

Minutes of: LICENSING AND SAFETY PANEL

Date of Meeting: 5 September 2019

Present: Councillor T Rafiq (in the Chair)
Councillors C Cummins, S Hurst, G Keeley, C Morris,
B Mortenson, C Walsh, S Wright and Y Wright

Also in attendance:

Public Attendance: 5 members of the public were present at the meeting.

Apologies for Absence: Councillor P Cropper, Councillor J Grimshaw and Councillor K Leach

LSP.136 DECLARATIONS OF INTEREST

Councillor Rafiq declared a prejudicial interest in item 8 on the agenda in relation to client 05/2019. It was proposed and agreed by the Licensing and Safety Panel members that item 9 (Application for a Private Hire Driver's Licence) would be moved before item 8, as Councillor Rafiq would leave the meeting before the start of item 8.

LSP.137 MINUTES

Delegated decision:

That the Minutes of the Licensing and Safety Panel meeting held on 25 July 2019, be approved as a correct record and signed by the Chair.

LSP.138 PUBLIC QUESTION TIME

Charles Oakes of the Hackney Drivers' Association Ltd, addressed the Panel, explaining that in Bury there were 931 Private Hire drivers and 61 Hackney Carriage drivers paying collective fees of £117,720. The trade representatives do not feel that information is given in relation to Bradley Fold testing station and whether they actually receive value for money. Mr Oakes also raised the issue of the Service Level Agreement and that under the Freedom of Information Act, he had asked to have sight of this but as yet had not received anything.

The Head of Service, Trading Standards and Licensing, explained that at present there wasn't a Service Level Agreement to view, however the issues that Mr Oakes was referring to would be on the agenda of the next Trade liaison meeting to be held on 19 September 2019.

The Council Solicitor explained that under the Freedom of Information Act, there is a process to follow and if Mr Oakes was unhappy or dissatisfied with the process, he was entitled to ask for a review.

A driver representing The Private Hire Drivers' Association addressed the Licensing and Safety Panel, and stated that in the last year there had been 270 re-tests and

this year there were 300 and most were due to minor issues such as dirt on alloy wheels, staining on seats or windscreen wipers leaving smears. He felt that this was unfair and drivers were being victimised and that a vehicle should only be re-tested due to a mechanical failure.

The Licensing Unit Manager explained that he regularly receives telephone calls from hackney and private hire drivers with the same complaint that their vehicle has been failed due to 1 or 2 minor faults. However on looking at the test sheet provided by Bradley Fold, he stated that there are often in fact 7 or 8 faults. He went on to state that drivers are not preparing their vehicles for testing appropriately and that if 3 faults are found there would be no charge for a re-test, for 3 – 9 faults there is a fee of £25 and if there are 10 faults or more, the full test fee of £55 was payable.

Further, he explained that at the next Trade liaison meeting on 19 September, these issues would be on the agenda, including an item on the proposed testing manual, which will set out the detailed criteria a vehicle must comply with, so drivers will know exactly why their vehicle has failed and this may alleviate the problems and the questions raised relating to re-testing.

LSP.139 OPERATIONAL REPORT

The Assistant Director (Legal and Democratic Services) submitted a report advising Members on operational issues within the Licensing Service.

The report set out updates in respect of the following issues:

- **Appeal to Magistrates**

A driver had appeared before the Licensing and Safety Panel on 5 September 2018 and was refused a Hackney Carriage Driver's Licence as the Panel did not deem the Applicant a fit and proper person. The Applicant appealed the decision. The appeal was heard at Manchester and Salford Magistrates' Court on 13 August 2019, it was dismissed and £750 contribution costs were awarded.

- **Partnership Working**

Officers of the Licensing Service took part in a multi-agency operation on 16 August 2019 along with Greater Manchester Police, GM Fire and Rescue Service and the Immigration Service and four premises were visited. Two takeaways had expired fire extinguishers and a lack of alarm systems and an off licence had a gentleman who had no right work and a number of illicit cigarettes were seized.

