

SPEAKERS PANEL (LICENSING)

16 January 2024

Commenced: 10.25 am

Terminated: 2.40 pm

Present: Councillors S Homer (Chair), Chadwick (Deputy Chair), Alam, Beardmore, Drennan, Howarth and Patel

In Attendance: Ashleigh Melia
Mike Robinson
Legal Representative
Regulatory Services Manager
(Licensing)

Apologies for Absence: Councillors Jones and Quinn

31 DECLARATIONS OF INTEREST

There were no declarations of interest.

32 MINUTES

RESOLVED

The minutes of the Speakers Panel (Licensing) meeting held on 14 November 2023 were agreed as a correct record.

33 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 applicants and licence holder and would therefore be in breach of Data Protection principles.

34 APPLICATION FOR A PRIVATE HIRE & HACKNEY CARRIAGE DRIVER'S LICENCE - 10/2023

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 a Private Hire and Hackney Carriage Driver's Licence in accordance with the provisions of Sections 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 Private Hire and Hackney Carriage Driver's Licence on 18 August 2023. The applicant had previously held the aforementioned licences from 20 August 2020 until 20 August 2023. The initial application was referred to Speaker's Panel (Licensing) for determination and was subsequently granted on 18 August 2020.

On 14 November 2022, the Licensing department received information from Greater Manchester Police relating to an alleged sexual assault that took place in Stalybridge town centre during the early hours of 13 November 2022. The applicant was named as the alleged offender.

Following the information provided by Greater Manchester Police, the Panel heard that the applicant attended the Licensing office on 14 November 2022 to provide their version of events to the Licensing Manager and Regulatory Compliance Officer. During this interview, they confirmed that they had driven a licensed vehicle after consuming alcohol and confirmed that the alleged sexual interaction had taken place inside a licensed private hire vehicle.

The Licensing Manager contacted the Borough Solicitor to request the immediate revocation of their licence in the interests of public safety and the licence holder voluntarily surrendered their Private Hire and Hackney Carriage Driver's Licence on 16 November 2022.

On 22 December 2022, Greater Manchester Police provided details of the circumstances surrounding an incident and the applicant's arrest outside their property on 21 December 2022.

The Regulatory Services Manager attended the Licensing department on 17 August 2023 to provide an update in relation to the alleged sexual assault that took place on 13 November 2022. They stated that Greater Manchester Police were taking no further action in relation to the alleged sexual assault. During the interview, the applicant advised that they had been charged with a Public Order Offence relating to an on-going neighbour dispute in December 2022, which would be heard in court on 4 April 2024.

In addition, the applicant admitted being found in possession of cannabis during a police traffic stop in October 2020. On 5 January 2024, Greater Manchester Police provided an update in relation to an offence on 9 June 2023 in which they were found to be in possession of cannabis whilst in control of a motor vehicle.

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 explained that in relation to the offence for possessing cannabis, their brother had placed this in the glove compartment of the vehicle. He then refused to admit that it belonged to him.

Regarding the sexual contact that took place in the applicant's licensed vehicle, they explained that this was consensual and that the woman had been "all over them". She then stated that she felt sick and ran off. The applicant accepted that they should not have been kissing the woman in their licensed vehicle but stated it had been consensual and did not believe that it was sexual assault. They felt that the accuser was struggling with their mental health at the time the allegation was made.

In relation to the alleged assault on their neighbour, the applicant stated that the individual had assaulted their partner and child. The neighbour was being abusive towards them and this resulted in a conflict. The applicant claimed to have a pair of pliers in their hand, and not a knife as accused, as they had been working on their vehicle. The applicant contended that there was CCTV footage showing they were carrying pliers, not a flick knife.

The applicant concluded by stating that they were responsible for three children and wanted to get their life back on track.

At this juncture the applicant and the Regulatory Services Manager (Licensing) 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)*.

The Panel were concerned that the applicant was charged with being in possession of cannabis on 7 October 2020. The Panel considered their explanation for this incident that their brother had put the cannabis in the vehicle's glovebox. However, they noted that the applicant was found guilty of this offence.

The Panel referred to its Conviction Policy, which stated that an application would normally be refused for offences relating to the possession of drugs if the dates of conviction was less than five years prior to the date of the application. The Panel noted that only three years and three months had elapsed since the date of the conviction.

The Panel then considered the alleged sexual assault. The Panel noted that the applicant said the sexual activity was consensual and noted that the complainant withdrew their complaint to the police. The Panel acknowledged that the applicant accepted that consensual sexual activity took place in their licensed vehicle and referred to its Conviction Policy, which stated that a licensee shall not engage in any sexual activity in a licensed vehicle, even if consensual. The Panel were concerned that the applicant engaged in sexual activity in their licensed vehicle that was used to transport members of the public and were even more concerned that this vehicle was used to transport vulnerable school children.

