

Agenda

Minutes for Information

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Agenda Annex

Minutes of the meeting of the Licensing and Appeals Hearings Panel held at 9.30 am on Monday, 2nd March, 2020 at Council Chamber, Civic Centre, Stone Cross, Rotary Way, Northallerton, DL6 2UU

Present

Councillor R Kirk (in the Chair)

Councillor N A Knapton

Councillor A Wake

LAHP.14 **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.15 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.15 **Conduct of Hackney Carriage and Private Hire Driver**

All Wards

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 outlined in paragraph 6.1 of the Director's report. The Panel concluded that D was a fit and proper person to continue to hold a hackney carriage and private hire driver's licence subject to being issued with a written warning and therefore it was not necessary to revoke or suspend D's licence.

The reason for the decision:

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

The Panel noted that, in 2001, D was the subject of an investigation into an allegation of overloading a licensed vehicle. D subsequently admitted carrying an excess number of passengers and received a written warning as a result.

The Panel also noted that, in December 2013, North Yorkshire Police issued D with a Community Resolution Order following allegations that he made threatening comments on Facebook about foreign people setting up taxi firms and putting him out of business. D also received a written warning from the Council in relation to the same matter.

The Panel noted that, on 18 December 2019, Hambleton District Council's Licensing Team received some information from Hambleton and Richmondshire Pupil Referral Service (via North Yorkshire County Council) in relation to concerns over some comments allegedly made by a driver who was later identified as D.

The Panel noted that the report of the Pupil Referral Service stated that a 14 year-old male student indicated that D had used inappropriate language of a sexual nature in response to a taxi booking enquiry from a female passenger. The report stated that the 14 year-old male student was amused by D's comment and that this was not the first time that D had made comments similar to this.

The Panel noted that, on 19 December 2019, D attended the Council offices to give his account of the alleged incident. D denied that the incident occurred and he insisted that he had never had a conversation of that nature in the presence of passengers. D acknowledged that conversations of this nature would be totally unacceptable.

The Panel noted that, in December 2019, the Local Authority Designated Officer (LADO) at North Yorkshire Safeguarding Unit consulted with the Pupil Referral Service and a social worker in relation to the alleged incident and this was reported back to the Licensing Team. The social worker stated that the 14 year-old male student described the incident to her directly and confirmed that D had used inappropriate language of a sexual nature in response to a taxi booking enquiry from D's ex-girlfriend.

The Panel noted that the Pupil Referral Service had sought to make further enquiries with the male student in January 2020. However, at that time, he was refusing to answer any further questions in relation to the incident.

The Panel considered an email sent by the male student's mother ("M") on 10 February 2020 to the Licensing Team. The Panel noted that M expressed her concerns over the accuracy of the information provided to the Council in respect of D and indicated that her son was not present at the time of the incident and that he had not heard anything. The Panel noted M indicated that she had known D for 19 years and that she had found him to be professional and friendly.

The Panel also considered the case notes of the social worker and confirmation of the account provided by the Pupil Referral Service both of which were sent to the Licensing Team in February 2020. The Panel noted that the account provided by the Pupil Referral Service and the case notes of the social worker were consistent with the original information provided to the Council.

The Panel noted that it is entitled to rely on any evidential material, even if it is hearsay. In doing so, the Panel considered the source, nature and inherent probability of the evidence in order to assess its credibility. The Panel was satisfied that the Pupil Referral Service and the social worker are reliable sources and there were no reasonable grounds to doubt the accuracy of their reports.

The Panel was satisfied that the passenger had not intended to cause trouble for D as he found the incident amusing and did not believe that the driver had done anything wrong. The Panel noted that D believed that he had a good relationship with the passenger. On that basis, the Panel concluded that there were no grounds to doubt the accuracy of the accounts provided by the male passenger to the Pupil Referral Service and the social worker.

The Panel concluded that the alleged incident did occur and that the use of sexually suggestive language with a passenger was in contravention with the Council's Policy.

The Panel noted that the passenger involved in the alleged incident had not raised any concerns regarding D's conduct in respect of this incident and, reportedly, had found the exchange amusing. Similarly, the female caller was said to have laughed at D's comments and there was no suggestion that the incident had caused her any direct offence.

The Panel also noted that D had provided character references from two customers. The Panel concluded that D would have positive experiences with some customers. However, the Panel was concerned that his behaviour on this occasion was not appropriate.

The Panel concluded that a written warning issued by the Council's Principal Licensing Officer in relation to D's conduct and the Council's Policy requirements would be appropriate under the circumstances. The Panel was satisfied that the incident was unlikely to be repeated and that D would understand that any future concerns in this regard would raise serious doubts as to his suitability to act as a hackney carriage and private hire driver.

The decision:

Taking account of the above and having given appropriate weight to the evidence the Panel reached the following conclusions:-

The Panel was satisfied that the applicant was a fit and proper person to continue to hold a hackney carriage and private hire driver licence subject to a written warning being issued by the Council's Principal Licensing Officer in relation to appropriate conduct and Policy requirements.

The meeting closed at 10.15 am

Chairman of the Panel

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Present

Councillor R Kirk (in the Chair)

Councillor N A Knapton

Councillor A Wake

LAHP.16 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.17 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.17 Conduct of Hackney Carriage and Private Hire Driver

All Wards

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 Director’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 not satisfied that any of the alternative options, including issuing a warning or a suspension, would adequately serve the interests of the public.

The reason for the decision:

The Panel considered the Director’s report, the written and oral representations of D, the Council’s Hackney Carriage and Private Hire Licensing Policy and the relevant legislation.