It was agreed:

That the report be noted.

LSP.140 URGENT BUSINESS

There was no urgent business reported.

LSP.141 EXCLUSION OF PRESS AND PUBLIC

Delegated decision:

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items of business since it involved the likely disclosure of information relating to individuals who hold Licences granted by the Authority or Applicants for Licences provided by the Authority.

LSP.142 APPLICATION FOR A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

The Licensing Unit Manager presented a report submitted by the Assistant Director (Legal and Democratic Services) regarding an application for a Private Hire Vehicle Driver's Licence.

Applicant 10/2019 attended the meeting and was accompanied by the President of the Mosque he attends.

The Chair made introductions and explained the procedure and ensured that the Applicant and members of the Licensing and Safety Panel had all read the report. The report, which was accepted by the Applicant, explained that he was previously a licensed Private Hire driver with Bury Council between 27 January 2014 and 21 January 2019. The Applicant's licence had lapsed and he had therefore submitted a new application on 10 April 2019 and as part of that application, he had provided an enhanced DBS certificate and declared on his handwritten application a conviction on 23 September 2017 at Leeds Magistrates' Court for speeding, resulting in £100 fine and his licence being endorsed with 3 penalty points.

Also declared on the application were convictions on 9 April 2018 at Lincoln Magistrates' Court of possessing goods with a false trade mark for sale or hire, resulting in a community order, costs of £3,563.77 and 150 hours unpaid work requirement with a victim surcharge of £85 and on 27 September 2018 for failing to comply with the requirements of a community order at Bradford and Keighley Magistrates' Court resulting from the original conviction on 9 April 2018, which was ordered to continue with 10 hours unpaid work requirement in addition to the original sentence.

The Applicant had notified the Licensing Service of the speeding conviction on 18 December 2017, however, he did not notify the Service of the trade mark offences as required by the Private Hire driver licence conditions, which should have done so within 7 days.

The Applicant addressed the Panel and explained that he came to renew his licence but was told the Council could not find his details and to put in a new application. However, this was not a new application but a renewal. The Licensing Unit Manager explained that the licence had expired and therefore it was classed as a new application.

When asked why he had not declared the offence of possessing goods with a false trade mark, the Applicant explained that it has been a difficult time for him with not working and trying to provide for his family and home. His wife suffers from

severe depression and it was a genuine mistake on his part that he only declared this conviction when he came to renew his licence and didn't realise he should have declared it within 7 days. He went on to explain that he was a shopkeeper in Skegness and was not aware of the illegal practice, as he was not there very often due his wife's illness and the fact he had to care for his children. He left someone else to run the business and it was them who had sold counterfeit goods.

The Applicant provided a character reference from the operator he had worked for and asked the representative of his mosque to speak. The Applicant's representative, addressed the Panel and explained that he is a family man responsible for his wife and 3 children. He is a very trustworthy character who had been treasurer of the mosque for 6 years and is open and honest. He stated that he was aware of the convictions at the time and believed the Applicant had to declare them only at renewal.

Delegated decision:

The Panel carefully considered the report, the oral representations by the Applicant and representative of his mosque and after taking into account the Council's Conviction Policy and Guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976, resolved, unanimously, that the **application for a Private Hire driver's licence by Applicant 10/2019 be granted.**

The Panel noted;

- that the convictions of possessing goods with a false trade mark were serious, but the Applicant was clearly remorseful
- that the Applicant had failed to declare them was significant, however, but the Panel accepted this was a genuine mistake and the Applicant has been under significant pressure at home at the time
- that the Applicant had not hidden the fact he had been convicted from others in the community
- that the Applicant was trusted by the mosque to be their treasurer.

Councillor Rafiq, as Chair, left the room before the following item and it was proposed by Councillor Morris and seconded by Councillor Cummings that Councillor Walsh should Chair the final item.

