

## **REGULATORY PANEL**

**WEDNESDAY 15 FEBRUARY 2017 AT 2.00PM**

**PRESENT:** Councillor Bell (Chairman), Councillors Bainbridge, Bowman S, Layden, Mrs Parsons, Ms Patrick (as substitute for Councillor Ms Franklin), Sidgwick T, Tinnion, Mrs Warwick, Ms Williams and Wilson.

**OFFICERS:** Assistant Solicitor  
Licensing Officer

### **RP.06/17 APOLOGIES FOR ABSENCE**

Apologies for absence were submitted on behalf of Councillor Ms Franklin and Councillor Morton.

### **RP.07/17 DECLARATION OF INTEREST**

There were no declarations of interest submitted.

### **RP.08/17 PUBLIC AND PRESS**

It was agreed that the items of business in Part A be dealt with in public and the items of business in Part B be dealt with when the public and press were excluded.

### **RP.09/17 MINUTES OF PREVIOUS MEETING**

RESOLVED - That the minutes of the meeting held on 11 January 2017 be noted.

### **RP.10/17 DISCLOSURE OF CONVICTION**

The Licensing Officer presented report GD.11/17 regarding a Hackney Driver and Private Hire Driver who had disclosed that he had been convicted of assault / battery at Carlisle Magistrates Court.

Mr Hewitson, the licensed driver, was in attendance.

The Assistant Solicitor outlined the procedure the Panel would follow. Mr Hewitson confirmed that he had received, read and understood the Licensing Officer's report. The Assistant Solicitor advised Mr Hewitson 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 Hewitson's licensing history as detailed in section 1.1 of the report which included two applications for a Private Hire drivers' licence which had been refused by the Licensing Panel in 1988 and 1990 as he was not deemed to be a fit and proper person. She clarified that at the time licences were renewed on annual basis and Mr Hewitson had applied to renew his licence in March 1988, the application had been refused, a further application was submitted in August 1988 and his licence had been granted.

In March 1990 Mr Hewitson's application was refused and then following an appeal to the Magistrates Court it was granted in December 1990. At this time meetings were held in private which meant there was limited information available in the minutes on the

circumstances of the applications and the reports relating to the minutes had been lost when the Civic Centre flooded in 2005.

The Licensing Officer outlined Mr Hewitson's background which included a written warning following a Police Caution for an incident that had occurred on a school bus when offensive language had been used towards children. As a result of the incident Cumbria County Council later refused to re-issue Mr Hewitson's badge to carry out school contract work.

In 2014 Mr Hewitson's Hackney and Private Hire driving licences were suspended on medical grounds and he was informed they would only be returned when his doctor confirmed in writing that he was fit to drive a licensed vehicle. In February 2016 the Licensing Office was made aware that Mr Hewitson had obtained a Hackney Driver licence with Copeland Borough Council without declaring his medical condition and as a result the matter had been dealt with by their Taxi Licensing Panel on 5 April 2016. Mr Hewitson had not attended the Panel and the matter was dealt with in his absence. The Panel had suspended his Hackney Driver licence.

In April 2016 Mr Hewitson applied to Carlisle City Council for a Hackney and Private Hire driver licence and his family doctor had declared him fit to drive a licenced vehicle. It was noted within the statutory declaration that he was convicted of an offence of common assault in 1995. Both licences were issued and were due to expire in February 2019.

On 19 January 2017 Mr Hewitson had disclosed in writing to the Licensing Office that he had been convicted of assault / battery at Carlisle Magistrates Court on 17 January 2017. He was sentenced to 18 weeks imprisonment suspended for 12 months and ordered to pay £500 compensation and £200 costs. The Licensing Officer reported that Mr Hewitson had assaulted a parking attendant in the grounds of the Cumberland Infirmary, Carlisle details of the incident were set out in section 2 of the report.

In response to the Licensing Officer's report Mr Hewitson informed the Panel that he had no recollection of an appeal to the Magistrates Court or the reasons for the refusals in 1988 and 1990. The Licensing Officer clarified that the information had been set out in a previous report and was used as background information for this case.

The Chairman asked the Panel to bear in mind Mr Hewitson's statement during their consideration of the matter, adding that the incidents were some time ago.

Mr Hewitson then addressed the Panel. He set out the events leading to the incident. He explained that his wife was unwell, he was supporting his son who was fighting a custody case and he had his own illness to deal with. On top of all of that, it had been Mr Hewitson's father in law's funeral the week of the incident.

When the incident went to Court the Court had adjourned to allow for a report from Probation Services. Probation Services had prepared a background report which had taken account of the circumstances and had stated that Mr Hewitson's behaviour had been out of character. Mr Hewitson stated that the sentence he had received had not been the initial recommendation of the judge. There had been four options for the Judge, the first had been to sentence Mr Hewitson to community service but Mr Hewitson was not able to carry out community service due to his illness. The second option had been a curfew but Mr Hewitson was his wife's main carer and this would impact on her care.

