

Minutes of:	LICENSING AND SAFETY PANEL
Date of Meeting:	5 December 2013
Present:	Councillor D Jones (In the Chair) Councillors: N Bayley, D M Cassidy, T Holt, A K Matthews, A Quinn, S Southworth, B Vincent
Apologies for absence:	Councillors: I Bevan, J Grimshaw, T Pickstone and J F Walton
Public Attendance:	There were 3 members of public present at the meeting

LSP.XXX DECLARATIONS OF INTEREST

No declarations of interest were made in relation to any items considered at the meeting.

LSP.XXX MINUTES OF THE LAST MEETING

Delegated decision:

That the Minutes of the Licensing and Safety Panel meeting held on 4 November 2013, be approved as a correct record and signed by the Chair.

LSP.XXX PUBLIC QUESTION TIME

Mr Paul Brent, Chair of the National Taxi Association, took the opportunity to thank the Licensing and Safety Panel Members and the Licensing Officers for all of their hard work in addressing Licensing issues and for the attendance of the Chair and Officers following the meeting held on 3 December 2013 of the taxi trade forum.

The Chair, Councillor Jones, explained to the Members that Mr Oakes of the Hackney Drivers' Association Ltd, had sent his apologies to the meeting but had submitted a written request asking the Licensing and Safety Panel, once again, to suspend the five faults policy rule.

Councillor Jones stated that, as this issue had been considered at both the last meeting of the Licensing and Safety Panel on 4 November 2013 and at the taxi trade forum on 3 December 2013, it was an unreasonable request and therefore would not be considered at this meeting. Councillor Jones asked the Licensing Unit Manager to inform Mr Oakes that this issue would not be considered again until May 2014.

LSP.XXX OPERATIONAL REPORT

The Assistant Director (Localities) submitted a report setting out an update on operational issues within the licensing service, including:

- Two appeals had been heard by Bolton Crown Court on 5 November and 6 November 2013, following separate hearings at Bury Magistrates' Court in relation to the decision of the Licensing and Safety Panel regarding the following:
 - The suspension of a Hackney Carriage driver's licence for 3 months for inappropriate conduct
 - The decision to revoke a Hackney Carriage driver's licence for inappropriate conduct.

Both of these appeals were dismissed by Bolton Crown Court and the Council has been awarded £1,400 and £830.00, respectively, towards costs.

- The Licensing Section had submitted an application to review the Premises Licence in respect of Butt Hill Stores, Bury New Road, Prestwich, regarding the failure to supply CCTV, as had been requested. Representations had been received from Greater Manchester Police and the Bury Safeguarding Board in support of the review. On 15 November 2013, a Licensing Hearings Panel considered the application and their decision was to revoke the Licence.

The Head of Commercial and Licensing also informed the Members that issues discussed at the taxi trade forum on 3 December 2013 would be reported at the next Licensing and Safety meeting.

Delegated decision:

That the report be noted

LSP.XXX ANIMAL BOARDING ESTABLISHMENT CONDITIONS

The Assistant Director (Localities) submitted a report in relation to conditions in respect of animal boarding establishments (cats).

The Head of Commercial and Licensing explained that the determination of conditions to be attached to Licences is reserved to the Licensing and Safety Panel and this report requested the approval of the Panel of new conditions in respect of animal boarding (cats) Licences. The conditions have been drafted by the Chartered Institute of Environmental Health and a number of partner organisations, including the British Veterinary Association. The conditions would be applied by Officers in an appropriate and proportionate manner in consideration of individual premises.

It was agreed:

That the Licensing and Safety Panel approve the conditions in the format

requested and that Officers be permitted to apply the conditions in an appropriate and proportionate manner in consideration of individual premises.

LSP.XXX URGENT BUSINESS

There was no urgent business to report at the meeting.

LSP.XXX EXCLUSION OF THE 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.XXX PROPOSED SUSPENSION/REVOCATION OF PRIVATE HIRE DRIVERS' LICENCES

The Licensing Unit Manager presented reports submitted by the Assistant Director (Localities) on the proposed suspension/revocation of Hackney Carriage / Private Hire Drivers' Licences.

