

Minutes of the meeting of the LICENSING AND
APPEALS HEARINGS PANEL held at 9.30 am on
Monday, 14th November, 2016 at Main Committee
Room, Civic Centre, Stone Cross, Northallerton

Present

Councillor Mrs I Sanderson (in the Chair)

Councillor R A Baker

Councillor D M Blades

LAHP.17 **EXCLUSION OF THE PUBLIC AND PRESS**

That under Section 100A(4) of the Local Government Act 1972, the press and public were excluded from the meeting during consideration of the item of business at minute no LAHP.18 on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act as the Panel was satisfied that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

LAHP.18 **HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCE**

The subject of the decision:

The Director of Leisure and Environment (Acting) asked the Panel to consider whether the licence holder ("D") was a fit and proper person to continue to hold a hackney carriage and private hire driver licence.

The Panel was made aware that D had informed the Council's officers prior to the hearing that he had further evidence from another taxi driver to support his case. According to D, the driver had overheard a conversation between two other licensed drivers in relation to an incident involving D on 6th August 2016. D had not produced any evidence in this regard and therefore he was asked by the Chair if he would like to seek an adjournment of the hearing to enable him to produce this further evidence. D declined and wished for the hearing to proceed.

Alternative options considered:

The Panel considered the options in paragraph 6.1 of the officer's report but, having concluded that D was not a fit and proper person to hold a hackney carriage and private hire driver licence, the only suitable option was to revoke D's licence.

The Panel was satisfied that nothing less than revocation, including issuing a warning or a suspension, would adequately serve the interests of the public and address the concerns raised.

The reason for the decision:

The Panel considered the officer's report, the written and oral representations of the Council's Enforcement Officer and another licensed driver ("X"), D's written and oral representations and D's character references. The Panel also had due regard to the

Council's Hackney Carriage and Private Hire Licensing Policy and the relevant legislation.

The Panel considered evidence from the Council's Licensing Enforcement Officer who had investigated complaints made by D and X regarding an incident at Thirsk Railway Station on 6th August 2016 where both taxi drivers (D and X) and two passengers ("Mr and Mrs Y") were present.

D raised concerns about the delay between his complaint being made and the Enforcement Officer making contact with Mrs Y. The Panel noted that the Enforcement Officer had spoken to Mrs Y on 10th August 2016, which was the same day that D made the complaint. Mrs Y had asked the Enforcement Officer to call back on 15th August 2016 as she was on holiday until then. The Enforcement Officer spoke to Mrs Y on 15th August 2016 who provided the Officer with her account of the incident on 6th August 2016. Mrs Y had initially agreed to give her account in writing but, on 17th August 2016, she insisted that she had already told the Enforcement Officer the facts and she subsequently disengaged from the process. The Panel was satisfied that the Enforcement Officer was a reliable witness and had acted appropriately in carrying out his investigation. The Panel was satisfied that the Enforcement Officer had made reasonable attempts to obtain a written account and that he had accurately conveyed Mrs Y's verbal account of the incident.

The Panel noted that another taxi driver ("Z") provided a written account of what Mr and Mrs Y had told Z in relation to the incident on 6th August 2016. The Panel accepted that the account provided by Z supported the account provided by the Enforcement Officer and, as there was no reason to doubt the integrity of the source in either case, the Panel accepted the indirect evidence as accurate representations of Mrs Y's account of the incident.

The Panel noted paragraph 5.8 of the officer's report and was satisfied that it is entitled to rely on any evidential material which might reasonably and properly influence the making of a responsible judgment in good faith on the question in issue. Gossip, speculation and unsubstantiated innuendo would be rightly disregarded but the evidence provided by the Enforcement Officer and Z, albeit hearsay, carries a greater degree of credibility by virtue of its source, nature and inherent probability.

The Panel considered evidence in respect of an alleged incident, which occurred on 6th August 2016. The Panel considered written complaints made by D and X in respect of each other. The Panel was given three accounts of the incident as set out under the headings below.

D's version of events

D provided his evidence in the form of written and oral representations as follows:

X was dragging Mrs Y by her bag towards his vehicle, X "*flew out of his car*" and physically pushed Mrs Y before telling her and her partner to "*fuck off*". X threatened D by telling him "*to mind [his] back as [X] would sort [him] out*". D denies swearing and insists his version of events is accurate. D denies attempting to influence Mrs Y and insists he made contact with the passengers to ensure that they were "*okay*" and subsequently to enquire about their return journey.

X's version of events

X provided his evidence in the form of written and oral representations as follows:

D used bad language, acted in an aggressive and intimidating manner and threatened to report X as he was on his "*last warning*". D continually acts in a racist manner towards X. X denies using any bad language and he denies touching Mrs Y's bag. X insists he did not get out of his vehicle at any point.

Mrs Y's version of events

Mrs Y's version of events was derived from evidence provided by the Enforcement Officer and Z as follows:

D was the only person acting aggressively and using bad language at the time of the incident. X did not leave his vehicle and "*did nothing wrong*". D contacted Mrs Y to encourage her to support him when he reports the incident to the Council.

The Panel noted that X and Mrs Y had given their accounts separately. The Panel was satisfied that X's account was consistent with Mrs Y's account in that D was the only person acting aggressively and using bad language at the time of the incident. The Panel was also satisfied by X's consistency of evidence during the hearing.

The Panel noted that there was some inconsistency with D's evidence. D stated in his written and oral representations that X "*flew out of his vehicle*" and pushed Mrs Y out of the way to get to D. However, during the hearing D insisted that X was already out of his vehicle when he was dragging Mrs Y's bag towards his vehicle. When asked about the inconsistency by the Panel, D confirmed that the latter account was the accurate version but he could not provide an explanation for the inconsistency in his evidence.

