

Present

Councillor Mrs I Sanderson (in the Chair)

Councillor R A Baker

Councillor P Bardon

LAHP.3 **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.4 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.4 **CONDUCT OF LICENSED HACKNEY CARRIAGE DRIVER**

All Wards

The subject of the decision:

The Executive Director asked the Panel to consider whether to take any action against a hackney carriage driver licence held by the licensee ("Mr E").

Alternative options considered:

The Panel considered all of the options outlined in paragraph 8.1 of the officer's report but, having concluded that Mr E was not a fit and proper person to hold a hackney carriage driver licence, the only suitable option was to revoke the licence. The Panel was not satisfied that a warning or a suspension would adequately address the concerns raised.

The reason for the decision:

The Panel considered the officer's report, the witness evidence, Mr E's written representations, the Council's Vehicle and Driver Licensing Policy and the relevant legislation.

Mr E had informed Hambleton District Council ("the Council") that he would not be attending the hearing. No adjournment was sought and the Panel considered the matter in Mr E's absence.

The Panel heard evidence in relation to the following matters:

Allegation 1

The Panel considered Mr E's involvement in the use of a hackney carriage vehicle by an unlicensed driver on 2nd February 2013.

The Panel was satisfied that Mr E, as the holder of the hackney carriage vehicle licence, could have prevented the commission of the offence.

The Panel was not satisfied that the breach could be properly explained by Mr E's claims that he had sold the vehicle the day before the incident.

The Panel gave appropriate weight to the fact that Mr E had not been convicted for permitting the use of the vehicle. However, the Panel also acknowledged that, in order to prosecute Mr E of a criminal offence, Middlesbrough Borough Council (Middlesbrough BC) would have had to prove Mr E's guilt beyond reasonable doubt whereas, in a civil case such as this one, a different standard of proof applies, namely the balance of probabilities.

The Panel found on the balance of probabilities that Mr E had permitted the use of a hackney carriage vehicle by an unlicensed driver on 2nd February 2013.

The Panel considered the length of time that had passed since the incident and it attached appropriate weight to the incident on the question of Mr E's suitability to act as a hackney carriage driver.

Allegation 2

The Panel considered the alleged failure of Mr E to display a hackney carriage licence plate and driver badge on 16th October 2013.

The Panel considered Mr E's letter dated 28th August 2015 and found that it conflicted with the officer's report and the witness statement provided by an officer of Middlesbrough BC.

The Panel was satisfied that Mr E's version of events had changed from the version given to the Council's Licensing Team at the time of the incident and therefore appropriate weight was given to Mr E's written representation in this regard. The Panel accepted the account submitted by the officer of Middlesbrough BC and found on the balance of probabilities that Mr E was working at the time of the incident on 16th October 2013.

The Panel noted that, even if it had accepted Mr E's explanation in relation to the display of the licence plate, it still would have concluded that a breach had taken place as the plate should be affixed externally at all times.

The Panel was satisfied that Mr E had failed to correctly display his hackney carriage licence plate and it found on the balance of probabilities that Mr E had also failed to display his driver badge on 16th October 2013.

The Panel considered the length of time that had passed since the incident and it attached appropriate weight to the incident on the question of Mr E's suitability to act as a hackney carriage driver.

Allegation 3

The Panel considered the alleged failure of Mr E to display a hackney carriage driver badge on 27th October 2014.

The Panel was satisfied that Mr E did not challenge the written warning at the time of the incident and made no recent representations to the Council in respect of this allegation. The Panel therefore accepted the evidence provided by officers.

The Panel found on the balance of probabilities that Mr E had failed to display his driver badge on 27th October 2014.

The Panel considered the breach consistent with a very similar breach one year earlier and it attached appropriate weight to the matter on the question of Mr E's suitability to act as a hackney carriage driver.

Allegation 4

The Panel considered the alleged failure of Mr E to submit a criminal record check upon request by 9th May 2015 in accordance with the Council's policy. The failure to do so led to the suspension of Mr E's licence.

The Panel accepted Mr E's account that he could not access the website a couple of times. However, the Panel was satisfied that Mr E was given over a month to submit a Disclosure and Barring Service application before the suspension was imposed and it found on the balance of probabilities that Mr E had failed to make sufficient attempts to comply.

The Panel was satisfied that Mr E's criminal record itself had not raised concerns and that the matter was eventually resolved when a Disclosure and Barring Service application was submitted on 15th June 2015. However the Panel was slightly concerned that Mr E took a total of two months to comply with a routine request.

The Panel attached appropriate weight to the incident on the question of Mr E's suitability to act as a hackney carriage driver.

Allegation 5

The Panel considered an allegation made by a member of the public that Mr E had urinated in the street, approximately 20 yards from the complainant's house.

The Panel considered the email of complaint along with the images and video recording of the incident provided by the complainant. The Panel also considered Mr E's written representations dated 28th August 2015 and 1st October 2015.

The Panel was satisfied that, on 8th July 2015, Mr E had parked his hackney carriage vehicle approximately 20 yards from the complainant's residential property. The Panel was satisfied that the audio content on the recording was more conclusive than the images. The Panel was satisfied that Mr E had said that he was "busting" and that he had apologised to the complainant. The Panel found on the balance of probabilities that this discussion took place because Mr E had urinated in the road. The Panel did not accept Mr E's contention that he had been checking his tyres at the time.

The Panel was satisfied that Mr E's conduct was inappropriate for that which can be reasonably expected of a licensed hackney carriage driver. Appropriate weight was attached to the question of Mr E's suitability to act as a hackney carriage driver.

Additional Information

The Panel considered the revocation of Mr E's Public Service Vehicle Operator Licence by the Office of the Traffic Commissioner on 7th January 2015.

Mr E made no representations to the Council in respect of this information and therefore the Panel accepted the accuracy of the officer's report, the press report and the records held by the Office of the Traffic Commissioner.

The Panel was satisfied that the Traffic Commissioner had cause to revoke Mr E's licence at a public inquiry on 7th January 2015. The Panel was also satisfied that the press report dated 8th January 2015 provided an accurate account of the public inquiry held on 7th January 2015.

The Panel was concerned that the matters raised at the public inquiry were in keeping with the issues already considered by the Panel in relation to Mr E's conduct, repeated breaches and apparent disregard for regulatory requirements. The Panel attached appropriate weight to these concerns on the question of Mr E's suitability to act as a hackney carriage driver.

THE DECISION:

Taking account the above and having attached appropriate weight to the evidence, the Panel concluded that Mr E was not a fit and proper person to hold a hackney carriage driver licence and revoked his hackney carriage driver licence. The Panel was satisfied that any sanction less than a revocation would not be sufficient to enable Mr E to regain his fitness and propriety.

The meeting closed at 1.35 pm

Chairman of the Panel