

**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 and Appeals Board  
held on Friday 9 January 2015 at 10.00am  
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

**PRESENT:**

Councillor D Tyler (Chairman), Councillor A Lovett  
and Councillor A White.

**OFFICERS PRESENT:**

Wendy Vincent - Democratic Services Officer  
John Gilbraith - Licensing Manager

**LEGAL ADVISOR:** - Jo Furner

**CASE NUMBER – LAB021/14**

**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 Combined Driver's Licence, Private Hire Vehicle Licences and Private Hire Operators Licence. He introduced the Panel Members, Officers and the Legal Advisor. The Licence Holder introduced himself.

## **5.2 The Procedure**

The Legal Advisor outlined the procedure that would be followed at 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 Licence Holder had held a Borough Council of King's Lynn and West Norfolk Combined Driver's Licence for a number of years. His current combined driver's licence expired on the 15<sup>th</sup> August 2015. The Licence Holder also held a Private Hire Operator's Licence which expired on the 15<sup>th</sup> August 2015 and six Private Hire Vehicle Licences which expired between the 16<sup>th</sup> December 2014 and the 15<sup>th</sup> August 2015.

The report was for Members of the Licensing and Appeals Board to review the Licence Holders continued suitability to hold the licences mentioned above as a result of him using an unlicensed vehicle for hire and reward.

The Licensing Manager provided the Panel with details of a complaint received from a member of the taxi trade that the Licence Holder was using an unlicensed vehicle to transport passengers.

The Licensing Manager referred the Panel to the statement made by the Licensing Enforcement Officer and the statement made by the Senior Licensing Enforcement Officer regarding their dealings with the matter as included in the report.

The Licensing Manager explained that the Senior Licensing Enforcement Officer had written to the Licence Holder regarding the use of the unlicensed vehicle requesting written comments within 14 days. A copy of the letter was included within the report. No response was received from the Licence Holder.

The Panel was informed that the Licence Holder had applied to licence the unlicensed vehicle, but the Borough Council was unable to licence the vehicle as the DVLA Vehicle Registration Document provided by the Licence Holder as it did not have the correct number of seats on the document.

Subsequently the Licence Holder had produced an updated DVLA Vehicle Registration Document which showed the correct number of seats, however, the document still showed a different taxation class. The Licence Holder had been advised that the DVLA document could be changed provided that written evidence from the vehicle manufacturer was provided to the DVLA.

The Licensing Manager explained that he had written to the Licence Holder making him aware that the Borough Council had received an allegation that the unlicensed vehicle was still being used for hire and reward. Included within the report was a copy of the response to the letter received from the Licence Holder's Solicitor in which the allegations were 'strongly denied'.

The Licensing Manager informed the Panel that the Borough Council's licensing conditions did allow an altered vehicle to be licensed provided that a satisfactory

engineers report from the Vehicle and Operator Services Agency was produced. Condition 3.38 of the Hackney Carriage and Private Hire Licensing Conditions provided that:

*Any vehicle which has been altered from the original manufacturers specification, re-registered or has been an insurance loss shall only be considered for licensing if the vehicle has been subjected to a satisfactory SVA test (engineers report) from the Vehicle and Operator Services Agency (VOSA). Vehicles without a VOSA engineers report will only be considered for licensing if they have been built to the manufacturers original specification.*

The Licensing Manager explained that following advice from the Licence Holder's Solicitor the unlicensed vehicle underwent a VOSA inspection and a copy of the report was included with the Agenda. The report was considered unsatisfactory as three observations were raised regarding the weight, internal mirror and Vehicle Identification Number.

The Licence Holder informed the Licensing Manager that page 85 was missing from the copy of the Agenda he had received. The Democratic Services Officer provided the Licence Holder with a copy of page 85 of the Agenda.

The Licensing Manager asked the Licence Holder if he wished to ask any questions before he called his first witness.

The Licence Holder confirmed that he had no questions on the Licensing Manager's report.

