

CARLISLE CITY COUNCIL

Report to:- **THE CHAIRMAN AND MEMBERS OF THE REGULATORY PANEL**

Date of Meeting:- **14th March 2012**

Agenda Item No:-

Public	Operational	Delegated Yes
Accompanying Comments and Statements		Required Included
Cumbria Fire Service		No No
Cumbria Constabulary		No No
Environmental Services		No No
Cumbria Cerebral Palsy		No Yes

Title:- **GEOFFREY ATKINSON - HACKNEY CARRIAGE DRIVER COMPLAINT IN RELATION TO WHEELCHAIR USER**

Report of:- **DIRECTOR OF GOVERNANCE**

Report reference:- **GD 20/12.**

Summary:-

Mr Geoffrey Atkinson is a licensed Hackney driver with this Council. On 20th February 2012 he conveyed a wheelchair user and his Carer from The Cerebral Palsy Shop, 7 Botchergate, Carlisle to their resource centre on Shadygrove Road, Carlisle. The complaint has been received from the carer of the passenger and the Deputy Shop Manager, indicating that Mr Atkinson did not correctly secure the brakes of the wheelchair, did not strap the passenger in and also conveyed him sideways.

In addition Mr Atkinson made inappropriate remarks to the passenger that the Carer and Deputy Manager felt to be offensive.

This is contrary to the Codes of Practice attached to his Hackney Carriage driver's licence, an offence under Section 40 of The Road Traffic Act and is at variance with the vehicle manufacturer's recommendations.

Recommendation:-

To reach a decision from the options available, after hearing the evidence and the response from Mr Atkinson.

J A Messenger
Licensing Manager

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:- LTI manufacturer's handbook. HC driver's code of practice . Witness statements from Ericha Spiegel and Sarah Connolly, copies of which are attached.

To the Chairman and Members of the Regulatory Panel 14 March 2012

NAME Geoffrey Michael Atkinson

AGE 64

ADDRESS Blackwell Road, Carlisle

LICENSING HISTORY

Mr Atkinson was first granted a Hackney Carriage Drivers Licence on 3/1/2001. This was granted under 'grandfather' rights, which allows him to carry passengers in a wheelchair.

Mr Atkinson has never attended or passed a DSA (Driving Standards Agency) Wheelchair Test Assessment.

This is the first time Mr Atkinson has been referred to the regulatory Panel.

Warnings and complaints on his file include:

- 14/03/01 Complaint received about Mr Atkinson urinating between vehicles at the station taxi rank. Mr Atkinson admitted this and accepted a warning.
- 08/12/01 Complaint received about Mr Atkinson's vehicle being 'double' parked on Scotland Road during heavy traffic. When questioned about this Mr Atkinson said he couldn't remember the incident but agreed it 'must have been him' and apologised. He was told be aware of his driving responsibilities and this would be recorded on his file.
- 22/05/06 Complaint received about Mr Atkinson urinating at turning point station rank. He strongly denied this as he knew he had a previous warning. Mr Atkinson said he was sweeping out the floor of his vehicle.
- 27/11/08 Complaint received about Mr Atkinson parking in a family bay at Morrison's when no children were with him and swearing at the member of the public who complained. Mr Atkinson denied this and said his children were with him.
- 04/03/09 Complaint received about Mr Atkinson using a small plastic crate with a wooden top as a step to assist passengers into his taxi. A disabled member of the public complained it was a Health and Safety issue when wet as the crate had slipped on the wet ground when she stepped on to it, causing her to fall. Licensing spoke to Mr Atkinson and inspected the step. He denied that the passenger fell, saying he had hold of her arm the whole time she was getting out of the taxi. Mr Atkinson was advised that the step should not to be used in future.
- 20/01/10 Manner of driving. Mr Atkinson was observed by a Licensing Officer driving at speed towards two gentlemen who had stepped out late at the traffic lights as they changed. One gentleman had to jump out of the way. If they had complained to the Licensing office, it would have been dealt with formally. Letter sent to Mr Atkinson.
- 25/01/10 Complaint received about Mr Atkinson taking a mobile phone call whilst driving a fare paying passenger. Mr Atkinson was warned that any more complaints about his manner and driving and he would go before the Regulatory Panel.

05/01/12 Manner of driving. Complaint received by Head mistress of St Cuthbert's School concerning Mr Atkinson's driving. Mr Atkinson disputed the facts. Warning letter issued to him and informed that the Head mistress did not want him to return to the school and would report it to Cumbria County Council contracts section.

