

REGULATORY PANEL

WEDNESDAY 21 SEPTEMBER 2016 AT 2.00PM

PRESENT: Councillor Franklin (Vice-Chairman), Bowman S, Collier (as substitute for Councillor Bainbridge), Layden, Morton, Sidgwick, Dr Tickner (as substitute for Councillor Bell), Tinnion, Mrs Warwick, Williams (as substitute for Councillor Osgood) and Wilson.

OFFICERS: Legal Services Manager
Licensing Manager
Licensing Officer

RP.36/16 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Bell, Bainbridge and Osgood.

RP.37/16 DECLARATION OF INTEREST

Councillor Tinnion declared a disclosable pecuniary interest in accordance with the Council's Code of Conduct in respect of Agenda Item B.1 – Private Hire Driver – Disclosure from Police. The interest related to the fact that he knew the Private Hire Driver and his family.

Councillor Layden declared an other personal interest in accordance with the Council's Code of Conduct in respect of Agenda Item B.1 - Private Hire Driver – Disclosure from Police. The interest related to the fact that he knew the Private Hire Driver as a taxi driver.

RP.38/16 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.39/16 MINUTES OF PREVIOUS MEETING

RESOLVED – 1) That the minutes of the meetings held on 13 July 2016 be agreed as a correct record of the meetings and signed by the Chairman.

2) That the minutes of the meeting held on 17 August 2016 be noted.

RP.40/16 HACKNEY CARRIAGE DRIVER – COMPLAINT

The Licensing Officer presented report GD.52/16 regarding a complaint against a Hackney Carriage Driver.

Mr Miah, the licensed driver, Messrs Warbeck and Maddison, the complainants, were in attendance.

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

Legal Services Manager advised Mr Miah that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Officer stated that Mr Miah had held a Hackney Carriage driver's licence since 31 March 2016 and he had completed all of the application criteria at the time.

The Licensing Officer reported that the Licensing Authority had received a telephone complaint on 3 August 2016 from Mr M Warbeck. Both Mr Warbeck and his colleague, Mr Maddison, were employees of Scot Rail and regularly booked taxis through Cab-find to take them from Carlisle Railway Station to Dumfries Railway Station.

A taxi had been ordered for Mr Warbeck and Mr Maddison for 10.15pm on 2 August 2016. The complainants reported that the taxi driver had not known where Dumfries Railway Station was located and started to programme his Satellite Navigation System (Satnav) whilst driving off the station grounds. The complainant also reported that the vehicle was being driven at a speed of up to 65mph on Scotland Road and reduced speed suddenly on the approach to the motorway, entering the slip road at approximately 10mph.

Having realised the driver did not have his vehicle lights on the complainant and his colleague asked the driver to switch the lights on and the driver appeared to be confused and switched the heater on and then started flashing his main headlight beam. At this point the vehicle was on the motorway and the driver had increased his speed to approximately 100mph and continued the journey with no lights on.

The complainants had been concerned for their safety and asked the driver to drop them off at Gretna where they would find another taxi. When the vehicle approached the slip road at Gretna the driver suddenly reduced his speed to 10mph. Whilst waiting for a different taxi the complainants saw the driver trying to put his lights on before he pulled away through a red light and in front of a bus.

The taxi driver had been identified and Mr Miah had attended a meeting with the Licensing Officer. Mr Miah responded to each of the complainants' allegations, details of which were set out in section 3 of the report. Mr Miah had stated that he had not needed to use his Satnav and denied speeding on Scotland Road and the motorway. In response to questions regarding his headlights Mr Miah had stated that his headlight bulb had blown and he had put his full beam on after the complainants had asked him to put his lights on. Other drivers were flashing at him and it was at this point that he put his fog lights on. He denied driving through a red light and pulling in front of a bus. Mr Miah's recollection of the journey had been attached at appendix 2 of the report.

The allegation had been brought before the Panel due to the short time period Mr Miah had held a licence and the seriousness of the complaint made against him.

