

Minutes of the meeting of the LICENSING AND
APPEALS HEARINGS PANEL held at 1.30 pm on
Wednesday, 26th September, 2018 at Main Committee
Room, Civic Centre, Stone Cross, Northallerton

Present

Councillor M A Barningham (in the Chair)

Councillor

K G Hardisty

Councillor

R Kirk

LAHP.13 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.14 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.14 SUITABILITY OF HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER

The Panel was informed that the hearing was initially due to take place on 30th August 2018 but it was rearranged at the request of the licence holder ("D") to enable him to make arrangements for a legal representative to attend.

The hearing was subsequently arranged to take place on 26th September 2018. On 25th September 2018, Watson Woodhouse Solicitors sent a request for an adjournment on the basis that, due to a conflict, they were unable to represent D and, as D had been in Turkey, he did not have time to seek alternative representation.

At the commencement of the hearing, D informed the Panel that he was aware of the request but he did not want any further delay and therefore he asked the Panel to proceed with the hearing. The Panel considered D's submission and concluded that it was in the public interest to proceed with the hearing.

The subject of the decision:

The Director of Law and Governance (Monitoring Officer) asked the Panel to consider whether 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 with immediate effect.

The Panel was not satisfied that any of the alternative options, including issuing a warning or a suspension, would adequately serve the interests of the public and address the safety concerns raised.

The reason for the decision:

The Panel considered the officer's report, the written and oral submissions of D, the Council's Hackney Carriage and Private Hire Licensing Policy, and the relevant legislation.

The Panel was informed that, in July 2018, D accepted a caution for the harassment of his daughter. The Panel considered a record of a meeting held in August 2018 between Council officers, D and D's wife. According to the record, D's daughter left the family home on 30th December 2017 and, in the weeks that followed, D attempted to contact his daughter who had refused to see or speak to him. D's daughter subsequently lived with a family friend in the house opposite D's family home.

The Panel noted that D had told officers that he had become "upset and cross" and he removed his daughter's clothes from her bedroom at the family home and placed them on the rear of his car in a position which was visible from the house opposite. The Panel was informed that this incident was later reported to the police.

The Panel also noted that a day after D had been told not to attempt to visit his daughter he removed her bed from her bedroom and broke it into pieces, again in view from the house opposite. D informed the Panel that the bed was already broken.

The Panel noted that D had confirmed that on 25th or 26th January 2018 he had contacted his daughter 64 times via telephone and on most of those occasions left a voicemail message. D's daughter did not reply to any of his messages. The Panel noted that D informed officers that he had begun each message with a derogatory comment towards his daughter. The Panel noted that D had informed officers that his voicemail messages included threats to chop his daughter's legs up and boil her head in a pan. D informed the Panel that this was "banter".

The Panel noted that D's daughter had informed the police that she had thought some of the messages were a bit silly but they had scared her and she felt harassed. The Panel had concerns that D regarded his derogatory comments and the threats made to his daughter as "banter". The Panel concluded that the nature of the comments and threats to D's daughter at a time of family pressure could not reasonably be regarded as "banter" and would be likely to provoke fear and concern.

D informed the Panel that, following the 64 attempts to contact his daughter in January 2018, he had been arrested on suspicion of harassment and later accepted a caution.

D told the Panel that he was concerned for his daughter's safety during her time staying at a family friend's house and that he and his wife had contacted social services regarding his daughter's whereabouts. D produced a letter dated 7th March 2018 that had been subsequently sent to his daughter and her appointed guardian by North Yorkshire County Council's social services department.

D told the Panel that, in July 2018, he felt that he had no other choice but to accept the caution for harassment. However, D indicated that he intends to appeal the caution. The Panel noted that a caution can only be administered if the alleged offender admits the offence and the administering officer is satisfied that the offence could be proved beyond reasonable doubt. The Panel also noted that, in accordance with the Council's Policy, the Panel was not entitled to consider the merits of the caution. Accordingly, the Panel was satisfied that D's guilt had been established.

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The Panel noted that, according to the Council's Policy, an individual will not normally be permitted to hold a licence within three years of receiving a caution or conviction for a public order offence.

The Panel concluded that in January 2018, D had persistently contacted his daughter despite warnings from the police regarding his conduct. The Panel had concerns about the actions D had taken in respect of his daughter's clothes and bed which had instigated police involvement. Furthermore, the Panel had serious concerns regarding the nature of the comments made by D towards his daughter which were graphic and threatening. The Panel noted that D had attempted to assure the Panel that his actions had been those of a concerned parent. However, the Panel noted that D's wife had maintained contact with their daughter through the same period of time without any restriction by the police.

D produced a translated letter from a psychiatrist registered in Turkey dated 19th September 2018 which appears to state that D is suffering with symptoms of depression and anxiety. The Panel considered the letter and concluded that, whilst the letter may give rise to concerns about D's mental health, the Panel would require a more detailed assessment before making any findings in relation to his medical fitness.

The Panel was informed that, in October 2012, the Council's Licensing Hearings Panel considered complaints against D and concluded that, on the balance of probability, D had carried an excess number of passengers, conducted himself in an inappropriate manner and had been driving dangerously. The Panel noted that D's hackney carriage and private hire driver licence had been revoked by the sitting Panel in October 2012, and was later reinstated on appeal to the Magistrates' Court on a procedural technicality.

The Panel was also informed that in October 2014, the Licensing Hearings Panel considered further complaints against D and concluded that, on the balance of probability, D had been driving in a dangerous manner and that his conduct had been inappropriate on two separate occasions. The Panel noted that the Panel sitting in October 2014 had issued D with a written warning in respect of his conduct.

The Panel accepted the findings of the previous Panels and had concerns about the incidents relating to D's conduct which were considered in 2012 and 2014. In light of historic and current concerns, the Panel concluded that D had demonstrated a propensity to behave in an aggressive and confrontational manner and that this was not the behaviour of a fit and proper person.

THE DECISION:

Taking account of the above and having given appropriate weight to the evidence, the Panel was not satisfied that D was a fit and proper person.

The Panel was not satisfied that the specific circumstances of D's case justified a departure from the Policy.

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.

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In accordance with section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976, the Panel decided to give immediate effect to the decision in the interests of public safety.

The meeting closed at 3.20 pm

Chairman of the Panel