

## **REGULATORY PANEL**

**WEDNESDAY 29 MAY 2013 AT 2.00 PM**

**PRESENT:** Councillors Allison, Bell, Cape, Craig, Ms Franklin, Layden, Morton, Mrs Parsons, Scarborough, Stothard (as substitute for Councillor Mrs Stevenson), Mrs Vasey and Mrs Warwick.

**OFFICERS:** Assistant Solicitor  
Licensing Officers x3

### **RP.21/13 APPOINTMENT OF CHAIRMAN**

It was moved and seconded that Councillor Bell be appointed as Chairman of the Regulatory Panel for the municipal year 2013/14.

**RESOLVED** – That Councillor Bell be appointed as Chairman of the Regulatory Panel for the municipal year 2013/14. Councillor Bell thereupon took the Chair.

### **RP.22/13 APPOINTMENT OF VICE CHAIRMAN**

It was moved and seconded that Councillor Ms Franklin be appointed as Vice Chairman of the Regulatory Panel for the municipal year 2013/14.

**RESOLVED** – That Councillor Ms Franklin be appointed as Vice Chairman of the Regulatory Panel for the municipal year 2013/14

### **RP.23/13 APOLOGIES FOR ABSENCE**

An apology for absence was submitted on behalf of Councillor Mrs Stevenson.

### **RP.24/13 DECLARATIONS OF INTEREST**

Councillor Cape declared an interest in accordance with the Council's Code of Conduct in respect of agenda item A.2 Hackney Carriage Driver – Speeding Conviction IM. The interest related to the fact that he knew the Hackney Carriage Driver.

### **RP.25/13 MINUTES OF PREVIOUS MEETINGS**

**RESOLVED** – That the minutes of the meeting held on 13 March 2013 be agreed as a correct record of the meeting and signed by the Chairman.

### **RP.26/13 HACKNEY CARRIAGE DRIVER – SPEEDING CONVICTION MPL**

The Licensing Officer submitted report GD.22/13 regarding a licensed Hackney Carriage Driver who had reported that he had been convicted of a speeding offence whilst transporting a fare paying passenger.

Mr Lewcock, the Driver, was in attendance at the meeting.

The Assistant Solicitor outlined the procedure the Panel would follow. Mr Lewcock confirmed that he had received and read the Licensing Officer's report. The Assistant Solicitor advised Mr Lewcock that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Officer outlined Mr Lewcock's Licensing History and highlighted previous incidents that had occurred.

The Licensing Officer reported that Mr Lewcock had informed the Licensing Office that he had received a £60 fine and 3 points for speeding on 10 February 2013. He had been in his taxi at the time and had been carrying a fare paying passenger. This had been the only conviction on Mr Lewcock's driving licence. In mitigation Mr Lewcock claimed his passenger had thought he was about to be sick and that was the reason for the lapse of concentration.

Mr Lewcock then addressed the Panel. He admitted that he had been over the speed limit and he had lost concentration due to the condition of his passenger. The passenger had been making noises as though he was going to be sick and he had opened the passenger side door. Mr Lewcock sped up to drop the passenger off at the bus stop before he had been sick in the car.

In response to questions Mr Lewcock stated that the incident occurred at approximately 3.30am. He had undertaken a speed awareness course in November 2012 and learned a great deal from the course about speeding and road safety. He had been travelling at 36mph in a 30mph zone. He confirmed that he had previously been travelling at 26 mph but had speeded up to 36mph when his passenger opened the car door. He confirmed that his vehicle was a white saloon.

The Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – 1) That, having given detailed consideration to the matter and taking into account the representations from Mr Lewcock, the Panel agreed to suspend Mr Lewcock's Hackney Carriage Driver's Licence for a period of 14 days.

2) That it be noted that Mr Lewcock was informed that he had a right of appeal and that right would be confirmed in writing.

#### **RP.27/13      HACKNEY CARRIAGE DRIVER – SPEEDING CONVICTION IM**

*Having declared an interest Councillor Cape left the meeting for the consideration of the following item.*

The Licensing Officer submitted report GD.23/13 regarding a licensed Hackney Carriage Driver who had reported that he had been convicted of a speeding offence whilst transporting a fare paying passenger.

