

Minutes of Previous Meeting

REGULATORY PANEL

WEDNESDAY 8 OCTOBER 2014 AT 2.00PM

PRESENT: Councillor Bell (Chairman), Councillors Bowman S, Ms Franklin, Morton, Mrs Parsons, Scarborough, Mrs Stevenson, Stothard (as substitute for Councillor Cape), Mrs Prest (as substitute for Councillor Layden), Mrs Warwick and Wilson.

OFFICERS: Principal Lawyer
Licensing Manager
Licensing Officer

RP.22/14 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Betton, Cape and Layden.

RP.23/14 DECLARATION OF INTEREST

Councillor Mrs Parsons declared an interest in accordance with the Council's Code of Conduct. Councillor Mrs Parsons stated that she had known the witness and had been informed of the details of the incident in advance of the meeting and accordingly would retire from the Panel and take no part in the decision today.

RP.24/14 MINUTES OF PREVIOUS MEETING

RESOLVED – That the minutes of the meetings held on 3 September 2014 be noted.

RP.25/14 HACKNEY CARRIAGE DRIVER – DUTY OF CARE TO PASSENGER

Councillor Mrs Parsons, having declared an interest, retired from the Panel and took no part in this item of business.

The Licensing Officer submitted report GD.45/14 regarding a complaint which had been received against a licensed Hackney Carriage Driver.

Mr Mulholland (the licensed Hackney Carriage Driver), Mr Chris Bray (Mr Mulholland's representative) and Mrs Carruthers (the complainant) were in attendance at the meeting.

The Chairman introduced the Panel and Officers in attendance.

The Principal Lawyer outlined the procedure the Panel would follow. Mr Mulholland confirmed that he had received and read the Licensing Officer's report.

The Licensing Officer outlined the licensing history pertaining to Mr Mulholland who had been a licensed Hackney Carriage Driver with the City Council since 1998. Mr Mulholland had come to the attention of the Licensing Office on a number of occasions but none of the issues were of a similar nature to the complaint.

The Licensing Officer reported that on 26 August 2014 the Licensing Office had received a complaint from Mrs Carruthers. Mrs Carruthers reported that her daughter had taken a taxi from the Warwick Road rank at 9.45pm on Saturday 16 August 2014 to travel home to Brampton. Her daughter (Miss Carruthers) had attended a party in the Andalusian and had decided to go home as she had had enough to drink. She had been unsuccessful in contacting Mrs Carruthers and had taken a taxi. An hour later Miss Carruthers had been found in Warwick Bridge, semi conscious and suffering from hypothermia as the weather had been cold with heavy rain. She was taken to hospital, where initially, medical staff had been unable to find her blood pressure. Unfortunately, as a side effect of the hypothermia, Miss Carruthers had no memory of what happened that evening.

Mrs Carruthers had been extremely concerned that her daughter had been let out/thrown out of a taxi by the side of a busy road and felt that the driver had been negligent and feared that other people in a similar position may be treated in the same way in the future. Mrs Carruthers gave the Licensing Office details of the lady who cared for her daughter until the ambulance arrived.

The Paramedics who had attended had been concerned that Miss Carruthers had been left there in a vulnerable condition by the taxi driver and contacted the Police. The Police visited Miss Carruthers in hospital to take a statement. The Police had been satisfied that no criminal offences had been committed and advised the family to report the incident to Licensing.

Mrs Carruthers had reported to the Licensing Office that she could not understand how her daughter had come to be left in Warwick Bridge as there were no family connections there. She surmised that her daughter may have been sick or wanted to be sick in the taxi and was then abandoned by the driver, although there had been no evidence on her clothes of her being sick.

The Licensing Officer reported that the driver, Mr Mulholland, had been identified using CCTV footage. Mr Mulholland was interviewed by the Licensing Officer on 4 September 2014 and recalled the fare. He stated that Miss Carruthers had 'seemed ok' initially but he had soon realised that she was 'very boozy' he remembered her mumbling, possibly on the phone and also remembered she was falling asleep. He had to pull in to a lay-by at the bottom of Warwick Road to establish where in Brampton she wanted to go, as he had been concerned that she would fall asleep and he would not get her address. On driving over Warwick Bridge Mr Mulholland said Miss Carruthers had been 'gagging' and was possibly going to be sick. He had pulled into a lay-by/exit of Holme Eden Abby just over the bridge, leaned over and opened the door, he had told her to 'get out and sort yourself out'. Mr Mulholland said that Miss Carruthers walked away from the taxi, he waited a few minutes, pipped the horn, then did a u turn back to Carlisle.