The Licence holders were invited into the meeting room for their separate hearings and the Chairman outlined the procedure to be followed. The Licensing Unit Manager summarised the contents of the reports for each driver which were accepted by the licence holders.

1. At the start of the hearing for the licence holder identified as 16/2013, Councillor Holt and Councillor Quinn each declared a prejudicial interest in this item. Councillor Holt knew the licence holder personally and Councillor Quinn was a Governor at Parrenthorn High School, referred to in the report. Both Councillors left the room and took no part in this hearing.

In attendance at the meeting on behalf of the complainant were his Father and Carer, together with the Deputy Licensing Officer and the Licensing Enforcement Officer. The Carer and Licensing Officers had submitted written statements which had been circulated to the Licensing Panel prior to the meeting.

Representing the licence holder was Mr Paul Brent, along with three witnesses.

The complainant's Carer was given the opportunity to address the Panel to explain their version of events, as to why a complaint had been made to the Licensing Service about licence holder 16/2013 and the circumstances of that complaint.

The Carer stated that on the evening of Sunday 3 November 2013, he and the complainant had arrived at the taxi rank in Kay Gardens and approached the first taxi in the queue. This taxi belonged to the licence holder, who was sitting in his vehicle along with another taxi driver. When the Carer and the complainant approached, the licence holder got out of the vehicle and stated, many times, that the wheel chair in which the complainant had to travel, was too big for his car and he would not take them in his vehicle. The Carer was concerned for the complainant, as it was a cold evening, and they were forced to move along the line of taxis until eventually the driver at the back of the rank, who knew the complainant, came forward and loaded the wheel chair into his vehicle and took them home. The Carer explained that he had not expected the licence holder to load the complainant into the car, as that was his responsibility.

The Carer explained that they had previously had trouble in getting a taxi home as the complainant had used an electric wheel chair which was bigger and therefore he had now changed to a standard manual chair, however, they still experienced some problems.

Members of the Panel then asked questions as to whether the driver that did take them was a friend. The Carer stated he had taken them before and that they had approached the second driver and then the other drivers in the row, but they had ignored them. They further asked if the cars were the same and the Carer stated that they were and also where the ramp had come from. In relation to the latter he stated he thought it was fitted into the car.

The Licensing Unit Manager then asked if he had noted the number of the second taxi. The carer stated he had not.

Mr Brent had no questions for the Carer.

Philip Styring, Licensing Enforcement Officer, then addressed the Panel and stated that he had taken the complaint from the Mother of the complainant, who explained that he was quadriplegic and confined to a wheel chair, with limited movement and no use of his right side. The complainant also cannot speak. His Carer is a UK based charity worker from Columbia on a 12 month visa, who cares for the complainant on a full time, live in basis.

Mr Styring explained that due to the nature of this offence, in refusing to take the complainant in a wheel chair, this matter should have been dealt with via the Magistrates Court. However, as the Carer is due to return to Columbia in mid January he would be unavailable to give evidence and a decision was therefore made that this issue be brought before the Licensing and Safety Panel.

Mr Styring informed the Panel that he and Mr Kelly, Deputy Licensing Officer, collected the wheel chair from the complainant and invited the licence holder to the Town Hall. When he arrived the licence holder stated that he had not refused to take the complainant because of the size of his wheelchair but that he had told the complainant and his Carer that the ramps to load the wheel chair were not strong enough to take the weight.

Mr Styring then sat in the wheel chair and asked the licence holder to load him into the vehicle. He was pushed half way up and then rolled gently back down the ramp, and the licence holder stated he was not strong enough to load him into the car.

Mr Kelly then proceeded to push Mr Styring up the ramp into the vehicle and into the correct position with relative ease.

Members of the Panel then asked questions as to whether all the ramps were standard and if drivers were trained. Mr Styring explained that Bradley Fold test station have a demonstration on the ability to load a wheel chair user and that newer vehicles have a 1 piece ramp which extends from the floor of the vehicle but the vast majority have 2 ramps which are extended manually which the wheel chair fits into. Mr Brent then stated that the ramps should be tested every 12 months and hold up to 250 kgs in weight. Mr Styring stated that to change from double to single ramps in all vehicles would be a huge expense, which would be met, understandably, with resistance by drivers.