The Licensing Manager called two witnesses – the Licensing Enforcement Officer and the Senior Licensing Enforcement Officer to support the Borough Council's case.

The Licensing Manager asked the first witness to confirm that the statement made on 27 October 2014 was a true reflection of his dealings with the Licence Holder on 21 August 2014.

The first witness confirmed that this was a true reflection of his dealings with the Licence Holder on 21 August 2014.

The Licensing Manager invited the first witness to provide the Panel with an overview of events evidenced in the Witness Statement.

The Chairman invited the Licence Holder to ask questions of the first witness.

The Licence Holder asked a question in relation to the statement made by the first witness.

The Licensing Manager asked the first witness a series of questions.

The first witness responded to questions from the Licensing Manager.

There were no questions from the Panel to the first witness.

The first witness left the Hearing.

The second witness was called to the Hearing.

The Licensing Manager asked the second witness to confirm that the statement made on 24 November 2014 was a true reflection of her dealings with the complaint against the Licence Holder regarding the use of an unlicensed vehicle on 21 August 2014.

The second witness confirmed the statement to be a true reflection of her dealings with the complaint against the Licence Holder.

The Licensing Manager invited the second witness to provide the Panel with an overview of events evidenced in the Witness Statement.

The Licensing Manager asked a series of questions to the second witness.

The second witness responded to questions from the Licensing Manager.

The Licensing Manager invited the Licence Holder to ask questions of the second witness.

The Licence Holder commented on information contained within the second witness statement, but there were no specific questions from the Licence Holder to the second witness.

There were no questions from the Panel to the second witness.

## **7. The Licence Holder's Case/Questions**

The Licence Holder presented his case and explained that on the day in question he had to decide whether to collect the vulnerable passengers from the Magpie Centre or leave them on the side of the road. He provided the Panel with the reasons why he had determined to collect the passengers in the unlicensed vehicle. The Licence Holder read out proof from a document that stated when he purchased the vehicle in 2012 the mileage had been recorded as 54,322 miles, yesterday the mileage had read 61,407 miles confirming that in 2 years, the vehicle had travelled 7,000 miles and therefore demonstrated that the vehicle had not been used for business purposes.

The Licensing Manager asked questions of the Licence Holder.

The Licence Holder responded to questions from the Licensing Manager.

The Licence Holder responded to a question from the Panel.

## **8. Summing Up**

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

The Licensing Manager summed up his case reminding the Panel that a complaint had been received in that the Licence Holder had used an unlicensed vehicle for hire and reward on the 21<sup>st</sup> August 2014. The Complainant had been particularly aggrieved because they had to be licensed.

It was witnessed by the Licensing Enforcement Officer when the Licence Holder first claimed to him that he did not get paid any money, then it was that he was paid occasionally, then that sometimes he did not get paid at all and then that it was on a set amount per mile not under contract.

The Licensing Manager explained that an Investigation by the Senior Licensing Enforcement Officer had shown that the Licence Holder had two paid contracts for that day to the Magpie Centre: The West Norfolk Community Transport (2 passengers) for which he received £58 (£29 each way); and CSV Downham Market for 4/5 passengers for which he received £24 (£12 each way).

The Licensing Manager advised the Panel that no other vehicle operated by the Licence Holder was seen at the Magpie Centre at this time so did the passengers for both contracts get into the same vehicle – in which case this was a breach of the Conditions of Contract between West Norfolk Community Transport and Norfolk County Council.

The Panel was advised that the Licence Holder was in further breach of contract with Norfolk County Council in that only licensed vehicles should be used

The Licensing Manager explained that when the Licence Holder was asked for his comments regarding the complaint he chose not to do so.

The Panel was reminded that with regard to the Ford Transit vehicle used by the Licence Holder, he applied to licence this in December 2012, but the Borough Council was not satisfied that the vehicle was fit for purpose as the evidence suggested that it started life as a van – three seats and no internal mirror. The Licence Holder claimed that it had always been a mini bus and that the DVLA documentation was wrong.

