

REGULATORY PANEL

WEDNESDAY 30 MARCH 2016 AT 2.00PM

PRESENT: Councillor Bell (Chairman), Councillors Bowman S, Cape, Ms Franklin, Layden, Morton, Nedved (as substitute for Councillor Shepherd), Mrs Parsons, Miss Sherriff, Stothard, Mrs Warwick and Wilson.

OFFICERS: Principal Lawyer
Licensing Manager
Licensing Officer

RP.09/16 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Shepherd.

RP.10/16 DECLARATION OF INTEREST

There were no declarations of interest submitted.

RP.11/16 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.12/16 MINUTES OF PREVIOUS MEETING

RESOLVED – 1) That the minutes of the meetings held on 16 December 2015 be agreed as a correct record of the meetings and signed by the Chairman.

2) That the minutes of the meeting held on 24 February 2016 be noted.

RP.13/16 HACKNEY CARRIAGE DRIVER COMPLAINT

The Licensing Officer submitted report GD.22/16 detailing a complaint which been received about a Hackney Carriage Driver.

Mr Gomes, the Hackney Carriage Driver, Mr and Mrs Topliss and Mr A Topliss were in attendance.

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

The Licensing Officer detailed Mr Gomes' licensing history informing the Panel that Mr Gomes had held a Hackney Carriage Drivers licence since May 2015 and had passed his Driving Standards Agency test, including the wheelchair element, and the Disability Awareness Session.

Mr Gomes had received a warning letter from the Licensing Office in November 2015 when he had been observed leaving his vehicle unattended obstructing a main access point for emergency vehicles in to the city centre pedestrian area.

The Licensing Officer reported that a complaint had been received, from Mrs Topliss, that a driver had taken her and a husband, a wheelchair user, from the Station Taxi Rank to their home on 1 March 2016. The driver assisted Mr Topliss into the vehicle, placing him sideways and securing the vehicle with one strap around the wheels then clipped to the floor. Mr Topliss had not been fastened with the vehicle seatbelts and the driver had stated that the wheelchair did not have the special hooks.

During the journey the wheelchair was moving so Mrs Topliss moved seats within the vehicle so she could use her feet to stop the wheelchair moving in the cab. Mrs Topliss informed the Licensing Office that their regular driver secured the wheelchair facing the rear of the vehicle and straps were fastened securely to the wheelchair and the seat belt was fastened around Mr Topliss.

Mrs Topliss had been concerned about the way her husband had been placed in the cab but had not 'made a fuss' as the journey was short. However, Mrs Topliss had been concerned about the journey and on arriving home she had contacted her usual driver who advised her how a wheelchair should be correctly secured in a vehicle. Mrs Topliss then decided to contact the Licensing Department.

The Licensing Officer reported that following enquires the possible driver of the vehicle had been identified as Mr Gomes. Mr Gomes had attended the Civic Centre on 3 March 2016. When asked about the fare Mr Gomes responded that he had only taken three fares on 1 March and they had not included the fare in question.

The Licensing Officer asked Mr Gomes to show her how he would place and secure a wheelchair into his vehicle. Mr Gomes demonstrated that he would put the wheelchair into the vehicle sideways and not facing backwards. Mr Gomes confirmed to the Licensing Officer that he had not fastened the wheelchair in this manner when he had undertaken the DSA Wheelchair Test. The Licensing Officer explained the severe consequences of not securing a wheelchair correctly and informed him that if a customer did not want to be secured in the correct manner then Mr Gomes had the right to refuse the fare.

Mrs Topliss attended the Civic Centre on 2 March 2016 and confirmed, from a photograph, that Mr Gomes was the driver. Mr Gomes was then invited to attend a formal interview on 9 March 2016 in which he was reminded of the previous discussions and informed that the passenger had positively identified him. During the interview Mr Gomes accepted that given the evidence it was reasonable to assume that he had been the driver.

In response to questions the Licensing Officer clarified that during the first interview Mr Gomes had stated he had not been the driver and during the second interview he accepted he had been. She also confirmed that the Licensing Office had a telephone number for Mr Gomes.

Mr Gomes explained that at the first interview he had been told it had been house number 91 and he could not remember attending a number 91. The Licensing Officer clarified that initially she had asked Mr Gomes if he had taken a fare to number 91 which had been incorrect, she then asked him if he had been to the street at all and he had said no.

