

SPEAKERS PANEL (LICENSING)

19 July 2022

Commenced: 1.00 pm

Terminated: 4.00 pm

Present: Councillors S Homer (Chair), Chadwick (Deputy Chair), Alam (part) and Cartey

In Attendance:

Ashleigh Melia	Legal Representative
Mike Robinson	Regulatory Services Manager (Licensing)
Lauren O'Toole	Regulatory Compliance Officer (Licensing)
Mattise Artingstall	Regulatory Support Officer

Apologies for Absence: Councillors Jones, Quinn, Reid, T Sharif and T Smith

1. DECLARATIONS OF INTEREST

Name	Agenda Item	Personal / Prejudicial	Nature of Interest
Councillor Alam	Agenda Item 5	Personal	Licence holder is a constituent and neighbour

2. MINUTES

The minutes of the Speakers Panel (Licensing) meeting held on 15 March 2022 were agreed as a correct record.

3. EXEMPT ITEMS

RESOLVED

That under Section 100A of the Local Government Act 1972 (as amended) the public be excluded for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 2 and 3 of Part 1 of Schedule 12A of the Act and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, because disclosure of the personal information contained in the reports would not be fair to the applicant or licence holder and would therefore be in breach of Data Protection principles.

4. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE - 1/2022

The Assistant Director of Operations and Neighbourhoods submitted a report requesting that the Panel determine whether the applicant was a fit and proper person to hold the relevant licence in accordance with the provisions of Section 51(1)(a) and 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976.

The Panel considered the written information submitted and heard the Regulatory Services Manager's (Licensing) case. He advised the Panel that the applicant had applied for a Chauffeur Drivers Licence on 22 March 2022. The application form and statutory declaration form showed an offence for possession of a bladed article in a public place contrary to section 139(1) Criminal Justice Act 1988 on 28 December 2018. The applicant had been convicted of this offence at Crown Court in February 2019 and sentenced to a 12-month community order, rehabilitation, costs of £340 and a £85 victim surcharge.

The application form and statutory declaration form also showed an offence of pursuing a course of conduct, which amounted to harassment contrary to sections 2(1) and 2(2) of the Protection from Harassment Act 1997 on 26 May 2020. The applicant was convicted of this offence at the Magistrates Court in July 2020 and sentenced to a restraining order – protection from harassment in place until July 2022, a £100 fine, costs of £85 and a £33 victim surcharge.

Both of these offences were detailed in the DBS certificate. The applicant had attended the Licensing Office in April 2022 to discuss the convictions.

The Panel were made aware of the relevant sections of the Policy and Guidelines relating to the Application of the “Fit and Proper Person Test” to Licensed Drivers and Operators.

Having heard the Regulatory Services Manager’s (Licensing) case, the applicant and the Panel were provided with the opportunity to ask questions.

The applicant then addressed the Panel and gave a detailed account of the events around their arrest for possession of a bladed article in a public place on 28 December 2018. They explained that they had previously collected knives and had been given an ornamental knife in a sealed box as a Christmas gift from a friend. They had not wanted the gift and had placed it in the boot of their car, in its original unopened packaging, and forgot it was there until the Police discovered it three days later.

The applicant also gave a detailed explanation of the events leading up to their arrest for harassment on 26 May 2020. They had been going through a very difficult period in a nine-year relationship, which had eventually broken down. They were trying to maintain contact with their child but their ex-partner was making this increasingly difficult and regularly involved the Police with false accusations and testimonies. With regards to the harassment charge, the applicant stated that they had contacted their ex-partner on multiple occasions in order to get a change of clothes for their daughter who was in the care of the applicant at the time. They had not wanted to plead guilty to the offence but did so as they were in the midst of a family court hearing and wanted to focus on gaining custody to their daughter, which they were eventually successful with.

In response to questions from the Regulatory Services Manager and Panel Members, the applicant stated they were a hardworking, honest individual who wanted to provide for their daughter. They explained that they were currently in debt and wanted to clear this debt by working in a second job as a chauffeur.

At this juncture the applicant, their partner, the Regulatory Services Manager (Licensing), the Regulatory Compliance Officer and the Regulatory Support Officer left the meeting whilst the Panel deliberated on the application. The Legal Representative and the Senior Democratic Services Officer remained in the meeting to give legal and procedural advice and took no part in the decision making process.

In determining the application, the Panel considered all the information presented at the hearing in addition to the report and appendices. They further considered relevant statute and case law and the Council’s *Convictions Policy (Policy & Guidelines relating to the Application of the “Fit and Proper Test” to Licensed Drivers and Operators)*. Specifically section B relating to Violence and Offences against Other Persons, which stated that an application would normally be refused where an individual has a conviction for offences, including possession of an offensive weapon and harassment, if the date of conviction was less than 3 years prior to the date of application.

The Panel considered the first offence of being in possession of a bladed article in a public place. The Panel accepted the explanation of the incident and that the knife was still in its original packaging. The Panel accepted that people do collect knives and that the Police did not dispute that the knife was in its packaging.