The Licence Manager explained that on the 3<sup>rd</sup> May 2013 the Licence Holder was made aware that the Borough Council had received allegations of him using this vehicle for hire and reward which was he 'strongly denied' through his solicitor. Notwithstanding that the Licence Holder had always claimed that the Ford Transit had always been a mini bus the Borough Council's conditions allowed a vehicle that had been altered to be licensed provided a satisfactory VOSA report was produced. A satisfactory report could not be produced with observations raised regarding the weight, internal mirror and vin number. The Licence Holder's solicitor, in his letter of the 27<sup>th</sup> August 2013 even suggested that a seat be removed to comply with the weight restriction. The application was therefore rejected and no further application had been received.

The Licensing Manager added that knowing that the Borough Council did not consider this vehicle fit for purpose and potentially unsafe for passengers the Licence Holder chose to use this vehicle unlawfully for hire and reward. The Panel heard from the Licensing Enforcement Officer that the passengers who got into the vehicle at the Magpie Centre on the 21<sup>st</sup> August 2014 did not need any prompting to get into the vehicle nor did the Licence Holder get out of the vehicle to guide them – this would suggest that his passengers were familiar with this vehicle – had he used the vehicle before?

The Licence Holder had claimed he had only used this vehicle once – as unlikely as that may be (because the complainant had mentioned seeing it had been used before), this one occasion potentially was uninsured as standard insurance would not cover 'hire and reward' and taxi insurance usually required the vehicle to be licensed.

The Licensing Manager reminded the Panel that the Hearing was originally for the 9<sup>th</sup> December 2014 – the Licence Holder did not contact the Council about this Hearing until a member of staff from the Licensing Team contacted him. Equally, the Licence Holder had not responded to the attendance sheet for this Hearing.

The Licensing Manager advised that under Section 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976 no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under Section 55 of this Act.

The Licensing Manager advised that under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 the Borough Council may suspend, revoke or refuse to renew a licence of a hackney carriage or private hire driver 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 the 1976 Act by the operator or driver; or
- (c) Any other reasonable cause.

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 hackney carriage or private hire 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 62 of the Local Government (Miscellaneous Provisions) Act 1976 the Borough Council may suspend, revoke or refuse to renew an operator's licence:

- (a) any offence under, or non-compliance with, the provisions of the 1976 Act;
- (b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;
- (c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
- (d) any other reasonable cause.

Section 52 of the Road Safety Act 2006 amended Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and provided licensing authorities with the power to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect where 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. The Licensing Manager explained that the Borough Council achieved this objective by setting standards for drivers, vehicles and private hire operators. In relation to drivers, the Borough Council should only authorise hackney carriage and private hire driver licences when they were satisfied that the applicant was "fit and proper" to hold such a licence and the Panel were made aware that any matter could be taken into consideration when determining "fit and proper".

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

- (a) In relation to his six private hire vehicle licences:
  - i. Take no action;
  - ii. Issue a warning;
  - iii. Suspension
  - iv. Revocation
  
- (b) In relation to his combined drivers licence either:
  - i. Take no action;
  - ii. Issue a warning;
  - iii. Suspension;
  - iv. Revocation;
  - v. Any other action deemed appropriate
  
- (c) In relation to his private hire operator's licence either:
  - i. Take no action;
  - ii. Issue a warning;
  - iii. Suspension
  - iv. Revocation

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

## **8.2 Summing Up - The Licence Holder**

The Licence Holder summed up his case and explained that he had only used the unlicensed vehicle on one occasion and should not have done so. He advised the Panel that the mileage for the unlicensed vehicle had been 7,000 miles over two years which indicated that the vehicle was not used for business purposes.

## **9 Legal Advice**

The Legal Advisor confirmed that she had nothing further to address the Panel on.

## **10. Determination**

The Chairman advised that the Panel would retire to consider their decision accompanied by the Legal Advisor and the 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 having regard to what it had heard and the requirements of the public interest. On reconvening, the 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 12.17 pm**