BACKGROUND TO CURRENT COMPLAINT

On 20/2/12 Mr Atkinson was called to a pre-booked fare through Beeline operator. Mr Atkinson was 20 minutes late, was rude to the passenger (in the Carers opinion) and did not correctly strap the wheelchair into his vehicle. Statements are attached from the two witnesses who made the complaint.

(Appendix 1 & 2)

Code of practice 16(c) attached to his Hackney Carriage Drivers Licence states that "The driver shall take all reasonable steps to ensure the safety of passengers conveyed in the vehicle driven by him.

(Appendix 3)

Section 40A of the Road Traffic Act 1988 states that "A person is guilty of an offence if he uses, causes or permits another to use a motor vehicle on a road when the number of passengers carried by it or **the Manner In which they are carried** is such that the use of the motor vehicle involves a danger of injury to any person. **(Appendix 4)**

The manufacturer of the vehicle Mr Earl was driving, London Taxis International, advises drivers in their handbook not to carry wheelchair passengers unrestrained or in a sideways position. **(Appendix 5)**

INVESTIGATION

On Wednesday 29th February 2012, Mr Atkinson attended the Civic Centre to discuss the complaint. He was defensive regarding his remarks saying 'these people are not stupid, they like a bit of banter' He has been transporting this particular passenger for many years (previously from Scalescaugh Hall). He couldn't remember the exact words he used when referring to the 'bump on the head', but said it was meant to get a smile out of the passenger. Mr Atkinson did recall that it was a new Carer with him, who he thought to be a bit 'naive, prudish'. He also said that his remark about 'cream cakes' would not have been said to cause any offence, merely to be cheerful.

When my Licensing Officer asked how the passenger was strapped into the vehicle, Mr Atkinson could not remember. He did insist that both brakes would have been put on the wheelchair. After further discussion, he admitted that the Wheelchair had been loaded in sideways and no straps put on the passenger or Wheelchair. In his opinion he felt this was sufficient, as he would only be driving slowly around corners and said 'the journey went without incident'.

My Licensing Officer discussed the importance of correctly securing wheelchair passengers; not only for their own safety, but also for the protection of the Driver should any accident occur. Mr Atkinson pointed out that in his day, 'you just had to come and fill an application form in and show your licence to be a taxi driver'.

Although the handbook for Mr Atkinson's vehicle explains the correct procedure for loading and unloading wheelchair passengers, he has never attended any formal training on this and has 'grandfather rights' to transport the disabled and wheelchair passengers.

LEGISLATION

Section 61 (1) of the Local Government (Miscellaneous Provisions) Act 1976, states that A District Council may suspend or revoke a Hackney Carriage Drivers Licence on a number of grounds.

Section 61 (1) (b) gives the ground of 'for **any other reasonable cause**' (**Appendix 6**).

OPTIONS

- 1 To take no further action
- 2 To issue Mr Atkinson with a letter of warning.
- 3 To suspend his Hackney Carriage driver's licence for a period of time.
- 4 To revoke his Hackney Carriage drivers licence.
- 5 As well as, or in addition to the above, Mr Atkinson could be required to undertake and pass the Driving Standards Agency Wheelchair Assessment Test within a specific time period.

Prepared by S J Stashkiw

APPENDIX 1

Incident Report

Taxi Driver: G M Atkinson

Number Plate S934TNA

Incident Time 3.35pm Date 20/2/12

After working in the Cumbria Cerebral Palsy charity shop (on Bothchergate), the taxi driver that picked us up was 20 minutes late and very rude and unaccommodating towards myself and a gentleman I support. His first remark was "Has he fell on his head or something?" This was witnessed by Erica, deputy manager at the shop who agreed that it was an appalling thing to say. He then wheeled the gentleman up the ramp and placed him in a position where one side of his wheelchair was blocked, which left no access to the brakes on the left hand side of his chair; which therefore remained unlocked throughout the journey back to the Resource Centre on Shadygrove Road. Not only this, after placing the brake on the right hand side of the chair, the driver felt this was sufficient enough and failed to strap down the chair or put a belt around the gentleman or anything. This failure to do his job correctly put both myself and the gentleman I was supporting at risk as I had to spend the entire journey making sure that the gentleman's chair was as safe as possible and that he did not move around too much.

Having been negligent and rude towards us, the taxi driver made further personal remarks as he was taking the gentleman in his wheelchair down the ramp and said "I think you've had too many cream cakes the size of you!" After which he left.