Mr Hewitson stated that the Judge had not wanted to impose a high fine as it would add to Mr Hewitson's financial burden and therefore the only option had been a suspended sentence. He added that the length of the sentence was at the Judge's discretion and it had initially been recommended at 6 months but changed to 18 weeks. He explained that the damage to the mobile phone had been dismissed by the Judge as there had been no evidence.

Mr Hewitson told the Panel that he was mad at himself for allowing the incident to happen and assured them that it was not a regular occurrence. He had been under a great deal of pressure and was at the hospital because his grandson had been taken into hospital.

Mr Hewitson explained that when he had arrived at the hospital he parked at the front of the hospital and entered the building. His grandson had not been seen by the doctors at that point and he went back outside to see the parking attendant being abusive to his son's partner. When Mr Hewitson approached his car he saw the attendant and explained he had just arrived, he also asked him for his name and number to report him for his behaviour towards his son's partner. The attendant would not provide the details and Mr Hewitson grabbed his shoulder. Mr Hewitson said that he had kicked the attendant once but not several times about the body. He had been charged with assault and battery as the use of feet was classed as a weapon. Mr Hewitson said that he could not have kicked the attendant about the person while he was stood up. However when the Chairman pointed out that Mr Hewitson had been convicted and sentenced and the Panel could not look behind this conviction Mr Hewitson accepted that he had pleaded guilty and accepted the punishment.

Mr Hewitson informed the Panel that he regretted what had happened and he had not been in the right frame of mind. He had been guilty and he had accepted the punishment. It was out of character for him and he had no previous convictions. In addition he had reported the incident straight away and the Licensing Office had not received any complaints about him. He tried to keep his vehicle clean and tidy and took pride in his job. The job fit in around caring for his wife and he had been a driver for most of his life. He had no previous convictions and held a clean driving licence.

A Member asked why Mr Hewitson had stated on his self certified medical questionnaire that he did not suffer from any heart disorder when he had had his driving licences suspended on medical grounds due to an angina condition in 2014. Mr Hewitson explained that he had collapsed following some physical work and test results had shown that he did not have angina but a condition called COPD which had caused the attack.

Members had concerns that Mr Hewitson was under a lot of pressure due to his illness and his wife's illness and asked him how he could reassure them that he could manage the stress and not react in a similar manner in future. Mr Hewitson responded that there had been repercussions following the incident and he had dealt with them. He explained that he had to assess the situations and step away from the situation if he felt he was becoming too stressed. He also had support from a crisis team and Cumbria Carers if he needed them.

Members asked for more details on the assault and the application to Copeland Borough Council and were reminded by the Chairman that the issues had been dealt with and the Panel could only take into account the outcome.

The Licensing Officer reminded Mr Hewitson that he had been convicted for a repeated assault, not just one kick. Mr Hewitson responded that his solicitor had advised him to plead guilty to avoid the case going to trial; he added that he had accepted the Courts decision.

The Licensing Officer highlighted the relevant legislation and the detailed Legal Advice set out in section 4 of the report which the Panel had to consider when making their decision, in particular section (f) of the Department of transport Circular 2/92 and Home Office Circular 13/92.

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

**RESOLVED** – The Panel had carefully considered and read the evidence in the report and listened carefully to the responses from Mr Hewitson and the mitigating factors surrounding his ill health and family problems.

The Panel noted that Mr Hewitson had previously been refused Private Hire and Hackney Carriage licences, had received a letter of warning and had his Hackney Carriage and Private Hire driving licences suspended on medical grounds.

The Panel had regard to Sections 61(1) and 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 and the Department of Transport Circular 2/92 and Home Office Circular 13/92 along with the Legal advice set out in Report GD.11/17 when determining if Mr Hewitson was still considered fit and proper to continue to hold his licences.

The decision of the Panel was that Mr Hewitson was not fit and proper to be driving the public and that both his Hackney Carriage and Private Hire drivers' licences should be revoked.

The reasons for the decision were:

1. It was a serious and violent reaction to a person of authority carrying out their job;
2. It was a sustained attack in a public place;
3. There was a pattern of misconduct;
4. The Panel were concerned for public safety

A letter would be sent to Mr Hewitson confirming the decision and setting out his right of appeal.

## **RP.11/17 CHAIRMAN'S COMMENT**

The Chairman informed that Panel that, following an internal and external recruitment process, Nicola Edwards had been appointed as the new Licensing Manager. The Panel wished her well in her new role.

(The meeting ended at 2.55pm)