The Panel then considered the charge for the Public Order Offence relating to an on-going neighbour dispute that took place on 21 December 2022. The Panel noted the applicant's explanation for the incident that they and their neighbour got into a conflict, were shouting at each other and that the neighbour informed the police that the applicant threatened them with a knife. The Panel acknowledged that the applicant had not yet been found guilty or not guilty of the offence and that a trial date was listed for 4 April 2024. However, the Panel noted the applicant had previously received a caution for assault occasioning actual bodily harm and felt that there was a pattern of behaviour.

The Panel noted that the applicant had previously attended the Speaker's Panel on 18 August 2020 because of their previous convictions. They informed the Panel that they had worked hard over the previous nine years to turn their life around, that they had a new partner and full custody of their three daughters and wanted to set a good example to them. On that occasion, the Panel accepted that the applicant was remorseful for their previous actions and that it had been nine years since their last conviction and resolved to grant them a licence. However, less than two months later, the applicant was charged with possessing a Class B drug and were now due to stand trial for a Public Order Offence.

The Panel were concerned that despite being granted a licence by the Panel on 18 August 2020, the applicant had continued to engage in criminal behaviour and behaviour that did not demonstrate that they were a fit and proper person to hold a licence. Furthermore, the Council's Policy prevented the Panel from granting the application for a licence, as it had not been five years since their last conviction for possessing a Class B drug. The Panel were of the view that no evidence was provided that could justify them departing from the Policy.

The Panel considered all available options and concluded that the applicant was not a fit and proper person to hold a licence and that their application would be refused.

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

RESOLVED

That the application for a Private Hire and Hackney Carriage Driver's Licence 10/2023 be refused.

35 REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE - 11/2023

The Assistant Director of Operations and Neighbourhoods submitted a report requesting that the Panel determine whether the driver remained a fit and proper person to hold a relevant licence in accordance with the provisions of Section 61 of the Local Government Act (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 driver had held a Hackney Carriage Driver's Licence since 1 April 1992.

The Regulatory Services Manager (Licensing) told the Panel that on 15 August 2023 the Licensing department received a complaint, that on 28 July 2023, the driver of a licenced vehicle refused to convey a wheelchair user while operating as a taxi driver on an authorised taxi rank within the borough.

The Regulatory Compliance Officer spoke with the complainant and a second witness on 14 September 2023 to obtain a full version of events relating to the incident.

The licence holder attended the Licensing Office on 16 October 2023 and a taped interview between the Regulatory Compliance Officer and them took place. The nature of the interview was to discuss the alleged complaint and obtain the licence holder's full version of events regarding the incident. During the taped interview, they provided a job list relating to pre-booked work completed on 28 July 2023.

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 and the Panel were provided with the opportunity to ask questions.

The licence holder then addressed the Panel and explained that they had dropped off a passenger in the vicinity of the taxi rank in Ashton-under-Lyne. They stated that they were due to attend a pre-booked school contract at 15:00 and had hoped to collect a customer that was travelling towards Mossley as they only had limited time. As the complainant and their family were not travelling in the direction of the pre-booked job, the licence holder refused the booking, as they would have insufficient time in which to complete it. The licence holder stated that it was not their intention to leave the family stranded and spoke to the taxi driver behind at the rank to ask if they could convey the wheelchair user and their family to their destination.

After refusing to convey the wheelchair passenger due to the time constraints, the licence holder then took another passenger who was at the rank. The licence holder explained that they had only done this as this passenger was travelling in the direction of the pre-booked contract work and that they had never refused to take a passenger because they were in a wheelchair.

Whilst the licence holder understood that they had let down the individual in the wheelchair and their family, they were concerned that had they taken the job then they would have been late for their contract work and let down the children who were waiting for them.

In hindsight, the licence holder accepted that they should not have gone to the taxi rank to undertake another job as they did not have sufficient time to complete this before their scheduled contract work.

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

At this juncture the licence holder, 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 Council's 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 was also made aware of section 165 of the Equality Act 2010, which placed duties on the licensed drivers of those vehicles to carry passengers in wheelchairs and carry non-wheelchair using disabled people and any mobility aids they may be using, providing assistance to those passengers. The section also prohibited drivers from refusing or charging extra for that assistance.

The Panel considered the licence holder's explanation for the incident and debated whether or not they felt that they were remorseful and understood the severity of what they had done.