Mr Magill, the Driver, was in attendance at the meeting.

The Assistant Solicitor outlined the procedure the Panel would follow. Mr Magill confirmed that he had received and read the Licensing Officer's report. The Assistant Solicitor advised Mr Magill that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Officer outlined Mr Magill's Licensing History and highlighted previous incidents that had occurred.

The Licensing Officer reported that Mr Magill had informed the Licensing Office that he had received a £60 fine and 3 points for speeding on 3 March 2013. He had been in his taxi at the time and had been carrying two fare paying passengers. His speed had been recorded by a fixed camera at Warwick Bridge at 39mph in a 30mph limit at 3.07am.

Mr Magill then addressed the Panel. He apologised for the offence and stated that he did not have an excuse. He had been tired, it was late in his shift and it had been lack of concentration. He was aware of the speed limit and tried to keep to a high standard and on the occasion in question it had been due to lack of concentration.

In response to questions Mr McGill confirmed that he had three points on his licence as previous points had been spent and he had taken the Driving Standards Agency Taxi Driving Test when he had applied for his licence.

The Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – 1) That, having given detailed consideration to the matter and taking into account the representations from Mr McGill, the Panel agreed to suspend Mr McGill's Hackney Carriage Driver's Licence for a period of 14 days.

2) That it be noted that Mr McGill was informed that he had a right of appeal and that right would be confirmed in writing.

*Councillor Cape returned to the meeting.*

## **RP.28/13 PUBLIC AND PRESS**

**RESOLVED** – That in accordance with Section 100A(4) of the Local Government Act 1972 the Public and Press were excluded from the meeting during consideration of the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in the paragraph number (as indicated in brackets against each minute) of Part 1 of Schedule 12A of the 1972 Local Government Act.

## **RP.29/13 HACKNEY CARRIAGE EXCEPTIONAL CONDITION POLICY AND HACKNEY CARRIAGE DRIVER FIT AND PROPER PERSON**

The Licensing Officer submitted reports GD.29/13 and GD.27/13 regarding the condition of a Hackney Carriage under the Exceptional Condition Policy and the suitability of Hackney Carriage Driver as a fit and proper person. Both reports concerned the same Hackney Carriage Driver, DC and the Panel agreed to hear both reports together.

DC, the Driver, GF the Driver's witness, and PW, NW and PCGR were in attendance at the meeting.

The Assistant Solicitor advised DC that he had a right to be represented.

DC addressed the Panel. He explained his personal circumstances and an incident that had occurred that morning which prevented him from representing himself properly at the meeting. He requested that the meeting be adjourned to allow him time to prepare himself. He voluntarily offered to surrender his vehicle plate and drivers badge to the Chairman of the Carlisle Taxi Association until the reconvened meeting.

The Licensing Officer reminded the Panel and DC that the vehicle plate and drivers badge were the property of Carlisle City Council and therefore should be surrendered to the City Council.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – That the Panel be adjourned until 12 June 2013 to allow DC time to prepare for the meeting. The Panel agreed to DC's voluntary submission of his vehicle plate and drivers badge on the condition that they were surrendered to Carlisle City Council within 24 hours.

The meeting adjourned at 3.05 pm

**The meeting reconvened on Wednesday 12 June 2013 at 2.00 pm.**

PRESENT: Councillor Bell (Chairman), Councillors Allison, Cape, Craig, Ms Franklin, Layden, Morton, Mrs Parsons, Scarborough, Stothard (as substitute for Councillor Mrs Stevenson) and Mrs Vasey (until 2.20 pm)

OFFICERS: Assistant Solicitor  
Licensing Manager  
Licensing Officer

**RP.30/13 APOLOGIES FOR ABSENCE**

Apologies for absence were submitted on behalf of Councillors Mrs Stevenson and Mrs Warwick.

**RP.31/13 DECLARATIONS OF INTEREST**

There were no declarations of interest affecting the business to be transacted at the reconvened Panel meeting.

