

Present

Councillor Mrs I Sanderson (in the Chair)

Councillor M A Barningham                      Councillor R Kirk

LAHP.19 **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.19 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.20 **CONDUCT OF HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER**

**The subject of the decision:**

The Director of Law and Governance (Monitoring Officer) 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.

**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 D;
- four character references in respect of D;
- the written and oral representations of five witnesses ("V", "W", "X", "Y" and "Z");
- the Council's Hackney Carriage and Private Hire Licensing Policy; and
- the relevant legislation.

The Panel considered D's account in relation to an incident that allegedly occurred on the taxi rank at Thirsk Market Place on 17<sup>th</sup> December 2016. D informed the Panel that he was involved in a minor altercation with another taxi driver ("V"), which led to a verbal exchange between the two drivers through the windows of their vehicles. It was accepted as a fact that V had sounded his horn whilst waiting behind D following D's failure to move forward when a space opened up on the rank. D then collected two passengers, one male ("W") and one female. According to D's statement, he and W had observed V waving his hands, pointing at his mobile telephone and threatening to report D to the Council's licensing team. D stated that he asked "what's the problem?" and V repeatedly told D that he was going to report him. D then drove away with his passengers. V alleged that D had given him a "dirty look", which was corroborated by another taxi driver ("X"). However, the Panel noted from the officer's report that the seriousness of the allegations in this regard would not warrant any formal action being taken.

The Panel considered evidence from W in relation to the same verbal exchange between D and V. W informed the Panel that V had been banging on D's window. However, no other witnesses (including D) made any mention of this or even of V leaving his vehicle. Furthermore, the incident had not appeared in W's letter submitted ahead of the hearing. W also alleged that V had used abusive language towards D during their verbal exchange. This allegation was denied by V and, as D's statement made no reference to any abusive language at this stage of the incident, the Panel was not satisfied that D had been subject to any considerable provocation at this point. The Panel noted that both V and W had made reference to previous disputes between themselves. In light of the lack of support for W's account, the Panel was satisfied that no reasonable person could have concluded that his version of events was accurate. In any case, the Panel was satisfied that the nature of this verbal exchange would not warrant any formal action being taken against either driver.

The Panel was satisfied that D was "annoyed" by the incident, as detailed in D's statement. The Panel was also satisfied that D returned to the taxi rank after dropping off his passengers with the sole intention of confronting V. D informed the Panel that he did not intend to ply for hire when he returned to the rank and that is why he parked alongside the vehicles as opposed to parking behind them on the rank itself. According to D's statement, he "pulled onto the cobbles with the intention of asking [V] why [he] was going to be reported".

According to D's statement, on his return to the rank he asked V (in Turkish) why he was going to report him. The Panel accepted the evidence from both parties that V had informed D that he was recording him and that he had asked D to speak in English.

The Panel considered allegations made by V that D had threatened V's mother, wife and daughter. The Panel was satisfied that the witnesses (other than V) were unable to understand the words said by D in Turkish. Accordingly, the Panel had two very different accounts to consider and it could not be satisfied that the allegations made by V could be substantiated in this regard. The Panel considered the evidence of the other taxi drivers present ("X" and "Y") and it was satisfied that D was acting in an aggressive manner at the material time. According to X's statement, D was "shouting in a loud voice" at this point. The Panel was satisfied that this was in keeping with Y's evidence and therefore it could not be satisfied that D had merely "asked [V] why he was reporting [him]", as contended by D.

The Panel also considered evidence relating to D's conduct during a verbal exchange with Y. Y had alleged that D was standing two feet in front of him and speaking "in a very loud manner". This was in keeping with X's statement, which alleged that D was shouting in [Y's] face. The Panel was satisfied that V's statement corroborated the evidence of X and Y, alleging that D was "standing face to face with [Y]" and that D "shouted at [Y] in a very aggressive and intimidating manner". The Panel was therefore not satisfied that D had merely "asked [Y] why he was being reported", as contended by D. The Panel concluded that D had acted in an inappropriate manner with Y.

The Panel considered evidence relating to the next phase of the exchange, which resulted in D making contact with V, thereby causing damage to V's mobile telephone as it collided with the ground.