The Panel felt that at the time of the incident, the licence holder did not realise the seriousness of their actions at the taxi rank. The licence holder stated that they refused to give the customer a lift because they felt that they would not have enough time to do the journey and the make it to their school contract job. However, the Panel believed that from the customer and family's point of view, the licence holder refused to give a lift to a disabled child which would have made the family extremely upset and left them feeling discriminated against.

The Panel noted that the licence holder had a legal duty under section 165 of the Equalities Act 2010 to carry wheelchair users and they worked for a company that prided itself on being wheelchair accessible. The Panel acknowledged that it was a criminal offence to breach this duty.

The Panel noted that the licence holder stated that wheelchair users were discriminated against and felt that they had contributed to this discrimination.

The Panel were of the view that the licence holder now had a better understanding of the seriousness of the incident after the hearing and acknowledged that they had apologised.

In mitigation, the Panel recognised that there was no record of any complaints being made to the Council in the licence holder's 32 years as a licensed driver.

The Panel agreed that a warning letter should be issued to the licence holder to remind them of their legal duties in accordance with the Equalities Act 2010.

RESOLVED

That the Hackney Carriage Driver 11/2023 receive a warning letter to remind them of their legal duties in accordance with the Equalities Act 2010.

36 REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE & HACKNEY CARRIAGE DRIVER'S LICENCE - 12/2023

The Assistant Director of Operations and Neighbourhoods submitted a report requesting that the Panel determine whether the driver remained a fit and proper person to hold a relevant licence in accordance with the provisions of Section 61 of the Local Government Act (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 driver had held a Private Hire Driver's Licence and Hackney Carriage Driver's Licence since 2017.

The Regulatory Services Manager (Licensing) told the Panel that on 6 November 2023 the Licensing Department received a complaint in relation to an alleged breach of the Equality Act 2010 whereby the licence holder refused to allow a registered assistance dog and its owner to travel in their private hire vehicle.

The complainant, who was registered blind, ordered a private hire vehicle through the Uber app on 3 November 2023 and had an assistance dog with them at the time. The vehicle had been ordered to collect the individual from their home and take them to another address in Stalybridge.

On arrival, the complainant and the licence holder had a conversation in relation to the carriage of both them and the assistance dog. Due to previous issues concerning taxi drivers refusing to carry the assistance dog, the complainant recorded the conversation on their phone.

During the conversation, the licence holder clearly stated that they would not take the dog, as it was too big. Even when it was pointed out to them that to refuse to take an assistance dog was an offence, they continued to refuse until eventually the complainant requested to cancel the trip.

The licence holder attended the Licensing Office on 21 November 2023 and licensing officers interviewed them under caution and in accordance with PACE.

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 and the Panel were provided with the opportunity to ask questions.

The licence holder and their representative then addressed the Panel and provided their version of events about the incident on 3 November 2023. A written document was circulated that explained the licence holder had been a market trader in Oldham for over 30 years and had successfully built up a strong customer base. They had then worked as a taxi driver for the past four years.

The representative then went on to explain that the licence holder's wife suffered from various mental health issues and there had been occasions when she had been hospitalised as a result. This had put a great deal of strain on the family. It was highlighted that the licence holder was the family's main breadwinner as well as their wife's main carer. Recently the licence holder's, wife's claim for Personal Independence Payment (PIP) had been cancelled and this had placed a further financial strain on the family.

In relation to the incident on 3 November 2023, the licence holder regretted the incident and the complaint that was made against them by a disabled passenger. In retrospect, the licence holder felt that they could have dealt with this matter in a much better way. The licence holder explained that they had not correctly registered the words "guide dog" when the passenger wanted to board the vehicle and they apologised for this.

Since the incident, the licence holder had taken time to reflect about the rights of all customers and particularly those with disabilities. The representative explained that the licence holder was considering undertaking training in relation to disability awareness and that they would follow any conditions the Panel Members deemed necessary for them to retain their licence.

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

At this juncture the licence holder, the Regulatory Services Manager (Licensing) 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)*.

The Panel considered your explanation for the incident.

The Panel did not accept that the licence holder did not hear the passenger say "guide dog". The Panel listened to the recording of the incident during the hearing and the passenger very clearly said "guide dog" or "service dog" a total of seven times. The passenger also told the licence holder four times that it was a legal requirement that they allowed them to travel in the vehicle with their guide dog. The Panel noted the passenger asked if the licence holder understood that and they confirmed that they did. The Panel were of the view that the licence holder was being dishonest by stating that they did not hear the passenger say "guide dog".

The Panel also noted that in the interview with the Licensing Authority the licence holder accused the passenger of being racist. However, in the hearing the licence holder was unable to provide any evidence of this. At no point during the audio recording did the passenger make any racist remarks. The Panel were concerned that accusing somebody of being racist was a serious accusation. The Panel were of the view that the licence holder was being dishonest when they made this accusation to the Licensing Authority. During the hearing, they acknowledged that the accusation was wrong.