The Licensing Officer reported that during the investigation of the complaint Mr Miah's vehicle had been observed by a member of the Licensing Team parked up and unattended at the bottom of Scotch Street whilst Mr Miah was queuing in the Post Office. Mr Miah had been interviewed and he was reminded that the entrance to Scotch Street was to allow emergency vehicles access. Mr Miah had responded that he had been waiting for a passenger in the Post Office for a few minutes. The Licensing Office dealt with the matter by issuing a warning letter.

Mr Warbeck and Mr Maddison addressed the Panel. They reported that they had asked Mr Miah to put his headlights on and he initially put his radio on then put his full beam on.

The taxi was on the motorway at this point and other vehicles, which included lorries, thought Mr Miah was flashing them into his lane. The complainants were concerned that the taxi could be crushed by lorries. Mr Miah then drove over 100mph which is why they asked to be dropped off at Gretna. Mr Miah had struggled to set the Satnav whilst leaving the station and then tailgated a car from the Sands Centre before reaching 65mph on Scotland Road. They had reminded Mr Miah it was 30mph area and he had reduced his speed.

In response to questions Mr Warbeck and Mr Maddison clarified the following:

- When the taxi reached the slip road to the motorway they could see the vehicles lights were not on and they started to panic as he had also reduced his speed to 10mph to join the motorway;
- In trying to put his lights on Mr Miah put the radio on then his heater. He held his full beam on then started flashing it on and off which confused other drivers;
- When Mr Miah dropped them off at Gretna they could see he was still trying to switch his lights on and kept getting out of the car to check, he then proceeded to go through a red light and pull in front of a bus;
- It had been dark when they were on the motorway;
- They used taxis on a regular basis and had done so for fifteen years, they had a lot of experience of taxi drivers but this had been the most traumatic journey they had experienced;
- Both of them could drive;
- When they reached Gretna they called Cab-find to arrange another taxi and had to wait for 45 minutes;
- The two decisions made, namely whether to leave the vehicle and whether to report Mr Miah had not been actions they had taken lightly;
- It was the first time they had complained to a Local Authority about a driver although they had previously complained to their area manager;
- Mr Miah had been trying to programme the Satnav from leaving the Station and past the Citadel;
- Mr Miah had reached his top speed near the BMW garage at Kingstown Industrial Estate;
- They had been watching the speedometer in the vehicle the whole time;
- The vehicle speed had reduced gradually to 10mph whilst Mr Miah was focussing on trying to put the lights on rather than paying attention to maintaining his speed;
- There had been some communication issues but Mr Miah had understood where they were going, that they wanted the lights on and that they wanted to be dropped off at Gretna;
- They had called for a replacement taxi, it was not arranged by Mr Miah.

Mr Miah then addressed the Panel. Mr Miah explained that he had asked Mr Warbeck and Mr Maddison for the postcode for the Satnav because it was easier to find the way but he had not needed it as he had been to Dumfries Station on two other occasions. He disputed the claims that he had driven at 65mph on Scotland Road and stated he travelled at 25-30mph, it was not possible to drive faster due to the traffic on the road and because his lights were not working.

He did not understand how he could have driven at 10mph and stated that he did control his speed. When he was travelling on to the slip road his right bulb went off but the left bulb was working. He put the full beam on but switched it off when he got onto the motorway and only travelled at 55-70mph. The passengers asked him to switch his

lights on and he told them the bulb had gone off but they pushed him to put them on. He took the passengers to Gretna and called his office to inform them that his bulb had gone then he travelled back to Carlisle.