## **RP.32/13 PUBLIC AND PRESS**

**RESOLVED** – That in accordance with Section 100A(4) of the Local Government Act 1972 the Public and Press were excluded from the meeting during consideration of the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in the paragraph number (as indicated in brackets against each minute) of Part 1 of Schedule 12A of the 1972 Local Government Act.

## **RP.33/13 CHAIRMAN'S COMMENTS**

The Chairman welcomed all those present to the reconvened meeting of the Regulatory Panel.

The Chairman noted that the Hackney Carriage Driver (DC) had yet to arrive, stating that the meeting would adjourn to afford DC the opportunity to attend.

The meeting adjourned at 2.03 pm and reconvened at 2.08 pm

## **RP.34/13 HACKNEY CARRIAGE EXCEPTIONAL CONDITION POLICY AND HACKNEY CARRIAGE DRIVER FIT AND PROPER PERSON**

(Public and Press excluded by virtue of paragraph 7)

Pursuant to Minute RP.29/13, the Licensing Officer submitted reports GD.29/13 and GD.27/13 regarding the condition of a Hackney Carriage under the Exceptional Condition Policy; and the suitability of Hackney Carriage Driver as a fit and proper person. Both reports concerned the same Hackney Carriage Driver (DC) and the Panel agreed to hear the reports together, prior to giving detailed consideration to each of the matters in turn.

The Chairman sought and received confirmation that all Members had read the reports prior to the meeting.

(1) The Licensing Officer began to outline, in detail, the content of report GD.29/13 entitled "Hackney Carriage Exceptional Condition Policy".

During the Licensing Officer's presentation the Licensing Manager informed the Panel that DC had arrived.

DC entered the meeting at 2.20 pm.

The Chairman informed DC that the meeting had commenced as scheduled at 2.00 pm and that the Panel was disappointed by his late arrival. DC apologised to the Panel.

The Chairman introduced the Panel Members and Officers who were in attendance.

The Assistant Solicitor outlined the procedure the Panel would follow. DC confirmed that he had received and read the Licensing Officer's report, and that he understood the procedure. The Assistant Solicitor advised DC that he had a right to be represented.

In response, DC explained that his Solicitor was unable to attend today. He had, however, brought a number of letters / certificates in support of his case, copies of which could be shown to Members. Compiling the information had involved a lot of time and effort.

The Assistant Solicitor emphasised that, should the Panel resolve to suspend / revoke DC's Hackney Carriage Licence, there would be no further opportunity for his Solicitor to appear before the Panel to represent him.

DC confirmed that he understood the options as outlined by the Assistant Solicitor, and that he would represent himself on this occasion.

For the benefit of DC, the Licensing Officer reiterated her previous detailed presentation of report GD.29/13.

The Licensing Officer reminded Members that the Regulatory Panel had, on 10 November 1997 and 28 February 2007, adopted and amended a set of criteria for licensed vehicles which included the proviso that, when a wheelchair accessible hackney carriage was ten years old, the proprietor must apply for an extension to the licence to show that the vehicle was maintained in 'exceptional condition'. The vehicle owned by DC was 22 years old and it was the opinion of the Licensing Officers that the vehicle no longer fulfilled the 'exceptional condition' criteria.

Since the vehicle was over ten years old it was subject to four monthly mechanical inspections at the City Council's garage, followed by a visual inspection by a Licensing Officer.

In early 2011 Licensing Officers had been concerned that the vehicle had reached the end of its useful life due to the number of mechanical failures and that it had fallen well below the 'exceptional condition' criteria. Despite repeated opportunities DC had not carried out the requested work on the vehicle. The Regulatory Panel considered the condition of DC's vehicle in February 2011 and agreed not to suspend DC's licence at the time, but to review the vehicle one month after the meeting to allow DC time to carry out the work. The Panel made it clear that DC would be referred back to the Panel for consideration of the revocation of his Hackney Carriage licence should the vehicle fail the inspection. A visual inspection was carried out a month later and DC had maintained the vehicle's condition at that time.