Mr Gomes addressed the Panel. He explained that he had driven to Stranraer, on his return taken two regular passengers and then stopped for food so he could not be precise about the timing. He admitted that he was guilty and had put the wheelchair into the vehicle sideways. He had his licence for less than a year but drove 5-6 wheelchair users every day for the company he worked for. He stated that he put wheelchairs in the vehicle sideways at the request of customers who found it easier, as did he. He added that he always asked passengers if they were ok to carry on and he said no one said no.

Mr Gomes said he had less than one year experience and saw other drivers putting wheelchairs in sideways so he had not thought it was a problem. He stated that he knew the right way to put a wheelchair into his vehicle and had shown the Licensing Officer the way he had done it on the day in question. Mr Gomes was happy to apologise and stated it had been his first mistake.

In response to questions Mr Gomes clarified the following:

- He had attended the City Council Disability Awareness Session
- He was not experienced and still struggled with addresses
- He had been nervous in the interview and had not remembered being to a number 91
- Mr and Mrs Topliss had not raised any issues at the time
- He placed customers into the vehicle sideways and put the strap on the wheels and the seatbelt on to make sure the customer was safe and happy.
- He acknowledged it had been a mistake and had since refused a passenger who had requested to be placed in the vehicle sideways.
- Mr Topliss had not made a request to be placed in the vehicle sideways
- He had showed the Licensing Officer how he had loaded the wheelchair on that occasion or when a customer requested it.
- He understood that he could refuse a fare if he did not feel the passenger would be safe.
- He understood that putting a vehicle in the correct way was the safest way so the wheelchair did not move and to avoid an incident such as the Birmingham case.
- He would not put a wheelchair in his vehicle incorrectly again.
- He had received a warning letter following the incident in November 2015

The Licensing Manager added that the City Council Disability Awareness session aimed to equip drivers with all of the necessary information before they were licenced. The importance of passenger safety and duty of care was stressed in the session and instructions on how to correctly secure a wheelchair passenger and the impact in the event of an accident if a wheelchair was not correctly secured were discussed. The Birmingham case was also raised in the session as the case brought about the introduction of Disability Awareness Sessions for drivers across the country.

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 – That the Panel has carefully considered and read the evidence in the report and listened carefully to the responses and heard Mr Gomes.

The Panel noted that Mr Gomes had held a Hackney Carriage Driver's Licence since 2015 at which point he passed his Driving Standards Agency Test including the wheelchair element.

In November 2015 the Licensing Section issued a letter of warning when Mr Gomes left his vehicle unattended, obstructing the main access point for emergency vehicles in to the city centre pedestrian area.

On the 2 March 2016 the Council received the complaint from Mrs Topliss regarding the incident for which Mr Gomes was before the Panel today.

The Panel have listened carefully to Mr Gomes' account of this incident today. However the Panel are extremely concerned that despite attending a Disability Awareness Session and passing a test on the subject less than twelve months ago Mr Gomes still proceeded to transport a disabled passenger in a dangerous manner, failing to secure his wheelchair correctly.

The Panel must be satisfied that Mr Gomes is a fit and proper person to hold a Hackney Carriage Driver's Licence.

The Panel decided to:

Suspend Mr Gomes' Hackney Carriage driving licence for a period of 6 weeks with immediate effect (due to the Panel's grave concerns over the risk to safety of other wheelchair using passengers) in line with the Local Government (Miscellaneous Provisions) Act 1976, Part II Section 61 (2B), and re-attend the City Council's disability awareness training during that time.

The reasons for the decision were:

1. Mr Gomes' actions were entirely against council policy and entirely against the disability and duty of care guidelines.
2. Mr Gomes had attend the training and was aware of the requirements for transporting a wheelchair
3. It was very dangerous to transport a wheelchair unsecured and Mr Gomes placed himself and his passengers at risk.
4. Mr Gomes had no valid reason for not securing the wheelchair correctly

RP.14/16 HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER – DURATION OF LICENCE AND FEES

The Licensing Manager submitted report GD.19/16 regarding changes to the duration of drivers' licences for hackney and private hire drivers.

The Licensing Manager reported that the Deregulation Act amended Section 53 of the Local Government (Miscellaneous Provisions) Act 1976 by introducing a 3 year licence for Private and Hackney Carriage driver licences, with only 'individual exceptional circumstances' negating the issue of a 'lesser' period of licence. Accurate calculation of fees had been undertaken and consultation had concluded.