In response to questions Mr Miah clarified the following:

- He had held a driving licence for four years and had driven throughout that period mainly in Carlisle;
- He had been driving this taxi for two months;
- He knew how his lights worked and his vehicle had a warning informing him his light had gone off;
- He stopped working once he reached Carlisle;
- He rented his vehicle from Radio Taxis and they were responsible for the maintenance of the vehicle;
- He knew the speed limits for built up areas and for the motorway;
- He thought the passengers had asked to stop at Gretna because he did not have both lights working;
- He would not have carried on the journey to Dumfries had the passengers not asked to stop;
- He had wanted to stop on the hard shoulder but his passengers had said not to;
- He had thought the Service Station between Carlisle and Gretna would be closed;
- He denied all of the allegations and did not know why the passengers may have made them up.

The Licensing Officer clarified that during her interview with Mr Miah she had asked why Mr Miah had not stopped at the Service Station and he had stated he did not know.

The Licensing Officer outlined the relevant Legislation and outlined the options open to the Panel. She highlighted Option 5 which requested Mr Miah to undertake a Driving Standards Agency (DSA) Taxi driving Test. Since the publication of the report the Licensing Office had been notified that the DSA were no longer running the tests and as a result this Option was no longer available to the Panel.

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 Miah, Mr Warbeck, Mr Maddison and the Licensing Officer.

The Panel noted that Mr Miah had received a letter of warning regarding his unattended vehicle parked in an emergency vehicle access area following the receipt of the complaint from Mr Warbeck and Mr Maddison.

The Panel had regard to Sections 59 and 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1076 when determining if Mr Miah was still considered a fit and proper to continue to hold his licence.

Mr Miah had been carrying two fare paying passengers, who had been concerned enough about the actions of Mr Miah and for their own safety that they complained to the Local Authority and attended the Panel meeting and this was a fact which the Panel considered

to be the most worrying aspect of the matter. The two passengers had made a number of allegations concerning unsafe and illegal driving, each and everyone of which was denied.

The Panel accepted the evidence given by Mr Warbeck and Mr Maddison and found that they were credible witnesses with no reason to make false allegations. It accepted that they had felt in danger and asked Mr Miah to stop at Gretna where they called another taxi. Both witnesses were drivers and would know that Mr Miah's driving was erratic.

With regard to the evidence given by Mr Miah, the Panel did not accept his version of events, which was contradictory. Mr Miah said that he wanted to pull onto the hard shoulder which he had not said previously. By denying each and every allegation in the face of clear evidence, he showed a lack of responsibility for his actions.

The Panel was satisfied that Mr Miah exceeded speed limits to a considerable degree and continued to drive at speed knowing that his lights were not working properly, and that he drove through a red light.

The safety of passengers should be a driver's primary concern and exceeding prescribed speed limits, with or without defective lights, could lead to accidents and harm being caused to passengers, members of the public and drivers. Happily this was not the case here, but the Panel wanted to impress upon Mr Miah the importance of respecting prescribed speed limits. The fact that the lights were not working made this more dangerous and Mr Miah should have stopped at the first safe opportunity which he did not.

The decision of the Panel was that Mr Miah was not fit and proper to be driving the public and that his licence should be revoked.

The reasons for the decision were:

1. Mr Miah had only held a licence for a few months
2. In that time Mr Miah had a serious complaint made and had received a warning letter about another a matter
3. Mr Miah failed to demonstrate that he met the standard of driving which the City Council expected from a driver
4. Mr Miah put two fare paying passengers in fear for their safety
5. The Panel's primary concern was for the safety of the public
6. Mr Miah had not shown that he put the safety of his passengers paramount

The Panel considered that this matter was sufficiently serious and public safety would be put at risk if Mr Miah continued to drive pending any appeal he might decide to make. This was because Mr Miah failed to appreciate the importance of safe driving and in one incident he had driven so erratically that the passengers so feared for their safety that they got out his car and added an hour to their journey. Mr Miah had denied the allegations and accepted no responsibility for his actions. The Panel were not convinced, therefore, that Mr Miah would improve his driving as a result of today's decision.

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

Having declared a disclosable pecuniary interest, Councillor Tinnion left the meeting.