Members also asked as to how long it had taken Mr Kelly to load the chair and Mr Styring stated it was a matter of seconds and that the Carer would ordinarily do this.

Mr Kelly then addressed the Panel and stated that the licence holder had given three reasons as to why he was unable to load the complainant; that the wheel chair was too large, that the ramps were not strong enough and finally that he was not physically strong enough to push him up the ramps. Mr Kelly explained that the reason for asking the licence holder to the Town Hall was to see if the wheel chair fitted into the vehicle. If for any reason the wheel chair had not fitted into the vehicle, he stated that the licence holder would not have been brought before the Panel.

Members of the Panel had no questions for Mr Kelly.

Mr Brent asked both Mr Styring and Mr Kelly if they had any training in loading a wheel chair passenger into a vehicle and in the acts of 'pushing and shoving'. Mr Styring had not received any formal training and Mr Kelly explained that, although he had 25 years training within the armed forces and plenty of experience 'pushing and shoving', he had no formal training and this was his first attempt at loading a wheel chair user into a vehicle.

The Chair, Councillor Jones, then invited each of the three witnesses for the licence holder to speak.

The first witness explained that he had been with the licence holder when the complainant approached his vehicle and that the licence holder got out of the car to assess the situation but felt that the wheel chair was too big for the ramps. The witness stated that it was the Council's Policy not to refuse to take a passenger in a wheel chair and he did not feel that the licence holder was refusing the fare but that he did not, in his opinion, feel he could accommodate the complainant safely. He stated that there have been a lot of problems with wheel chairs and that on previous occasions there had been incidents with wheel chairs slipping from the ramps and he believed that the wheel chair was bigger than standard. He went on to say that it is a risky job getting people into the taxi and that some taxis have solid ramps. The witness referred to the driver at the rear approaching him and that he stated he would take him as he has a solid ramp.

Members of the Panel asked how often the witness takes wheel chairs and he stated almost every day. He was then asked why this one would be a problem and the witness referred to his age and stated that he cannot do what he did when he was younger. He also stated that it is the Council's policy that taxi drivers must take wheel chairs.

Mr Brent informed the Panel that every Hackney Carriage has to be wheel chair accessible but that Bury Council does not have a Policy in training the drivers in loading and unloading wheel chair users and does not have standard ramps.

The second witness then addressed the Panel and explained that he too saw the complainant approach the licence holder's vehicle and was told politely that he could not take the wheel chair, then another driver arrived and said he could accommodate the complainant and his wheel chair. The second witness stated that he and the driver pulled out the ramp from his vehicle and loaded the complainant and he took him and his Carer home.

Members of the Panel questioned the second witness as to his whereabouts when the complainant approached and he replied he was in his car and when he got out the licence holder asked him if he had a double ramp.

The third witness was invited to address the Panel and stated that the licence holder approached his vehicle and asked if he had a 'flat ramp' in which to load the complainant, which he did not have in his vehicle. Another driver then came forward and said he had the flat ramp and would take the complainant. The witness then helped the driver as he loaded the complainant and took him and his Carer home.

The Chair of the Panel then asked the Carer if he agreed with what the witnesses had said and he confirmed he did. He then invited Mr Brent to present the licence holder's case.

Mr Brent referred to a document that had forwarded to the Licensing Unit Manager the day before the Panel meeting and explained to the Licensing Panel that at Edinburgh Council, the Health and Safety Executive actually frowned upon the 2 piece ramps and looked favourably upon a 1 piece ramp. He presented documentation in relation to transporting a wheel chair user into and out of taxis. He stated that the Hackney Carriage drivers had to assess the risk of loading a passenger in a wheel chair. The licence holder had felt, in his opinion, that for health and safety reasons, he was unable to take the complainant and maybe there was a breakdown in communication in explaining this and that rather than commenting upon the size of the occupant, he didn't want to personalise it and therefore stated that he had felt that the wheel chair was bigger than standard. The complainant's Father then explained to the Members of the Panel the size and shape of the wheel chair and that it was not considered bigger than a standard chair.

