

REGULATORY PANEL

WEDNESDAY 12 FEBRUARY 2014 AT 2.00 PM

PRESENT: Councillor Bell (Chairman) Councillors Allison, Betton, C Bowman (as substitute for Councillor Mrs Parsons) Cape, Craig, Ms Franklin, Morton, Scarborough, Mrs Stevenson and Mrs Warwick.

OFFICERS: Legal Services Manager
Licensing Officer

RP.01/14 APOLOGIES FOR ABSENCE

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

RP.02/14 DECLARATIONS OF INTEREST

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

RP.03/14 MINUTES OF PREVIOUS MEETINGS

RESOLVED – That the minutes of the meetings held on 16 October 2013 and 20 November 2013 be agreed as a correct record of the meetings and signed by the Chairman.

RP.04/13 HACKNEY CARRIAGE DRIVER – COMPLAINT REGARDING USE OF MOBILE PHONE

The Licensing Officer submitted report GD.04/14 regarding a complaint from a member of the Civic Centre staff who had witnessed a Hackney Carriage Hire Driver using a hand held mobile whilst driving his taxi.

Mr Barnes, the Driver, and Mr Harrison, Mr Barnes' representative were in attendance at the meeting.

The Legal Services Manager outlined the procedure the Panel would follow. Mr Barnes confirmed that he had received and read the Licensing Officer's report.

The Licensing Officer outlined Mr Barnes' licensing history which included a previous application in 2001 for a Private Hire Driver's licence which had been refused and three convictions. In addition the Licensing Officer outlined a previous complaint which had been received in 2007 from the Council's Access Officer. The Access Officer had claimed that she had followed Mr Barnes for some considerable time in slow moving traffic on Dalston Road and that he had been using his mobile phone, which had been resting between his ear and shoulder, the whole time. Mr Barnes had been interviewed and had denied the allegation claiming it was in fact his two way radio, he also denied owning a mobile phone following medical advice.

The Licensing Officer reported that on 25 November 2013 Mr Oliver, a member of the Council's Chief Executive's Department, had contacted the Licensing Office to make a

complaint against Mr Barnes. The complaint alleged that Mr Barnes had turned right from Hartington Street into Victoria Place and had failed to see Mr Oliver turning left into Victoria Place from Chatsworth Square opposite. The vehicles would have collided if Mr Oliver had not taken the necessary evasive action. Mr Oliver claimed that the taxi driver had not seen him because he was using his mobile phone at the time. Mr Barnes continued to use his mobile phone along Victoria Place, Georgian Way, Hardwicke Circus and onto Castle Way.

The Licensing Officer stated that when Mr Barnes was first interviewed he denied being in the area at the time of the incident. He was informed that the Licensing Office had contacted the owner of the taxi who had confirmed Mr Barnes had been in the area. Mr Barnes then remembered he had been to Trinity School. Mr Barnes denied that there had been any road incident or that he had been using his mobile phone. Mr Barnes was informed that if the complaint could not be resolved it would go before the Regulatory Panel.

A Member raised Mr Barnes' previous appearance before the Panel and sought clarification with regard to the receipt of court documents. The Legal Services Manager explained to the Panel that Mr Barnes' previous appearance before the Panel could not be reconsidered and that the Panel were here to give consideration to the complaint by Mr Oliver only.

A Member asked if applicants for a Taxi Drivers Licence had to declare all of their previous convictions or just new convictions. The Legal Services Manager clarified that taxi drivers were exempt under the Rehabilitation of Offenders Act 1974 and therefore all offences were disclosable.

In response to questions the Licensing Officer confirmed the following details:

- Mr Barnes' driving licence had not been available to the Panel when they granted his licence on 17 April 2002, therefore, the Panel had not been aware of his speeding conviction from September 2001 which he had failed to declare on his application;
- With regard to the complaint made on 7 March 2007, the Licensing Office had not contacted Mr Barnes employer to confirm if he had a two way radio because the complainant had not wished to take the complaint further.

Mr Harrison questioned the information contained in the previous report which had been circulated and the Legal Services Manager clarified that the content had been incorrect and therefore withdrawn, she asked Mr Barnes to confirm that the information contained in Report GD.04/14 was correct. Mr Barnes confirmed that the information set out in the report was correct.

Mr Oliver then addressed the Panel. He explained that he was driving left from Chatsworth Square onto Victoria Place and Mr Barnes was turning right from Hartington Street onto Victoria Place across the traffic. The taxi cut in front of Mr Oliver and the driver was unaware of him. Mr Oliver stated that he had to take evasive action to avoid a collision. He stated that he could see the driver close up and the driver was holding a mobile phone held to his left ear. The driver had been in the left lane and Mr Oliver was in the right lane and was able to see that he was using his mobile phone all along Victoria Place, through the traffic lights, right turn onto Georgian Way and along to Hardwicke Circus.