LSP.143 SUSPENSION/REVOCATION OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS' LICENCES

1. Further to the published agenda it was reported that the Chair had agreed prior to the meeting, to the withdrawal by the Licensing Unit Manager of the case relating to Licence Holder 11/2019.
2. Licence Holder 05/2019 attended the meeting and was represented by Mr Giles Bridge, Barrister and accompanied by Mr Charles Oakes, from the Hackney Drivers' Association Ltd.

The Chair made introductions, outlined the procedure to be followed and clarified that all those present had read the report. The Licensing Unit Manager presented the report submitted by the Assistant Director (Legal and Democratic Services)

which was accepted by the Licence Holder and his representative, which set out the reasons for the Licence Holder being before the Panel.

The report explained that the Licence Holder had first been issued a Hackney Carriage Drivers licence with Bury Council on 29 April 2003 and that the current licence is not due to expire until 24 January 2022.

The report went on to state that the Licensing Unit had received a number of complaints within the last 12 months from a member of staff at the Council's test centre, passengers and members of the public regarding the Licence Holder. These related to various matters.

Mr Bridge, the Licence Holders representative then asked the Licence Holder to explain his version of events for each of the incidents.

- On 1 April 2018, a complaint was made by a passenger that this Licence Holder did not switch on the meter and over charged him for the short distance to his home. The Licence Holder stated that this was not the case and the passenger was drunk and abusive and threw a stone at his vehicle. The Police were called but no further action was taken.
- On 14 May 2018, a passenger approached the licence holder to ask the cost of the journey to his home address and was told £10 but as the passenger had purchased a TV cabinet and loaded this into the Licence Holder's vehicle, the passenger alleged he had charged an extra £5. When contacted by the Deputy Licensing Officer, initially the licence holder stated that he could not remember but then he telephoned to say he could remember. He refunded the £5 when he was reminded that an additional charge was not permitted and a warning letter was sent to him. The Licence holder stated to the Panel that the passenger had agreed to the additional charge of £5 before the journey, however, he accepted that he shouldn't charge extra over the agreed fare table.
- On 9 September 2018, a passenger approached the Licence Holder's vehicle, which was third in line on the rank, but the two in front had passengers in. Initially the passenger knocked on the window, but was ignored by the Licence Holder. The passenger got into the vehicle and so the Licence Holder then asked where he wanted to go to. The passenger replied Brandlesholme Road and the Licence Holder then told him to get in the taxi in front. The passenger explained there were passengers in them and the Licence Holder then told him to get out and wait for another taxi. The Licence Holder stated to the Panel that he asked the passenger to pay £5 up front and that he would put the meter on and give back any change at the end of the journey. He also stated that as a Hackney Carriage it was more expensive than a Private Hire vehicle.
- On 30 January 2019, the Deputy Licensing Officer was contacted by an investigator at an insurance company as the Licence Holder had made a claim relating to an accident in December 2018. The vehicle had been examined by an independent assessor and concern was raised as to the safety of the vehicle. The vehicle's licence was therefore suspended and the Licence Holder asked to attend the Council's test centre for an inspection. The Licence Holder wished to retain his licence plates himself before the vehicle was examined and therefore

suspension stickers were placed across them. When the vehicle was presented for test on Monday 4 February 2019, the examiner found the licence plates on the passenger seat with the stickers removed. When questioned about this by licensing staff, the Licence Holder claimed that his daughter had washed the stickers off the plates. The Licence Holder stated to the Panel that after the accident in December 2018, he contacted the Licensing Service and was told he would be given a month to sort out the vehicle. Regarding the licence plates, he took the plates off the car and took them into the house and as they were dirty, his daughter decided to wash them and removed the stickers. He denied that he had forcibly removed the stickers or that he had used the Hackney Carriage whilst the stickers were off.