The Panel noted that D had been licensed for approximately three years from 2011 to 2014. The Panel also noted that, in 2017, D applied for a new hackney carriage and private hire driver licence with Hambleton District Council. The application was referred to the Council's Licensing and Appeals Hearings Panel on 1 August 2017 to consider the application and, in particular, a caution on D's criminal record from 24 January 2015 for an offence of battery.

The Panel also considered the contents of the minutes of the hearing where it was determined that the incident in January 2015 had been an isolated incident and subsequently D's application was granted. The Panel noted that, at that hearing, D had expressed regret for his conduct during the incident and had later undertaken counselling and stress management.

The Panel noted that, on 26 January 2020, the Council received a complaint from a licensed hackney carriage driver in relation to an alleged incident involving D on 19 January 2020. The complainant alleged that, on 19 January 2020, he arrived at D's home address to collect a pre-booked fare, at which time, D had become verbally abusive and had threatened the complainant that there would be consequences if he did not leave the property. The Panel noted from the complainant's account that he had tried to reason with D but D then parked his own vehicle across the highway preventing the complainant from driving away with his passengers.

D informed the Panel that the incident occurred as a result of an argument between him and his partner, which had started as a minor disagreement that escalated over the course of the day. D told the Panel that his partner had booked a taxi as she was in the process of leaving to return to her own home. D told the Panel that he did not want her to leave as he wanted to talk to her to resolve the issue. D also informed the Panel that he had asked the taxi driver to leave numerous times. D informed the Panel that he could not recall using bad language but admitted he had blocked in the complainant's vehicle to prevent his partner from leaving the property. D stated that he had blocked in the complainant's vehicle for 25-30 minutes before moving it and allowing the complainant and his passengers to leave.

The Panel noted that D had attended the Council offices on 29 January 2020 and informed the Licensing Enforcement Officer that he was wound-up, frustrated and angry.

The Panel acknowledged its duty to consider the potential impact of D's character on passengers and other members of the public. In doing so, the Panel is required to consider not only the individual's behaviour whilst working in the licensed trade but the individual's entire character, including, but not limited to, the individual's attitude and temperament.

The Panel was concerned that, despite knowing that his partner had made arrangements to return home, D not only wanted her to stay but, by parking his vehicle across the road, he took active steps to prevent her from leaving. The Panel acknowledged that D did not use physical restraint against his partner but it concluded that D's conduct was wholly inappropriate. The Panel noted that,

throughout the investigation and the subsequent proceedings, there was never any suggestion that any other person present had reacted in an aggressive or confrontational manner towards D. The Panel was concerned that D's conduct could easily have led to a far more serious public order issue had it not been for the temperament of the other parties present.

D informed the Panel that he had spoken to the complainant on 20 January 2020 (the day after the incident) and had apologised for his behaviour and offered financial compensation for any missed fares. The Panel noted that the complainant subsequently submitted his complaint on 26 January 2020.

The Panel noted that D's partner had confirmed to the Council's Licensing Enforcement Officer that, at the time of the incident, she had heard D shouting and that D had blocked in the complainant's vehicle and had refused to move it when asked to.

The Panel noted that the complainant had sought to reason with D and, when he had been unsuccessful, he had contacted the police. The Panel concluded that D had shouted at the complainant using verbally abusive language and that D had blocked in the complainant's vehicle for at least 25 minutes. The Panel was satisfied that D's conduct towards the complainant was unprovoked, aggressive and continued for a sustained period of time. The Panel concluded that D's conduct was not in keeping with the Council's expectations of a licensed driver.

D informed the Panel that he had taken over sole custody of his children and that his domestic situation was, at times, incredibly stressful. The Panel noted that D was remorseful for the incidents that occurred in January 2020 and previously in 2015. The Panel noted that licensed drivers are expected to demonstrate appropriate professional conduct at all times whether in the context of their work or otherwise. The Panel noted that the Policy requires licensed drivers to be "*courteous, avoid confrontation, not be abusive or exhibit prejudice in any way*". The Panel concluded that D's conduct was not in accordance with the Policy requirements.

D informed the Panel that, at the time of the incident, his adrenaline was running high. However, he subsequently regretted his actions. D told the Panel that the incident was a one-off and that he would ensure it would not happen again. D also informed the Panel that, since the incident, he had begun to undertake counselling and stress management through a mental health charity.

The Panel that determined D's application in 2017 was satisfied that D's caution for battery came as a result of an isolated incident. The Panel in the present case could not be so satisfied because D's character and temperament had once again been brought into question. The Panel noted that D had undertaken a course of stress management and counselling in 2015 and was undergoing a similar course of counselling following the incident in January 2020.

The Panel acknowledged that D had attempted to take steps to address any stress-related anger but it was concerned about his ability to sustain any behavioural changes. The Panel was not satisfied that the steps taken by D to manage his behaviour would adequately address the concerns over his suitability to hold a hackney carriage and private hire driver licence.

The Panel noted that, according to Council records, D was not the subject of any other complaints. The Panel considered the contents of four character references provided by customers in support of D and a reference from D's current employer. The Panel accepted that D would have some positive experiences with customers and had a good reputation with his employer.

The Panel noted that licensed drivers are often required to deal with difficult customers and therefore must possess the necessary characteristics to ensure the safety of themselves, their passengers and other members of the public. The Panel was concerned that, not for the first time, D had reacted in an aggressive and confrontational manner.

The Panel concluded that D was not a fit and proper person to continue to hold a hackney carriage and private hire driver licence.

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 to hold a hackney carriage and private hire driver licence.

The Panel was satisfied that the hearing to determine D's application in 2017 should have served as a warning in relation to his future conduct. On that basis, the Panel was not satisfied that a warning or suspension would adequately address its concerns and 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 12.20 pm

Chairman of the Panel