In response to questions Mr Oliver confirmed the following:

- Mr Barnes had not stopped when Mr Oliver had been forced to take evasive action, he carried on driving;
- He felt that, had he not taken evasive action he would have collided with Mr Barnes;
- The lights on Victoria Place outside Carlisle College had been on green and the lights at the junction of Georgian Way had been on red;
- Mr Barnes had negotiated the traffic lights and turned smoothly and Mr Oliver did not know how he was able to change gears;
- He felt that the students, which had been on both sides of the road, were in danger as someone who was on a mobile phone whilst driving was not in control of their vehicle;
- He confirmed that Mr Barnes was on his mobile phone and was not simply rubbing his head;
- Mr Barnes was holding his mobile phone in his right hand to his left ear and not cradling it in his shoulder;
- He had not known Mr Barnes prior to the incident;
- He made the complaint primarily because Mr Barnes had nearly caused a road traffic collision and secondly because if Mr Barnes had caused an accident further on then Mr Oliver would “not have been able to live with himself” if had not reported what he had seen;
- The incident took place on a Monday morning.

A Member asked if it would be possible to obtain Mr Barnes’ mobile telephone bill to confirm if he was using his mobile at the alleged time and date. The Legal Services Manager responded that the Panel had two witness testimonies and they had to decide which of the testimonies to accept. If they wished to obtain the mobile records from Mr Barnes the meeting would have to be adjourned until they were available.

Mr Harrison, on behalf of Mr Barnes, then addressed the Panel. He stated that Mr Barnes’ case was simple. The Panel were aware Mr Barnes had suffered a subdural haematoma which had resulted in Mr Barnes having two holes in the left side of his head. Mr Barnes was always rubbing his head, it was a bad habit. Mr Harrison had specifically asked if it was Mr Barnes’ left hand to the left side of his head. He claimed that the witness was mistaken; to constantly drive the way Mr Barnes had would not have been possible, he would not have been able to navigate that area of town especially through three sets of traffic lights and a difficult turn. Mr Barnes was not on his mobile phone he was rubbing his head due to his head injury and that was what the witness had seen.

In response to Members questions Mr Barnes and Mr Harrison confirmed the following details:

- He had not denied being in the area, he had actually questioned how the owner of the vehicle had known his whereabouts;
- Mr Barnes had not been rubbing his head for the whole time of the incident;
- Mr Barnes stated that he did not touch his head constantly, he had two holes in his head which filled with blood, he rubbed them to prevent a migraine;
- Mr Barnes confirmed that he could now use a mobile phone
- Mr Barnes denied using a mobile phone whilst driving.

The Licensing Officer clarified that he had the registration number of the vehicle and he contacted the owner of the vehicle as he thought he had been the one driving. The owner informed the Licensing Officer that Mr Barnes had been driving the vehicle and

that he had a regular drop off at Trinity School. The Licensing Officer confirmed that Mr Barnes denied initially being in the area.

The Licensing Officer reminded the Panel that the matter was a civil matter and not a criminal matter. He outlined the relevant Legislation and outlined the options open to the Panel.

Mr Barnes summed up by informing the Panel that he had four children and an elderly mother to take care of.

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

RESOLVED –

1. The Decision

The Regulatory Panel had considered the evidence put before them by the Licensing Officer, Mr Harrison, Mr Barnes and Mr Oliver, the witness who attended today.

After careful consideration of the evidence specified in the Report to the Panel (GD.04/14) and presented to the Panel by the Licensing Officer, the evidence presented by Mr Barnes and his representative Mr Harrison, the Panel reached the following decision:-

To suspend Mr Barnes' Hackney Carriage Licence for two months. As well as the suspension, the Regulatory Panel require Mr Barnes to sit and pass a Driving Standards Agency Taxi Driving 'Taxi' Test within 13 weeks. If Mr Barnes did not pass his test within 13 weeks his licence would be revoked.

2. Reasons for the Decision

The Regulatory Panel gave the following reasons for the decisions:

1. They accepted fully the evidence given by the witness, Mr Oliver, that Mr Barnes was using his mobile phone whilst driving, and did not find Mr Barnes a credible witness.
2. They did not consider that it was necessary to obtain mobile phone records for the above reason.
3. They accepted the Licensing Officer's account of the interview in which Mr Barnes categorically denied being in the area at the time.
4. They felt that the matter was serious and Mr Barnes had a history of driving offences.
5. They noted that a warning letter had been given previously and considered suspension was appropriate having regard also to Mr Barnes caring responsibilities and the seriousness of the offence.

3. Right of Appeal

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

(The meeting ended at 3.01pm)