The Panel then considered the second offence of pursuing a course of conduct, which amounted to harassment. The Panel listened to the explanation of this incident and the history between the applicant and their ex-partner and felt that they were credible in their explanation. The Panel noted that the family court would have heard all the evidence against them and that the family court deemed it appropriate for the applicant to see their daughter. The Panel also acknowledged that the applicant had taken steps to ensure that they do not communicate with their partner now unless it goes through a third party. The Panel were pleased that they had followed the family court's advice in pursuing an emotional management course and hoped that they continued to pursue this and benefitted from it.

The Panel noted that it had been more than 3 years since the applicant was convicted of being in possession of a bladed article however, it had been less than 3 years since they were convicted of harassment. On this occasion, having carefully considered all the evidence before it and the oral submissions made during the hearing, the Panel decided to depart from the Policy for the following reasons:-

1. The Panel determined that the applicant was credible when explaining the history between them and their ex-partner;
2. There were numerous allegations made against the applicant by their ex-partner that they were not charged with;
3. The applicant was visibly upset when they were talking about the photographs on their mobile phone that had been wiped and the Panel were sympathetic towards this;
4. The applicant had been through a long custody battle for their daughter and the family court, having considered the evidence and allegations that were made against them, ordered that they could see their daughter;
5. The applicant's ex-partner had informed the social worker during the family court proceedings that they had never put their hands on them and that was said to get at the applicant.

The Panel felt that the applicant was plausible and conducted themselves well during the hearing. The Panel strongly encouraged that they continued seeking support for emotional management and wished them and their daughter the best of luck in future and in their new career.

RESOLVED

That the application for a Private Hire Driver's Licence 1/2022 be approved.

At this juncture Councillor Alam declared an interest and left the meeting.

5. REVIEW OF A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE - 2/2022

The Assistant Director of Operations and Neighbourhoods submitted a report requesting that the Panel determine whether the licence holder was a fit and proper person to hold the relevant licence in accordance with the provisions of Section 61 of the Local Government (Miscellaneous Provisions) Act 1976.

The Panel considered the written information submitted and heard the Regulatory Services Manager's (Licensing) case. He advised the Panel that the licence holder had held a Hackney Carriage and Private Hire driver's licence since April 2010. There were two existing complaints on file from June 2017 and July 2021. The first related to being abusive towards another road user and driving erratically and the second related to speaking inappropriately towards the complainant and driving without due care and attention. The licence holder received written warnings for both of these incidents and the cases were closed.

It was reported that on Monday 6 June 2022, the Licensing department received a complaint regarding a road traffic accident involving a hackney carriage vehicle and the conduct of the driver following the accident. The vehicle belonged to the licence holder and they were driving it at the

time of the accident. The driver presented their vehicle at Tame Street depot for inspection on the same day following a request from Licensing. Photographic evidence was taken that showed a slight mark on the front bumper. The driver had explained that this was a historic mark, which was accepted by Licensing and members of the Panel.

On 7 June 2022, Licensing contacted the complainant and a witness statement was taken. On 9 June 2022, the complainant submitted photographic evidence to the Licensing department taken at the time of the accident. On 15 June 2022, Licensing contacted the licence holder to obtain a witness statement. On 6 July 2022, the licence holder supplied photographic evidence to the Licensing department that they had taken on the day of the accident.

The Panel were made aware of the relevant sections of the Policy and Guidelines relating to the Application of the "Fit and Proper Person Test" to Licensed Drivers and Operators.

Having heard the Regulatory Services Manager's (Licensing) case, the licence holder, their two representatives and the Panel were provided with the opportunity to ask questions.

The licence holder then addressed the Panel and told them that they had been on a journey from Stalybridge to Hyde and their cab had touched the back of the complainant's car while they had been stationary at traffic lights. The driver explained that they had itched their leg and then their foot meaning they released their foot from the brake pedal and the cab had rolled into the back of the complainant's car. During the Panel's questioning, the licence holder said that they had mistakenly not applied the handbrake on this occasion.

The licence holder stated that the complainant got out of the car and had been furious and was very abusive towards them. During the altercation, the licence holder was trying to calm the complainant down and explain that there was limited damage to either vehicle. The complainant claimed that the licence holder had hit their car with force and they had hurt their back, which the licence holder disputed as the damage to both vehicles was extremely minor. The complainant had also accused them of grabbing their arm, which was strongly denied by the licence holder. The complainant's partner was travelling in the opposite direction shortly after the accident had taken place and became involved in the altercation. They said that the licence holder needed to apologise to the children who they claimed were both injured in the back of the car. The licence holder apologised to the children and in doing so touched the back of one of the children, which they were heavily criticised for.