Taking account of all of the evidence the Panel was satisfied on the balance of probabilities that X's account of the incident was accurate and that D's account was at least to some extent fabricated. The Panel was satisfied that, if D's account was accurate (i.e. that Mrs Y was pushed, sworn at and had her bag dragged away from her) she would have complained to the police and/or the Council, particularly when she was specifically asked about the incident by the Council's Enforcement Officer.

In light of Mrs Y's account the Panel was satisfied that no reasonable person could have concluded that D's version of events was accurate. Accordingly, the Panel concluded that D had acted in an aggressive manner during the incident and that he provided a false account of the incident to the Council.

The Panel was concerned by Mrs Y's suggestion that D had encouraged her to support his account by contacting her on more than one occasion after the incident. The Panel noted that when asked about his contact with Mr and Mrs Y, D told the Panel that he had contacted them after the incident at the station and again later in the week to enquire about a return journey. The Panel was satisfied that passengers usually initiate any arrangements for hire with taxi drivers and D's repeated contact with Mrs Y was not only to secure a return fare or to check on the passengers' wellbeing but it was to influence Mrs Y and secure her support for his case. The Panel concluded that D provided Mrs Y's contact details to the Council because he believed that he had obtained the support of the passengers. The Panel was also satisfied that D's

repeated contact with Mrs Y ultimately led to her disengaging with the Enforcement Officer's investigation.

The Panel noted that D made oral representations about the credibility of Mrs Y as her discussion with the Enforcement Officer took place nine days after the event and she had been under the influence of alcohol at the time of the incident. When questioned by the Panel, D stated that Mr Y seemed to have had more to drink than Mrs Y but neither was drunk. The Panel was satisfied that the account given by Mrs Y to the Enforcement Officer was not distorted by the passing of time. The Panel concluded that, whilst Mrs Y may have consumed alcohol on the train, this would not have adversely affected her ability to recall the incident with accuracy to the Enforcement Officer given that the incident occurred at approximately 1.45pm. The Panel also noted that D had not raised any concerns about Mr and Mrs Y's sobriety at the time of making the complaint (when D still believed that the passengers would support his account).

The Panel considered the evidence provided by X and was satisfied that it was an accurate account of the incident. The Panel concluded that D believed that an allegation of verbal and physical abuse against a driver who he believed was on his last warning would place that driver at great risk of revocation of his licence. The Panel concluded that the allegation made by D against X was a calculated attempt to implicate X by providing a false account. The Panel also concluded that the allegation was made with malicious intent.

The Panel considered evidence from X that D's inappropriate and aggressive behaviour at the time of the incident was part of an on-going pattern of conduct towards X which X stated was racist. When asked by the Panel why X believed D's behaviour to be racist, X explained that the comments made by D towards him, including "*on your bike*", were a reflection of D's perceived superiority over X. X explained that D made him feel different and that D did not want him driving a taxi in Thirsk. The Panel was satisfied that X believed that D's behaviour was racist in manner. However, the Panel was not satisfied that the explanation provided by X was evidence of racist behaviour and, therefore, this element of the complaint was unsubstantiated.

The Panel noted the evidence given in respect of a complaint about D failing to engage his meter on a journey. The Panel was satisfied that, whilst D denied failing to engage his meter, D had accepted that there were circumstances where drivers do fail to engage the meter by mistake. The Panel concluded that D had not purposefully failed to engage his meter and it was satisfied that this matter had been appropriately addressed by officers.

The Panel considered a complaint made in respect of D carrying separate fare-paying passengers in his vehicle without obtaining the consent of all parties. The Panel was satisfied that, when interviewed about this complaint by the Enforcement Officer, D had told the Officer that he had informed the person making the second booking that there would be another customer in the vehicle. During the hearing, D stated that he always secured the consent of both customers when carrying separate fare-paying passengers. The Panel was satisfied that, if any offences had been committed in this regard, it was not intentional. In any event, the Panel was satisfied that the matter had been addressed by officers and that future compliance had already been secured.

In light of the above, the complaints relating to D's meter and passenger-carrying practices did not contribute to the Panel's findings.

The Panel considered D's history as a licensed driver and it was satisfied that he had not been the subject of any complaints relating to his character. However, the Panel

was extremely concerned by D's conduct both during and after the incident on 6th August 2016.

The Panel concluded that D had breached his licence conditions and the Hackney Carriage Byelaws by failing to behave in a civil and orderly manner. The Panel also concluded that a person who is capable of making a false allegation with malicious intent and one who seeks to influence witnesses cannot be regarded as a fit and proper person to hold a hackney carriage and private hire driver licence.

Summary of findings:

The Panel was satisfied that D had acted in an aggressive manner, that he had used bad language in public, that he provided an inaccurate account of the incident, that he made a false allegation against a licensed driver with malicious intent and that he attempted to influence witnesses to the detriment of the Council's investigation. The Panel was satisfied that this gave rise to serious concerns about D's character. The Panel noted paragraph 5.4 of the officer's report, in reference to the Council's Hackney Carriage and Private Hire Licensing Policy, emphasising the importance of a licensed driver's honesty and integrity.

THE DECISION:

Taking account of the above and having attached appropriate weight to the evidence, the Panel concluded that D was not a fit and proper person to hold a hackney carriage and private hire driver licence. The Panel was not satisfied that any sanction less than revocation would be sufficient to enable D to regain his fitness and propriety. The Panel, therefore, resolved to revoke D's licence for 'any reasonable cause' in accordance with section 61 of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting closed at 11.30 am

Chairman of the Panel