence, the most recent was 40mph in a 30mph zone. This had resulted in him receiving six points and a £400 fine with costs. The Licensing Manager reiterated that although three points would come off the driver's licence and not be counted for totting up purposes in July 2014, this would still leave twelve points on his licence.

In relation to his DVLA driver's licence, the Licensing Manager highlighted that since 1999, the driver had received fourteen days disqualification, twenty seven penalty points and paid £1390 in fines and costs. He had appeared before a Panel of the Licensing & Appeals Board on three previous occasions; August 2002 which had resulted in his hackney licence being suspended for four weeks, in July 2009 he had received a written warning and in October 2012 he had received a twenty one day suspension with immediate effect. A complaint had also been received in August 2013 when the driver had jumped a red traffic light. This had resulted in a written warning being issued by the Licensing Enforcement Officer.

The Licensing Manager reminded Members of the Panel that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, it gave the Council 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 referred to the "fit and proper" test and although there was no judicially approved test for fitness and propriety, the following was reiterated:

*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?'*

The Licensing Manager referred to the driver's statement that because he had no passengers at the time of the offences, he had not put anyone in danger and suggested that speeding was a recognised cause of accidents and did put other road users at risk.

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) 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 had no further comments to add.

## **9 Legal Advice**

The Legal Advisor addressed the Panel and stated that the Licensing Manager had covered all aspects of necessary advice in order for the Panel to be in a position to make a decision.

## **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.

### **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 12.20pm**