The City Council issued one year licences to new and existing drivers and fees were calculated on that basis. There were 250 hackney carriage drivers and 90 private hire drivers although this figure fluctuated. The report detailed the tests and checks that new drivers and existing drivers had to undertake at application or renewal time.

Although the legislation stated that a driver's licence should be granted for 3 years, there may be circumstances in which it may be appropriate to grant a licence for a shorter period. Advice from the Institute of Licensing and the Council's Legal Section was that each driver's request for a shorter period of licence should be considered on its own merits. Examples of circumstances where it may be appropriate to grant a shorter licence could be:

- Drivers who were intending to retire within the next three years
- Drivers who were required to undergo annual doctors medical check
- New drivers who had a conviction or an amount of motoring points on their licence
- Drivers who were being phased into a three year licence

The Licensing Manager explained that delegated authority would be sought to enable her to grant a licence for a lesser period, in circumstances deemed appropriate, and to charge the proportionate fee.

In order to streamline administration for the driver and the licencing office it was proposed that licence renewal dates were brought into line with DBS renewal dates, as well as align with a driver's medical and DVLA licence check. This would result in a more even spread throughout the year and would reduce administration costs.

The proposed fees from 1 April 2016 were detailed in section 3.3 of the report. Consultation for the proposals ended on 10 March and no responses had been received from the public or trade.

RESOLVED – 1) That report GD.19/16 be noted;

2) That the renewal licence dates for Hackney Carriage and Private Hire licences be aligned with DBS and medical expiry dates over a three year period;

3) That authority be delegated to the Licensing Manager to enable the granting or refusal of a 'lesser period licence', in circumstances which they consider appropriate, and to charge the proportionate fee;

4) If a decision to refuse a lesser period of licence is made, a driver will have appeals rights to the Regulatory Panel and a report submitted for their casting decision;

5) That Cumbria County Council DBS certificates are no longer accepted;

6) That DVLA licences are checked annually through the DVLA Government digital system, with the permission of the driver;

7) That annual administration checks be carried out to ensure:

- A self-medical declaration is completed
- A statutory declaration to confirm all convictions
- A DVLA driving licence check
- An up to date photo if the identity of the driver has significantly changed from previous year.

8) That the following fees are agreed from 1 April 2016:

	1 year	3 year
New driver	115.00	235.00
Renewal	75.00	185.00

9) That fees are reviewed on an annual basis in line with the charging report.

RP.15/16 PRIVATE HIRE OPERATOR – DURATION OF LICENCE AND FEES

The Licensing Manager submitted report GD.20/16 regarding changes to the duration of drivers' licences for hackney and private hire drivers.

The Licensing Manager reported that the Deregulation Act amended Section 55 of the Local Government (Miscellaneous Provisions) Act 1976 introducing the standard duration of Private Hire Operator licences from 1 to 5 years, with only 'individual exceptional circumstances' negating the issue of 'lesser' period of licence.

Carlisle City Council issued one year Operator Licences and had 24 Operators. Charges were dependent on the amount of vehicles an Operator controlled. The Licensing section carried out administration and compliance checks of Operator records along with receiving and investigating complaints.

The legalisation stated that an operator's licence should be granted for 5 years; however, there were circumstances in which it may be appropriate to grant a licence for a shorter period. It was suggested that the Licensing Office commenced with disclosure checks for directors and telephone operators of companies from 1 April 2016/their next renewal date and updated on renewal of the Operator Licence every 5 years.

The proposed fees had been set out in the report along with the methodology used to calculate them.

The proposed fees from 1 April 2016 were detailed in section 3.3 of the report. Consultation for the proposals ended on 10 March and no responses had been received from the public or trade.

RESOLVED – 1) That report GD.20/16 be noted.

2) That authority be delegated to the Licensing Manager to enable the granting or refusal of a 'lesser period licence', in the circumstances which they consider appropriate, and to charge the proportionate fee.

3) if a decision to refuse a lesser period of licence is made, an Operator will have appeal rights to the Regulatory Panel and a report submitted for their casting decision;

4) That the following fees are agreed from 1 April 2016:

PH Operator	1 year new/renewal	5 year new/renewal
1-5 vehicles	175.00	495.00
6-10	245.00	550.00
11-20	460.00	670.00
21-30	595.00	745.00

5) That the fees are reviewed on an annual basis in line with the charging report;

6) That the commencement of basic criminal records checks for directors and staff of Operating companies be agreed with effect from 1 April 2016.

(The meeting ended at 3.10pm)