The Licensing Officer gave an overview of the history of tests, inspections and communications from 9 February 2011, full details of which were set out at Section 2.7 of the report. She informed the Panel that Carlisle City Council currently licensed 78 wheelchair accessible hackney carriages, of which 8 were over 10 years old and subject to the 'exceptional condition' criteria. Hackney proprietors abided by the Council's age policy and most strived to ensure that their vehicle met the required standards.

With the permission of the Panel, the Licensing Officer tabled copies of a photograph of the next oldest vehicle to that of DC (which was 4 years 5 months younger and passed every mechanical and visual inspection first time); together with photographs showing the front grill of the metro cab.

It had been noted by the Licensing Section that the age and condition of DC's vehicle had given rise to comments from other drivers who questioned why DC's vehicle remained licensed in view of its condition. Some used it as a 'lever' to refrain from

undertaking necessary work and it was felt that this would impact upon the future standards of the taxi fleet.

The Licensing Officer then responded to Members' questions. She confirmed that DC had once again failed to make his vehicle available for inspection by Members this afternoon.

The Chairman invited DC to put questions to the Licensing Officer on the content of her report.

In response, DC explained the personal and stressful circumstances which had prevented him from presenting his vehicle for inspection by Members on 29 May 2013. DC added that he had wanted to bring the vehicle for inspection this afternoon, but required to make preparations in advance of the vehicle being re-upholstered the next day. That appointment was a cancellation and it had not been possible to arrange any other date for the work. He also elaborated upon the differences between a London style taxi and a Metrocab.

The Panel noted that the condition of the seat covers had been raised with DC almost two years before.

DC also took issue with the service of a Section 68 Notice served upon him by post; and removal of the vehicle plates as detailed within the report. He clarified that the damage to the front of his vehicle had been caused by a large dog running into the road.

In response, the Licensing Officer confirmed that the vehicle had failed a mechanical test resulting in the Section 68 Notice being issued. A copy of the Notice had also been handed to DC during a brief meeting on 28 March 2013. Removal of the vehicle plates had been undertaken correctly and in line with established practice.

DC then addressed the Panel. He outlined in some detail his academic qualifications and experience of the motor trade, which spanned a period in excess of thirty years; the mechanical history of the vehicle (including omissions levels), and the work which he personally undertook in maintaining the vehicle to a generally high standard over its lifespan. DC commented that he ran the vehicle out of respect for his many years of training.

Referring to the test / inspection history, DC commented upon the difficulties he had experienced in trying to obtain a replacement roof lining for the vehicle. A stain had been caused as a result of transporting an injured passenger to hospital. He had, however, replaced the carpet. DC added that a series 1 front grille was no longer available. He had, together with another engineer, made a replacement aluminium grille which was superior to the original fitment. The seat covers would be replaced in "leatherette" material. There were no safety issues with the vehicle.

DC further alleged that a ruling from the Monopolies Commission and under the Human Rights Act prohibited a manufacturer from requiring their own parts to be fitted to a vehicle following expiry of the warranty period.

DC then responded to a number of questions from Members of the Panel, the Assistant Solicitor and Licensing Officer.

In summing up, the Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel.

In summary, DC stated that his vehicle was always kept clean and the interior maintained in nice condition. DC had only ever received one customer complaint i.e. the complaint dated 5 November 2011 and he explained the circumstances leading to submission of that complaint.

the meeting adjourned for a comfort break at 3.27 pm, reconvening at 3.38 pm

The Chairman indicated that the Panel would follow the procedure explained earlier in the meeting.

DC confirmed that he fully understood the procedure.

(2) The Licensing Officer presented in detail the content of report GD.27/13 concerning a number of complaints received about the conduct of a Hackney Carriage Driver, the driver being DC.

The Licensing Officer outlined DC's Licensing History; together with details of previous complaints and expressions of appreciation of actions taken by the driver which had been received.

The Licensing Officer highlighted, in particular, the most recent complaint received on 29 April 2013 from a neighbour (NJW) which included DC being in possession of a dangerous dog; allowing his dog to attack her twice; allowing his dog to damage his vehicle.

With the permission of the Panel, the Licensing Officer tabled colour photographs which showed more clearly the injuries sustained by the complainant as a result of the dog attack.