The licence holder explained that during the altercation, the complainant was filming them and taking many photographs but the complainant's partner denied the licence holder the opportunity to take photographs. The licence holder managed to take one photograph of the back of the car but were unsure of the quality. They said that they had provided their insurance details to the complainant and both had continued with their separate journeys in the same direction as the licence holder was travelling to the taxi rank in Hyde. The licence holder explained that they were concerned that they needed further photographic evidence so, as the complainant was signalling to turn right, they took another photograph of the back of the complainant's car and then continued straight on the road towards Hyde.

The representatives of the licence holder questioned the relevance of including the two previous complaints made against the licence holder stating that they felt this was unfair as there had been no evidence. They also queried the complainant's statements as they differed and their failure to submit the video that had been taken at the time of the accident. They assumed the main reason the licence holder was before Panel was due to them placing their hand on one of the children's backs shortly after the accident had taken place. They claimed that this showed compassion and that the licence holder was trying to comfort the child, which they believed demonstrated that they were a fit and proper person.

The Regulatory Services Manager (Licensing) and Panel Members, were provided with the opportunity to ask questions.

At this juncture the licence holder, their representatives, the Regulatory Services Manager (Licensing), the Regulatory Compliance Officer (Licensing) and the Regulatory Support Officer left the meeting whilst the Panel deliberated on the review. The Legal Representative and the Senior Democratic Services Officer remained in the meeting to give legal and procedural advice and took no part in the decision making process.

In determining the review, the Panel considered all the information presented at the hearing in addition to the report and appendices. They further considered relevant statute and case law and the Council's *Convictions Policy (Policy & Guidelines relating to the Application of the "Fit and Proper Test" to Licensed Drivers and Operators)*.

The Panel listened to the licence holder's explanation of the incident on 6 June 2022 and determined that, on the balance of probabilities, the driver had rolled into the back of the complainant's car and that they did not hit it with force as alleged.

For the avoidance of doubt, the Panel did not consider the fact that the accident happened nor the extent of the accident when they were determining whether the licence holder was a fit and proper person to hold a licence. The concern of the Panel was the conduct following the accident, which they felt fell short of what they expected of its licenced drivers. The Panel did note though that whilst being interviewed about the incident at Tame Street, the licence holder stated that they were "sorting out change" when their car rolled into the back of the complainant's car. However, during oral submissions at the hearing, the licence holder stated that they had rolled into the back of the vehicle because they were "scratching their leg". The Panel expected its licenced drivers to drive and operate their vehicles to a certain standard and the licence holder was informed that in future, as a professional driver, they should use a handbrake when they were at traffic lights.

The Panel noted that the complainant alleged that the licence holder put a hand on their arm and that the complainant provided photographic evidence of a bruise on their arm. The Panel acknowledged that the licence holder disputed that they touched the complainant's arm and there was no further evidence as to whether or not this injury was caused by the licence holder nor could they ascertain when the photograph may have been taken.

The Panel were significantly concerned that the licence holder went to the rear of the complainant's vehicle and touched their child. The driver accepted that they had done this and whilst they stated that they had done this to see if the child was okay, the photographic evidence provided clearly shows the child looking distressed, uncomfortable and trying to move away from the licence holder's hand. Regardless of why the licence holder touched the child, the Panel felt that it was completely inappropriate and unacceptable behaviour.

Following the accident, the Panel were confident that the licence holder had followed the complainant for approximately 1 mile to the junction of Ashton Road and Bennett Street and this could be considered as intimidating behaviour. Initially during oral submissions, the licence holder stated that they were going straight on towards Hyde, however, they later stated that they were behind the complainant who was turning right. When asked about this, the licence holder stated that they could not remember which direction they went in. The Panel were of the view that the licence holder must have been in the right hand lane behind the complainant in order to take the photograph of the back of the car and were aware that it was a right hand only lane at this junction. The Panel were concerned that the licence holder had followed the complainant up to this point and felt that following the accident and subsequent altercation the correct course of action was for them to take an alternative route, of which there were many, to the end destination.

In addition to this, the Panel were concerned that the licence holder must have used a mobile phone to take this photograph whilst their vehicle was in motion and their cab was positioned extremely close to the complainant's car, which they also considered to be intimidating behaviour.

The Panel noted that there were two previous complaints against the licence holder in addition to this incident and they were concerned that there may be a pattern of behaviour. The Panel's primary concern was the safety of the public. Therefore, the Panel felt it necessary to give weight to

these two complaints, albeit no further action was taken on those occasions, and had to take a course of action against the licence holder.

The Panel considered all available options. However on balance, having carefully considered all the evidence, the Panel decided that the licence be suspended for a period of 3 months. The suspension would take effect after the 21-day appeal period had expired.

The Panel was of the view that the sanction imposed was appropriate and proportionate having regard to all the circumstances of this matter and having regard to the Council's adopted policy.

RESOLVED

That the licence holder's licence be suspended for a period of 3 months following the expiration of the 21-day appeal period.

6. DATE OF NEXT MEETING

RESOLVED

That the date of the next meeting of Speakers Panel (Licensing) scheduled for 13 September 2022 be noted.

7. URGENT ITEMS

There were no urgent items.

CHAIR