The Licensing Officer had asked Mr Mulholland if he had asked for the fare to which he had replied that he 'didn't normally charge someone on their own if they walked off' and that 'it wasn't worth it'.

The Licensing Officer informed Mr Mulholland what had happened to Miss Carruthers and he had replied 'what could I have done? I couldn't man handle a girl back to my taxi'. The Licensing Officer explained that Mr Mulholland had a duty of care to his passengers and that he could have informed the Police that he had left a vulnerable girl or he could have gone after her to ensure she had another means of getting home.

The CCTV footage of Miss Carruthers getting in the taxi had been shown to Miss Carruthers in the hope it would help her remember the evening, unfortunately it had not.

The Licensing Officer took a witness statement from Mrs Round by telephone on 19 September 2014 and this had been included as Appendix B in the report.

The Licensing Officer added that Mr Mulholland had received training on 1 May 2013 where the duty of care to passengers had been discussed. The Licensing Officer explained the meaning of duty of care as set out in the report and stated that as a result of the complaint the word 'vulnerable' had been added to the driver codes of practice. Number ten of the code stated that 'a driver must provide reasonable assistance to all types of passengers'; this has been amended to 'reasonable assistance shall be provided to wheelchair bound, disabled, elderly and vulnerable passengers'. This, however, did not change the driver's common law duty of care.

The Licensing Officer showed the Panel the CCTV footage of Miss Carruthers getting into Mr Mulholland's taxi.

A Member asked if Mr Mulholland had a radio in his vehicle as, he felt, that drivers with radios would record their routes and incidents like this, where CCTV footage had to be found, would not occur. He asked that the Licensing Officers look to amend the regulations to ensure that Hackney Carriage and Private Hire vehicles had a radio channel.

In response to questions the Licensing Officer clarified the following points:

- Mr Mulholland did not have a radio in his vehicle as he worked solely from the rank;
- There was no requirement for a driver to have a radio in their vehicle;
- Miss Carruthers had not given a formal statement as she could not remember the events that took place;
- Miss Carruthers had got into the second taxi in the queue at the rank, the first vehicle had been a black taxi and passengers often, mistakenly, thought that they were more expensive than the white saloon vehicles. The driver of the second car had asked to get in the first vehicle as is protocol. Miss Carruthers, instead, got out of the vehicle and went to the taxi behind which was Mr Mulholland's vehicle. At that point the first two vehicles took passengers and left the rank.

Mrs Carruthers then addressed the Panel. She explained that she usually collected her daughters when they were on a night out as she had told them not to get into taxis on their own. Her daughter had called her but she was travelling back from Scotland at the time. Her daughter then made the decision to get a taxi which was the safe route to get home. The driver accepted the fare knowing she had been drinking as he would be used to on a Saturday evening. Mrs Carruthers assumed the driver stopped at Warwick Bridge so her daughter could be sick then he left her on a cold wet evening wearing clothing that young people wear for nights out. Her daughter was six miles from home near a busy road and river in an isolated area. The driver had told her to get out and 'sort herself out', how would a young person know what that meant? Did she get back in the car? Would she want to if he had asked her to get out? Mrs Carruthers queried how many times the driver had done this before as she had heard stories about people being left at Warwick Bridge before.

Mrs Carruthers added that the meaning of duty of care was clear and her daughter had been responsible enough to get in a taxi. The City had a University and steps should be taken to keep the City safe and one of those steps would be safe taxis. Her daughter had

been left with no help and had ended up in hospital. If the driver asked her to get out to avoid her been sick his vehicle and made sure she was ok Mrs Carruthers could have understood this and had she been sick in his vehicle she would have expected a bill for that, his loss of earnings did not compare to a loss of life. The consequences of the driver's action resulted in Mrs Carruthers daughter being hospitalised for hypothermia.

Mr Bray then addressed the Panel on behalf of Mr Mulholland. Mr Bray stated that Miss Carruthers was not abandoned by Mr Mulholland as she walked away from the vehicle on her own accord. Mr Mulholland waited, blew the horn then returned to town. Miss Carruthers was going to be sick, all drivers had been in that situation, all he wanted to do was get her out of the car and she wandered off. He asked the Panel to disregard the term 'thrown out' in paragraph 2.8 of the report as she was not thrown out of the vehicle. He also asked them to disregard the training set out in paragraph 3.1 as there had been no mention of alcohol in the training.