- On 9 April 2019, the Licence Holder's vehicle was presented for test at the Council's test centre, for its 6 month interim test. The vehicle examiner contacted the Licensing Service after the test to complain about the Licence Holder's manner explaining that initially the Licence Holder was reluctant to hand over the keys and questioned the examiner about his qualifications. Whilst the vehicle was raised on the ramp, the other examiner saw the Licence Holder filming them and shouting things through the viewing area, trying to distract the examiners. Towards the end of the test, the examiner opened the rear doors of the Licence Holder's vehicle to gain access to the wheelchair ramps and the Licence Holder became agitated and angry at this. At the end of the test, the examiner explained what faults had been found and that due to the number, the vehicle licence would be suspended. Initially the Licence Holder decided to remove and surrender the plates but refused to hand them to the examiner. He then decided to refit the plates and demanded that the suspension stickers be fitted to the plates, which was done. The Licence Holder stated to the Panel that he did not know the examiner and that was why he did not want to hand over his keys but did when the usual examiner approached him. He sat in the waiting area and was speaking on his mobile phone and was holding it out in front of him as he was using the speakerphone and the examiners thought he was filming them. When the examiner opened the rear doors, the Licence Holder told him to ask if there was anything he was unsure about and the examiner was rude to him. Once the test was finished, the Licence Holder went outside and when he was shown the fault sheet he took the plates and asked for the stickers. The Licence Holder stated that the examiner was very aggressive to him. A witness, who is a Private Hire driver for Uber in Bury was called. He stated he was in the waiting area at the time the Licence Holder was using his phone and explained that he was on the speaker phone of his mobile phone and that he did call out when the rear doors were opened to say if any help was needed. The witness stated that both the Licence Holder and the examiner seemed a little frustrated.
- On 10 April 2019 a complaint was received that the Licence Holder had overcharged and had an argumentative manner. The complainant had approached the Licence Holder's vehicle and when asked where he was going he gave his address and got into the vehicle followed by the Licence Holder, who told him it would be £5. The complainant said he knew it would not be that much as he had taken a taxi on several occasions and asked for the meter to be turned on and eventually the Licence Holder agreed and the fare on the meter at the destination was £3.90. The Licence Holder stated to the Panel that he had explained that as a Hackney Carriage the price was more than a Private

Hire vehicle, he was unsure where the address was and thought it was further away and also that the journey would cost more as it was a Sunday.

(Councillor Keeley left the room)

Mr Bridge, the Licence Holder's representative finally summed up by explaining that the Licence Holder had explained his version of the events regarding the incidents and that the point had not been reached that the Licence Holder was not fit and proper. There was clearly a different version of events in relation to the testing station and the witness had confirmed that both the Licence Holder and examiner had frustrated attitudes on that day. Overall, he stated that all of the incidents were minor and could warrant a possible suspension but for the Panel to appreciate that this was the Licence Holder's livelihood and he has been driving for 27 years. Three references were provided to the Panel.

(Councillor Keeley returned but took no part in the decision, as he had missed the summing up from Mr Bridge).

Delegated decision:

The Panel carefully considered the report and oral representations by the Licence Holder, his witness and representative and taking into account the Council's Conviction Policy and Guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976 resolved, on a majority, **to suspend Licence Holder 05/2019 for a period of 3 months.** Furthermore during the period of the suspension the Panel required that the Licence Holder complete a communications course and the statutory safeguarding course.

The Panel noted the following;

- That the Licence Holder did not appear to understand the seriousness of his actions
- That the Licence Holder did not accept any responsibility for any of the incidents or complaints
- That the Panel felt it reasonable to expect the Licence Holder to be more aware of his attitude and behaviour towards staff, passengers and members of the public
- That there were a number of complaints regarding the Licence Holder, many of a similar nature
- That the Licence Holder appeared to have a low tolerance in relation to being asked by passengers for information as to the fare
- That the licence holder should be fully aware of the Licensing conditions and what is expected of him as a Private Hire driver in Bury.

COUNCILLOR T RAFIQ
Chair

(Note: The meeting started at 7.00 pm and ended at 9.35 pm)