D informed the Panel that V's property was damaged recklessly rather than intentionally. D also stated that he had touched V underneath his hand and V had let go of the telephone himself. The Panel noted that this was inconsistent with D's own statement, which indicated that he "hit the underneath of [V's] hand to get rid of whatever was in his hand".

The Panel noted that all parties present at the material time had made reference to the telephone travelling some distance before landing on the floor. D indicated that the telephone travelled over his head, V indicated that the telephone smashed "some distance away", X indicated that the telephone travelled "at least 10-15 feet" and Y indicated that the telephone travelled "over [D's] car". The Panel was therefore satisfied that D had not merely touched V underneath his hand as he had claimed during the hearing. The Panel was satisfied that D had struck V with sufficient force to cause V's telephone to travel up in the air and over a distance of at least 10 feet.

D informed the Panel that, prior to making contact with V's hand, V had pulled something from his jacket which, at the time, D could not identify but, after making contact, he realised that it was his phone. The Panel was satisfied that this contradicted D's own statement, which indicated that V "already had his phone in his hand" when D approached him. V, X and Y all indicated that V was holding his telephone throughout the exchange with D and, therefore, the Panel concluded that D's account in this instance was inaccurate. The Panel was satisfied that D had fabricated his version of this particular incident in order to appear to be acting in self-defence when he made contact with V.

V alleged that D had intended to destroy V's recording and that was the reason for the physical contact. The Panel noted that, during the hearing, D had admitted to saying to V (in Turkish) "come on then you silly bugger, don't be a camel's arse (or donkey's arse)" immediately before "knocking his hand". The Panel was therefore satisfied that D was verbally provocative and abusive towards V at the material time. The Panel was also satisfied that D had intended to knock V's telephone out of his hand in order to prevent further recordings taking place and/or to damage the recording already obtained.

D informed the Panel that he was assaulted following the incident which led to V's phone being damaged. The Panel was satisfied that the alleged assault would be subject to a separate investigation and did not contribute to D's conduct for the purposes of this hearing as it occurred after D's alleged misconduct took place.

The Panel considered the evidence provided by another taxi driver (“Z”) on behalf of D. Z was not present for any part of the incident and therefore the Panel did not consider his representations relevant for the purposes of this hearing.

D informed the Panel that V had personal issues with D and that he had an agenda to ensure that D’s licence was revoked. The Panel was not satisfied that any personal issues had significantly impacted on the evidence as D’s account was, to a large extent, in keeping with the accounts provided by the witnesses.

In any case, the account provided by D in his statement and during the hearing was sufficient to satisfy the Panel that he was acting in an aggressive manner towards two taxi drivers, that he was being verbally provocative and abusive with one taxi driver, that he made unwanted physical contact with one taxi driver and that he had provided an inaccurate account of the incident to the Council’s licensing team in order to give the impression that his conduct appeared less aggressive and that he had acted in self-defence.

The Panel considered the character references provided by D and the oral backing provided by W during the hearing. The Panel accepted that D will have customers and friends that have had positive experiences with him in his capacity both as a friend and as a taxi driver. However, having considered the outcome of the hearing before the Panel in March 2016, the Panel was satisfied that D had demonstrated a propensity to lose his temper. The Panel noted that taxi drivers must behave in a civil and orderly manner at all times in order to protect the public and themselves.

Having concluded that D’s conduct on 17<sup>th</sup> December 2016 was not satisfactory, Members considered the options outlined in paragraph 6.1 of the officer’s report. The Panel noted that D made assurances that it would not see him in front of the Panel again. D informed the Panel that he knew his conduct “was stupid and it shouldn’t have happened”. The Panel also noted that D had made reference to his financial circumstances during the hearing but this was not considered relevant for the purposes of the Panel’s decision.

**THE DECISION:**

Taking account of the above and having given appropriate weight to the evidence, the Panel was concerned by D’s conduct at the time of the incident, particularly in light of the fact that D had served a suspension the previous month following his failure to act in a civil and orderly manner earlier in the year. The Panel concluded that D was not a fit and proper person to hold a hackney carriage and private hire driver licence. As the previous sanctions (a formal warning and a three-week suspension) did not appear to have served the desired purpose in relation to D’s conduct, the Panel was not satisfied that any sanction less than revocation would be sufficient. 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 4.40 pm

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Chairman of the Panel