He reported that the 16 August was wet but was 13 degrees so was very mild. It had been reported that Miss Carruthers had no relocation of the event as a result of the hypothermia but he felt it was actually as a result of the alcohol. Miss Carruthers had first said her destination was Brampton then Longtown, from that Mr Mulholland pieced together her destination but she had had too much alcohol that night. He felt that the only offence that had occurred was Miss Carruthers leaving the vehicle without paying. He questioned what constituted as vulnerable as many drivers have drunk people who wandered off, it happened all the time.

With regard to the option of phoning the Police he explained that there was a very low response rate from the Police and drivers had been known to wait up to two hours for a response. He gave an example of this happening.

Mr Bray finished by stating that he had known Mr Mulholland for 20 years and there had never been any complaints made against him. Mr Mulholland never hesitated to help and he was well liked throughout the trade. Mr Mulholland was a father, grandfather and husband who had recently supported his wife through cancer. Mr Mulholland had suffered an attack and had his taxi stolen and he still lived with the psychological pain of the incident.

Mr Bray asked that the Panel consider option 2 as taking Mr Mulholland's livelihood would serve no purpose as Mr Mulholland was a credit to the industry.

The Principal Lawyer clarified that alcohol had been included as part of the Disability Awareness training and drew Members attention to the training slide at Appendix C of the report which clearly stated 'Variety of people, sober, drunk, carrying food Duty of care'.

In response to questions Mr Bray and Mr Mulholland clarified the following:

- Mr Mulholland was not admitting to being guilty by requesting that the Panel issue a warning letter;
- In retrospect Mr Mulholland would not have carried out anything differently;
- When Miss Carruthers was asked for a destination at Warwick Road she had initially stated Longtown;
- Mr Mulholland had asked Miss Carruthers to get out of the car as she had been asleep and then started 'gagging';
- Mr Mulholland had waited 2-3 minutes for her to return to the car;

- When Miss Carruthers got in the vehicle she had stated her destination as Brampton then she told him Longtown. He had stopped on Warwick Road as she was going to sleep and he had wanted to be sure of their destination;
- Mr Mulholland had been a driver since 1998 and he considered himself to be a professional driver;
- There was a maximum charge of £35 when a passenger soiled the vehicle, when this happened it meant the vehicle had to be taken off the road to be cleaned and it was usually the end of the shift for that driver;
- When a passenger left a vehicle in those circumstances you expected them to get back into the vehicle;
- Mr Mulholland explained that he had stopped in the layby as he had thought Miss Carruthers was going to be sick as she gagged and was asleep. He pulled over immediately. He leaned over her as she was in the front passenger seat, and opened the door and said 'would you mind getting out and sort yourself out' he had had to touch her shoulder to wake her up. When he said 'sort yourself out' he meant don't be sick in the car. Miss Carruthers had not been sick and she walked away toward Brampton. He had waited 2-3 minutes; she had not been sick in this time and had not walked very far. He pipped the car horn then did a u-turn back to town, Miss Carruthers had still been in sight on the path. There had been no other vehicles or people about.

He added that Miss Carruthers had a mobile phone and he had assumed she would call a friend as she had been using the mobile in the car. He had not thought to ask her if she had someone to call. He agreed that he would not like to have thought of a child of his in the same situation and would call the Police if a similar incident happened again. He said he was very sorry that this had happened.

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

RESOLVED – That the Panel had carefully considered and read the evidence in the report and listened carefully to the responses and heard Mrs Carruthers.

There was a long deliberation and the Panel have reached the conclusion that Mr Mulholland be issued with a strongly worded letter and this is by the narrowest majority 6 votes to 4. When Mr Mulholland gave evidence he said that it wouldn't happen again. This authority expects Hackney Carriage and Private Hire drivers to carry out their duty of care especially to vulnerable passengers.

Mr Mulholland will be given notice of the decision in writing within 14 days and have the opportunity to appeal within 21 days.

The Panel had a discussion and would like Mr Mulholland to receive further training in respect of general duty of care and responsibility towards vulnerable passengers and ask that Mr Mulholland carefully consider our strong recommendation to speak to the Licensing Officers and arrange as soon as practicable a session covering that part.