As a Private Hire and Hackney Carriage Driver, licence holders had a duty under the Equality Act 2010 not to discriminate against anyone with a disability. The Panel were extremely concerned that they had refused to allow the passenger into their licensed vehicle with the guide dog. Section 170(1) of the Equality Act 2010 made it a criminal offence to refuse to carry out a booking for a disabled person because they were accompanied by an assistance dog.

The Panel noted that in the licence holder's summing up, there was reference to some disabilities being hidden, but in this circumstance, the passenger's disability was not hidden as they had a stick and guide dog. The Panel were of the view that the customer must be subject to discrimination on a regular basis as they felt the need to record themselves trying to get into the licence holder's vehicle. Blind people relied on public transport as they were unable to drive themselves and the licence holder turned this customer away because they had an assistance dog with them.

The Panel felt that the licence holder was more concerned with their livelihood than the disabled customer, as in their mitigation they only talked about the impact the incident had upon them.

The Panel were not satisfied that the licence holder accepted the severity of their actions and had only shown limited understanding or remorse.

The Panel considered all available options and concluded that their licence should be suspended for a period of one month.

The following condition was also imposed upon their licence: that they undertake training as prescribed by the Licensing Authority within the next month.

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

RESOLVED

That Private Hire Driver's Licence and Hackney Carriage Driver's Licence 12/2023 be suspended for a period of one month and the licence holder undertake training as prescribed by the Licensing Authority within the next month.

37 REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE - 13/2023

The Assistant Director of Operations Neighbourhoods submitted a report requesting that the Panel determine whether the applicant was a fit and proper person to hold a Private Hire Drivers Licence in accordance with the provisions of section 51 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 they had held a Private Hire Driver's Licence with the authority since 2003.

The Regulatory Services Manager (Licensing) advised that on 18 August 2023 the applicant applied to renew their Private Hire Driver's Licence and submitted an application for a Disclosure and Barring Service (DBS) certificate on the same date; as their previous one was due to expire on 27 September 2023. The DBS application was submitted on 13 September 2023.

On 23 October 2023, the applicant made contact with the Licensing department to renew their licence as they reported that they had now received their DBS certificate. Upon the processing of their application, standard checks were run on the applicant's driving licence with the DVLA. These checks showed their DVLA driving licence to be disqualified due to a TT99 offence of 'totting-up'.

This was confirmed via a check of the Police National Computer (PNC), where it was verified that they had appeared at Preston Magistrate's Court and their licence had been disqualified for six months, from 11 September 2023 until 10 March 2024. As the applicant's DVLA licence was classed as disqualified, their renewal application was not processed.

On 15 November 2023, the applicant attended the Licensing office to discuss their application and their driving licence disqualification. It was highlighted that they had failed to inform the Licensing department of this disqualification.

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 began by apologising for failing to inform the Licensing department that they had been disqualified from driving. The applicant stated that they had been a taxi driver for 25 years and there had no other issues in those years.

The applicant explained to the Panel that following a family death in London, their wife had completed the application and they were not sure why it was not declared that they had been disqualified from driving.

The applicant's solicitor at Preston Magistrate's Court advised that they did not need declare the offences.

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

At this juncture the applicant and the Regulatory Services Manager (Licensing) 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)*.

The Panel were concerned that the applicant had failed to disclose their fourth speeding offence on their application and that they failed to declare that they were disqualified from driving on 11 September 2023 for a period of six months.

The Panel noted that the applicant was still disqualified from driving and that their DVLA licence would not be restored until 10 March 2024.

The Panel referred to its convictions policy, which stated that an application would generally be refused unless the individual could show a period of 12 months had elapsed from the restoration of the DVLA licence. Unfortunately, as the applicant's licence had not yet been restored, they could not demonstrate that a period of 12 months had passed since their licence was restored. The applicant would only be able to demonstrate this from 11 March 2025.

The Panel were of the view that no evidence was presented to them at the hearing to justify them departing from the Policy and concluded that the application, in accordance with the Policy, be refused.

The Panel also noted that the Policy stated that any subsequent application made within five years of a refusal would be refused unless the applicant could prove that there had been a material change in their circumstances and that they were a fit and proper person to hold a licence.

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

RESOLVED

That the application for renewal of Private Hire Driver's Licence 13/2023 be refused.

38 URGENT ITEMS

There were no urgent items.

39 DATE OF NEXT MEETING

RESOLVED

That the date of the next meeting of Speakers Panel (Licensing) scheduled for 19 March 2024 be noted.

CHAIR