Mr Brent stated that it was up to the Council to ensure that all drivers were trained in the procedure of loading passengers and yet there was no Policy. He further stated that in view of Mr Kelly's past employment experience he was use to pushing things, but that the licence holder had previously been an office worker.

The Council Solicitor queried Mr Brent's authority for his statements regarding health and safety matters and what the relevant paragraphs were he was referring to in the document provided. She further stated that the Council were not the employer and the Hackney Drivers were self employed and although there was legislation, there was no obligation upon the Council to provide training.

Mr Brent was unable to provide this. He then made reference to training of the Officers involved and accepted that the health and safety legislation would apply to the taxi drivers as they are self-employed.

The licence holder did not give evidence directly.

Members then asked questions and it was noted that the licence holder had held a licence for over 9 years. He was asked whether he has put wheel chairs into his vehicle and Mr Brent replied by indicating he had and referred to the fact he had been warned previously for failing to adequately secure a wheel chair in his vehicle. Mr Brent stated that it was up to the driver to assess the risk on the day and that there are different ramps. A query was raised by the Panel as the complainant's Father made reference to a small tray on the front of his

son's wheel chair. Mr Brent commented that this may have made the chair appear larger but it was for the driver to assess on the day.

In summing up, Mr Brent reiterated that whilst carrying out the risk assessment, the licence holder had considered, in his opinion, that the wheel chair was bigger than standard and too big for his vehicle. However, he had ensured that the complainant was loaded into another vehicle and he and his Carer were transported home.

Delegated decision:

Upon considering the written report and the oral representations made by the licence holder, his representative Mr Brent, the three witnesses, and the additional documentation presented by Mr Brent and also considering the evidence provided by the complainants Carer, the complainants Father and the two Licensing Officers and taking account of the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws and Section 167 Criminal Justice and Public Order Act 1994, (the purpose of these Acts is to ensure the protection of the public and a serious view is taken of convictions for offences under the Acts and deciding whether a licence holder is a fit and proper person to hold a licence), the Panel found;

- that the licence holder had refused to take the complainant,
- that there had been 3 differing reasons given as to why the licence holder had refused to take the complainant,
- that none of the reasons given by the licence holder amounted to a reasonable excuse not to take the complainant,
- that the actions of the licence holder amounted to a breach of section 53 of the Town Police Clauses Act 1847,
- that the licence holder had two previous warnings for misconduct issues connected with disabled people

and therefore the Panel unanimously resolved to **suspend the licence holder identified as 16/2013 for three months.**

The licence holder was advised of their right of appeal within 21 days of notification to the Magistrates' Court.

Note: Councillors Holt and Quinn returned to the meeting after the deliberation of this item.

2. Upon considering the written report, the oral representations made by licence holder, identified as 15/2013 and taking account of relevant Policy and Guidance, the Panel resolved that it was reasonable and proportionate to **admonish the Licensee as to future conduct.**

Licensing and Safety Panel, 5 December 2013

LSP.XXX APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

The Assistant Director (Localities) submitted a report regarding applications for Public/Private Hire Vehicles Drivers' Licences.

The applicant 17/2013 was invited to attend the meeting. The Chairman outlined the procedure to be followed and the applicant was invited to address the Panel on their application and any matters referred to in the Officer's report.

The Licensing Unit Manager summarised the contents of the report which was accepted by the applicant, who took the opportunity to address the Panel.

Delegated decisions:

That after careful consideration of all the representations and evidence submitted and taking into account the Council's Conviction Guidelines, the application for a Private Hire Driver's Licence by applicant 17/2013 be **approved**. The Panel determined, on a majority decision, the applicant to be a fit and proper person in accordance with the Local Government (Miscellaneous Provisions) Act 1976.

**COUNCILLOR JONES
CHAIR**

Please note: The meeting started at 7.00 pm and finished at 9.05 pm