(The meeting ended at 3.15pm)

REGULATORY PANEL

WEDNESDAY 12 NOVEMBER 2014 AT 2.00PM

PRESENT: Councillor Bell (Chairman), Councillors Betton, Bowman S, Morton, Mrs Parsons, Mrs Prest (as substitute for Councillor Layden), Scarborough, Mrs Stevenson, Stothard (as substitute for Councillor Cape), Mrs Warwick and Wilson.

OFFICERS: Assistant Solicitor
Licensing Manager
Licensing Officer x2

RP.26/14 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillor Cape, Councillor Ms Franklin and Councillor Layden.

RP.27/14 DECLARATION OF INTEREST

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

RP.28/14 PUBLIC AND PRESS

It was agreed that the items of business in Part A be dealt with in public.

RP.29/14 MINUTES OF PREVIOUS MEETING

RESOLVED – 1) That the minutes of the meeting held on 3 September 2014 be agreed as a correct record of the meetings and signed by the Chairman.

2) That the minutes of the meeting held on 8 October 2014 be noted.

RP.30/14 TAXI AND PRIVATE HIRE DRIVER KNOWLEDGE TEST

The Licensing Officer submitted report GD.53/14 regarding an amendment to the delivery of the taxi and private hire driver knowledge test.

The Licensing Officer reported that 'knowledge tests' were introduced in 2001 to test prospective drivers knowledge of streets, routes, public buildings, the terms and conditions attached to the licence and their understanding of the various tariffs.

As Carlisle developed into a modern and multi cultural city there had been an increase in applications for drivers' licences from people born outside of the United Kingdom whose first language was not English. As a result there had been occasions where complaints had been received regarding the quality of the language skills of some of the drivers. Complaints were often difficult to investigate and the drivers had been known to bring their English speaking partners with them to assist in an investigation. Obviously, this can not happen during the drivers shifts if they were required to have a dialogue with passengers.

The Licensing Officer explained that a number of Councils had introduced a basic English Language Test which could be carried out in house or out sourced to an independent training provider. Although it was not a significant problem in Carlisle it was felt that the communication skills of all applicants needed to be assessed. The Licensing Office believed that this could be achieved by changing the existing knowledge test from a written test to a verbal test. The verbal test could assess accuracy and clarity and would assist applicants whose written skills were poor. The verbal test would only apply to new applicants unless the language skills of an existing driver were called into question, the Regulatory Panel may then require them to undertake and pass the verbal test.

The Licensing Officer reported that there was no fee for the knowledge test and under the proposed scheme an officer would have to be present during the whole test. It was therefore proposed that a first attempt at the test was free but upon failing, any future tests would incur a fee of £10. It was also proposed that there would be a 10 day interval between tests to ensure applicants were adequately prepared.

The Licensing Officer added that should an applicant be refused a licence because of inadequate communications skills they had a right of appeal to the Regulatory Panel and, if necessary, the Magistrate Court. The Taxi Association had been in favour of the proposed changes.

The Regulatory Panel discussed the proposed fee and felt that it should be monitored for the next twelve months and if there was a high number of people who needed second tests then the £10 fee would be increased accordingly.

In response to a question the Licensing Officer explained that the Cumbria Adult Education Speakers of Other Languages course had a low sign up rate due to the cost and length of the course.

RESOLVED - 1) That the taxi and private hire knowledge test be changed from a written test to a verbal test;

2) That no charge be made for the first test and a £10 charge be incurred for subsequent tests;

3) That a minimum of 10 days elapse between tests;

4) Where instructed by the Regulatory panel, existing licensed drivers may be required to undertake and pass the verbal test when their English language skills had been brought into question and that the appropriate fee be paid;

5) That a review of the number of tests that had been re-taken, be reviewed in twelve months time to re-evaluate the level of fee.

RP.31/14 REVIEW OF HACKNEY CARRIAGE DRIVER CODES OF PRACTICE AND PRIVATE HIRE DRIVERS TERMS OF CONDITIONS

The Licensing Officer submitted report GD.57/14 regarding necessary amendments to the drivers' Codes of Practice and Terms of Conditions.

The Licensing Officer reported that the Hackney Carriage Driver Codes of Practice and Private Hire Driver Terms and Conditions were issued with Driver Licences under the Local Government Miscellaneous Provisions Act 1976. Both of the documents had been

amended by officers to accommodate minor changes but major changes had to be agreed by the Regulatory Panel.