Following this incident I reported it to Geoff Cook, deputy manager at the Resource Centre, he advised me to contact Beeline taxi's to launch an official complaint and inform them of the matter. I did so and explained the situation to the lady on the phone who apologised profusely, I also requested the manager contact us at the centre on 21/2/12 to discuss the matter further.

After the incident the gentleman had a chat with Geoff and explained that the driver had been rude and also said that he did not want to have the same driver again in the future, he also felt it was "Not on" that he hadn't been strapped in.

Geoff Cook has since spoken with the manager of Beeline taxi's who was extremely understanding and apologetic and advised Mr Cook to contact yourselves as the above driver is subcontracted out to their company. Mr Cook informed the manager that he would be taking this up with the transport department in order further investigate this matter. Mr Cook has also pointed out to myself that we are dealing with vulnerable adults in the public arena and this show of utter ignorance and intolerance towards the gentleman was appalling to say the least and must not be allowed to transpire.

Completed by Sarah Connolly (Support Worker)

"APPENDIX 2"

20-2-12.

APR 3:40 pm.

Statement from Erica Spiegel,
Assistant Shop Manager, Cerebral
Palsy 7, Botchergate, Carlisle.

Andy McHadden had been with
us in afternoon helping out with
our daily Tasks.

Andy's transport had been
ordered for his return journey
to Sister Court, Carlisle at
3:15pm or so near too, transport
didn't arrive till 3:40 approx.
Driver eventually got out of
Taxi when he realised ramp
access was needed - he was
half heartedly doing, the Sarah
had to bring Andy ^{back} in shop
as it was raining, driver then
turned round to Andy and said

You been bumping your head
and then proceeded to push
and up the ramp into the
lane, Sarah and I were both
shocked at the comment, Andy
& Sarah continued their journey
and I returned into the shop.
This is my recollection of the
incident.

Erica Spiegel.

"APPENDIX 3"

as laid down in the current issue of "At a glance guide to the current medical standards of fitness to drive" issued by the Drivers Medical Unit, DVLAS, Swansea. In addition he shall if so required, whether or not such medical certificate has been produced, submit to an examination by a registered medical practitioner selected by the Council as to his fitness to be such a driver.

15. The driver shall at the request of any authorised officer of the Council or any police constable produce for inspection his Hackney Carriage Driver's licence either forthwith or before the expiration of seven days beginning with the day following the date of the request:-
 - (a) in the case of a request of an authorised officer of the Council at the offices of the Council's Assistant Director (Governance), or
 - (b) in the case of a request of a police constable at any police station within the Council's area which is nominated by the driver when the request is made.
16. The driver shall: -
 - (a) if requested by the hirer of a Hackney Carriage provide him with a written receipt for the fare paid;
 - (b) at all times be clean and respectable in his dress and person and behave in a civil and orderly manner;
 - * (c) take all reasonable steps to ensure the safety of passengers conveyed in, entering or alighting from the vehicle driven by him;
 - (d) not without the express consent of the hirer drink or eat in the vehicle;
 - (e) not without the express consent of the hirer play any radio or sound reproducing instrument or equipment in the vehicle other than for the purpose of sending or receiving messages in connection with the operation of the vehicle;
 - (f) at no time cause or permit the noise emitted by any radio or other previously mentioned equipment in the vehicle which he is driving, to be a source of nuisance or annoyance to any person, whether inside or outside the vehicle;
 - (g) at all times when driving a Hackney Carriage carry with him a copy of these codes of practice and shall make it available for inspection by the hirer or any other passenger on request;
 - (h) at all times ensure that the Hackney Carriage lights are fully operative, the tyres are within the legal limits, the Hackney Carriage is clean and tidy and that it has a serviceable fire extinguisher and fully stocked first aid kit readily available.
17. This licence may be suspended, revoked, not renewed or the holder may be required to undertake a Driving Standards Agency "Taxi" test by the Council:-
 - (a) if the driver commits an offence or otherwise fails to comply with any of the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976, or the Town

‘Appendix 4’

Road Traffic Act 1988

(as amended by Road Traffic Act 1991)

40A Using vehicle in dangerous condition etc.

A person is guilty of an offence if he uses, or causes or permits another to use, a motor vehicle or trailer on a road when—

(a) the condition of the motor vehicle or trailer, or of its accessories or equipment,
or

(b) the purpose for which it is used, or

(c) the number of passengers carried by it, or the manner in which they are
carried, or

(d) the weight, position or distribution of its load, or the manner in which it is
secured,

is such that the use of the motor vehicle or trailer involves a danger of injury to any person.]