She reminded Members that a Witness Statement had been provided by PCGR who attended the first adjourned Panel meeting, but unfortunately, he was unable to attend this meeting due to prior commitments.

Members of the Panel raised no questions of the Licensing Officer.

The Chairman invited DC to put questions to the Licensing Officer on the content of her report.

DC replied that the dog had not been carried in the front of the taxi. The driver's side rear window had exploded as a result of being hit by an air gun pellet. He had not worked the vehicle when the dog was inside.

DC added that the allegations that the dog was dangerous and that he had not tried at any point to restrain the dog were untrue. He had in fact apologised and tried to assist the complainant with his first aid kit following the attack. The Police attended and a restorative justice process was invoked.



The dog had been registered with a Veterinary Practice. The vet had checked the Register and the dog was not a dangerous breed.

PW and NJW (the complainants) entered the meeting at 3.57 pm

DC then addressed the Panel. DC explained the circumstances leading up to the attack, together with his actions in seeking to assist thereafter. He acknowledged that he had been at fault by not having the dog restrained on a lead or choker chain.

DC read out the content of a character reference supplied by a neighbour. Copies of that letter, together with a letter of thanks for assistance provided were tabled at the meeting for Members' attention.

DC indicated that, having taken legal advice, he did not wish to comment further on the matter.

PW addressed the Panel and expanded upon his written statement, a copy of which was appended to the report. PW and NJW also responded to questions from a Member and the Licensing Officer arising from the information.

DC then questioned PW on the content of his submission.

The Chairman thanked PW and NJW for their attendance.

PW and NJW retired from the meeting at 4.18 pm

The Licensing Officer outlined the background to separate complaints received on 29 April 2013 alleging that DC's conversation and behaviour towards two female passengers during the course of the journey and thereafter were highly inappropriate; that his driving was dangerous; and that he had failed to re-set his taxi meter resulting in the first fare paying twice.

By way of assistance, the Licensing Officer drew DC's attention to the relevant section within the report.

DC then addressed the Panel. DC disputed the allegation that he had not re-set his meter after the first passenger paid her fare and was dropped off, resulting in the second passenger paying for the full journey. He emphasised that he had never done that at any time during his entire history as a licensed taxi driver. In fact, on numerous occasions when passengers were short of money, DC had accepted a lower fare to ensure that they were transported to a safe place.

DC also disputed the allegation that he was a dangerous driver, citing only one example when his actions had been to ensure the safety of his passengers. He further outlined the circumstances surrounding his voluntary visit to Carlisle Police Station.

DC then responded to questions from the Assistant Solicitor and Panel Members.

Whilst summing up, the Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel. DC did not wish to add anything further to what he had already presented.

The respective parties then withdrew from the meeting.

the meeting adjourned at 4.50 pm and reconvened at 4.55 pm

## **SUSPENSION OF STANDING ORDERS**

Pursuant to Council Procedure Rule 9 it was moved, seconded and AGREED that the meeting should continue beyond three hours in duration to enable the remaining business to be transacted.

The Panel gave detailed consideration to the matters.

The Parties returned at 5.05 pm

RESOLVED – That, having given detailed consideration to Report GD.29/13 and taking into account the representations from DC, the Panel agreed to revoke DC's Hackney Carriage licence as the vehicle was over ten years old; and had not been maintained in a proper manner, as a consequence of which it did not meet the City Council's 'exceptional condition' criteria.

RESOLVED - That, having given detailed consideration to Report GD.27/13 and taking into account the representations from DC and witness statements, the Panel agreed to revoke DC's Hackney Carriage Drivers Licence as he was not considered to be a 'fit and proper person' for the following reasons:

- (a) DC had shown a disregard for public safety in relation to the incident involving the dog;
- (b) DC had taken advantage of personal information available to him as a licensed driver and used it for his own personal gain in relation to the incident involving the two females;
- (c) DC had failed to maintain his vehicle in 'exceptional condition' over the previous two years either mechanically or visually as evidenced in the report.

(The meeting ended at 5.08 pm)