It had come to the attention of the Licensing Office that in recent months the Police had been unwilling to take possession of property which had been found in vehicles and handed into the Police by taxi drivers. Following a dialogue with Cumbria Constabulary and after reading their website it was clear that they expected the finder of any identifiable item to return it to the owner if possible. The Police would only accept identifiable items if they could not be reunited they would then return the items to the issuing authority.

The new instructions allowed taxi drivers to hand in identified property that they had been unable to reunite, this included wallets, purses, handbags and driving licences. A taxi driver should obtain a receipt from the Police for any item handed in. Any other property that was not identifiable such as umbrellas should be retained by the driver for 28 days before being disposed of.

All items, whether handed to the Police or retained by the driver, should be reported to the Licensing Team within 48 hours of being found to enable the Licensing Office to retain a record should any member of the public contact them.

Section 12 of the Hackney Carriage Driver Codes of Practice and Private Hire Drivers terms of Conditions had to be amended to allow for the change in procedure, the wording was set out in section 3 of the report.

RESOLVED – That section 12 of the Hackney Carriage Driver Codes of Practice and Private Hire Drivers terms of Conditions be amended as follows:

“12. At the end of each hiring and before commencing any further hiring the driver shall search the vehicle for any property accidentally left by the immediately preceding hirer. It is the drivers legal obligation to try and reunite all lost property with the owner and shall as soon as practicable and in any case within 48 hours after the discovery of property, attempt to return it to the owner. Failing that and still within 48 hours, all identifiable property shall be handed into the Police Station within the Council’s area and a receipt obtained, which must be kept by the proprietor of the vehicle. Identifiable property can range from purses, bank cards, driving licences, mobile phones, laptops, cameras, i.e anything that can identify the owner.

All unidentifiable property shall be kept by the proprietor for a minimum of 28 days and a record kept of the description.

ALL found property must be reported to the Licensing Section, Civic Centre, Carlisle within 48 hours where a record will be taken “

RP.32/14 REVIEW OF CHARGES 2015/16 - LICENSING

The Licensing Manager submitted report GD.49/14 setting out the proposed fees and charges for areas falling within the responsibility of the Licensing Section of the Governance Directorate with the exception of those under the Scrap Metal Dealers Act 2013 which falls to the Executive.

The Licensing Manager reported that the Corporate Charging Policy, which was part of the Strategic Financial Framework approved by the Executive and full Council, set out the City Council’s policy for reviewing charges.

He added that it was recognised that licence fees (that could be determined by local authorities) could only be set at a level which recovered the cost of administration, inspection and enforcement of the licensing authorities, arising out of carrying out their licensing functions under the various legislation. Pursuant to the case of Hemming V Westminster City Council 2013 licence fees could not include an element of enforcement against unlicensed operators.

It was the Council's policy to maximise charges to maintain full cost recovery wherever possible, and this should be the case when setting charges. Licensing were operating at an income level that was achieving full cost recovery.

Recognition should be made of the risk that licensing income levels could be subject to market forces outwith the Council's overall control, including new responsibilities and the repeal of other legislation. The full range of factors identified in the guidance must be taken into account when setting charges, with the overall aim of achieving target income levels to achieve the full cost recovery.

In addition the Policy recognised that each Directorate was different and required Directors to develop specific principles for their particular service or client groups, but within the parameters of the three main principles.

The Licensing Manager then outlined for Members the summary of income generated and the proposed increases to vehicle and Miscellaneous licences, as detailed within his report.

RESOLVED – That the fees and charges for areas falling within the responsibility of the Licensing Section of the Governance Directorate, as set out in Appendices A and B to Report GD.49/14, be agreed with effect from 1 February 2015, with the exception of the Scrap Metal Act fees which had been determined by the Executive and be effective from 1 December 2013, subject to any required advertising for hackney carriages and no objections being received.

RP.33/14 REGULATORY PANEL COMMENTS

Members of the Regulatory Panel asked if it was possible to delegate authority from the Regulatory Panel to the Chairman and Vice Chairman for policy agenda items to avoid the full Panel meeting for items which required little or no discussion.

The Licensing Manager explained that the decision to amend policy items and agree the charges review was delegated to the whole Panel within the Council's Constitution and any changes would require agreement by whole Council.

RESOLVED – That the Assistant Solicitor and the Licensing Manager investigate further the possibility of changes to the delegated powers of the Regulatory Panel.

(The meeting ended at 2.20pm)