" APPENDIX 5 "

The passenger compartment is fitted with equipment specially designed to assist passengers with special needs to travel in safety and comfort. The left hand occasional seat can be swivelled into the door aperture and used in conjunction with a simply installed additional step to assist the entry of passengers with restricted movement.

Provision has also been made to accommodate most type of hand operated and some power assisted four wheeled wheel chairs. The rear seat cushions are hinged to assist wheel chair entry, and to allow one side of the seat to be used by another passenger, while leaving additional space available for the wheel chair user when required.

To assist in loading a wheel chair, an integral ramp is provided in the passenger compartment floor. The additional step mentioned previously also acts as an extension for the integral ramp where the kerb loading height is low.

It is essential that the equipment is used with care and that the loading and unloading procedures are correctly followed. In all cases reassure the passenger about the equipment, by explaining how it is to be used, and protect your passenger by ensuring they do not contact the door aperture etc., as they manoeuvre into, and out of the vehicle.

GENERAL PRECAUTIONS

1. Wheelchairs must always be carried in the recess to the left hand side of the centre division with the passenger facing the rear of the vehicle. The wheelchair restraining belt, passenger seat belt, and extender belt provided must always be used.

WARNING: Never carry a wheelchair passenger unrestrained, positioned sideways or facing forwards as the wheelchair and passenger cannot be adequately restrained in these positions.

2. Wheelchair passengers must always be secured with the seat belt and extender belt provided, as the wheelchair restraint belt does not provide adequate security to the passenger. The seat belt should be threaded through the wheel chair as necessary so that it lies over the passenger's right shoulder before being clipped into the extender belt and routed across the passenger's pelvis to clip into the lower buckle. The belt should never be fitted across the top of the wheelchair arm rests.

3. Even under light braking, acceleration and cornering, an unrestrained wheelchair occupant can fall out of the wheelchair. While wheelchair brakes should be applied when the chair has been correctly positioned in the vehicle, they are not an adequate restraining system.

4. Harsh driving can cause many disabled people to slide in their wheelchairs, often they are unable to reposition themselves and this can cause discomfort or even physical damage. It is therefore extremely important to try to avoid hard acceleration, braking or cornering.

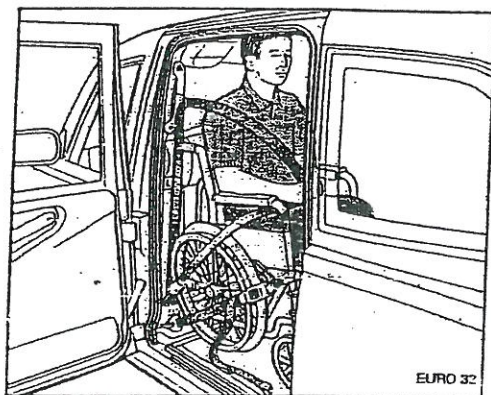
5. To prevent any risk of the wheelchair user falling out of the wheelchair, the wheelchair should only be loaded or unloaded with the passenger facing the vehicle using the left hand door (and ramps as required-see below).

6. Load a wheel chair passenger where the road and kerb are level. It is always preferable to pick up wheel chair passengers at a kerb so that the integral wheel chair ramp may be used without its extension.

CAUTION: Where there is no kerb, or the kerb height is below 125 mm (5 in.) the ramp extension must be used both to prevent damage to the integral ramp, and to reduce the effort required to load the wheel chair.

To avoid the risk of the passenger coming into contact with the door aperture etc., never rush the loading process or allow a powered wheel chair to be driven into the vehicle unsupervised.

MANUFACTURER'S HANDBOOK



EURO 32

PART II, 1976 ACT.

SECTION 61.

SUSPENSION AND REVOCATION OF DRIVERS' LICENCES.

(1) Notwithstanding anything in the Act of 1847 or in any part of this Act, a District Council may suspend or revoke or (on application therefore under Section 46 of the Act of 1847 or Section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a Hackney Carriage or a Private Hire vehicle on any of the following grounds:-

- (a) that he has since the grant of the licence:-
 - (i) been convicted of an offence involving dishonesty, indecency or violence: or
 - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of this Act, or
- (b) any other reasonable cause.
- (2) (a) Where a District Council suspend, revoke or refuse to renew any licence under this Section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the District Council the driver's badge issued to him in accordance with Section 54 of this Act.
- (b) If any person without reasonable excuse contravenes the provisions of this Section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding Level 1 on the standard scale.
- (3) Any driver aggrieved by a decision of a District Council under this Section may Appeal to a Magistrates Court.

NOTE.

The above section is as amended by the Criminal Justice Act 1982.