RP.41/16 PUBLIC AND PRESS

RESOLVED – That in accordance with Section 100A(4) of the Local Government Act 1972 the Public and Press were excluded from the meeting during consideration of the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in the paragraph number (as indicated in brackets against each minute) of Part 1 of Schedule 12A of the 1972 Local Government Act.

RP.42/16 PRIVATE HIRE DRIVER – DISCLOSURE FROM POLICE (Public and Press excluded by virtue of Paragraph 1)

The Licensing Manager presented report GD.53/16 regarding a disclosure from Cumbria Constabulary regarding a Private Hire Driver.

The Private Hire Driver (PHD) and representatives from Cumbria Constabulary were in attendance.

The Legal Services Manager outlined the procedure the Panel would follow. The PHD confirmed that he had received, read and understood the Licensing Manager's report. The Legal Services Manager advised the PHD that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Manager outlined the PHD's licensing history which began in 2008. The PHD had previously been charged with four offences which had taken place between 2002 and 2004 however, criminal proceeding had been discontinued in 2010. The PHD's licence had been suspended pending the outcome of the criminal case, during which time the licence had expired. The PHD had applied for and was granted his licence in 2010.

The PHD had come to the attention of the Licensing Office on a number of occasions as detailed in the report and in August the Licensing Office received a disclosure from Cumbria Constabulary that the PHD had been investigated for further offences. Upon receipt of the information the PHD had been interviewed and his licence was suspended.

The PHD had indicated that he disputed the information disclosed and wished to appeal the decision to suspend his licence; an appeal would need to be heard by the Magistrates Court.

The Licensing Manager responded to questions from the Panel and confirmed that, while the PHD had held a contract with Cumbria County Council to transport school children, this had been terminated following an investigation into an allegation that the PHD had made racist comments to a passenger.

Representatives from Cumbria Constabulary detailed the disclosures that they had sent to the Licensing Office and the questions which they had answered as a result of the disclosures. They also set out the allegations made against the PHD and the evidence they had.

The representatives from Cumbria Constabulary responded to Members questions and clarified issues raised.

The PHD drew the Panel's attention to an allegation set out in appendix three of the report and informed the Panel that the allegation had been resolved and Cumbria Constabulary confirmed this.

The PHD addressed the Panel. He detailed the circumstances surrounding the allegations and the evidence he had which disputed them. He felt he was a victim of previous allegations and that "mud sticks" and this had resulted in further allegations. None of the allegations were true and he could prove that they were not as he had done before.

The Legal Services Manager clarified some areas for the Panel with regard to the allegations and whether the PHD had proved the earlier allegations were untrue bearing in mind that the matter had not proceeded to trial.

The PHD responded to questions from the Panel, the Legal Services Manager and the Licensing Manager.

The Licensing Manager outlined the relevant Legislation and the options open to the Panel.

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 and heard from the Private Hire Driver, the Licensing Officer and Cumbria Constabulary.

The Panel noted the Private Hire Driver's licensing history as detailed in report GD.53/16.

The Panel had regard to Sections 59, 61(1), 16(2)(a) and 61(2)(b) of the Local Government (Miscellaneous Provisions) Act 1976 when determining if the Private Hire Driver was still considered a fit and proper person to continue to hold his Private Hire Driver's licence.

The Panel had listened carefully to the concerns expressed by Cumbria Constabulary and the responses given by the Driver. The allegations made were extremely serious and had safeguarding issues, and the Panel must take these seriously, although there were no criminal convictions, as they were relevant to his position as a taxi driver.

The decision of the Panel was that the Private Hire Driver's licence should be revoked.

The reasons for this were:

1. Cumbria Constabulary had felt it necessary to bring the concerns to the City Council's notice, which is unusual and reflects the seriousness of their concerns;

2. Cumbria County Council had also felt it necessary to terminate its contract with the driver to transport school children;
3. As a taxi driver, he had to transport vulnerable persons;
4. The Panel noted that several allegations of a similar nature had been made against the driver and did not accept his explanation that “mud sticks”;
5. It was entirely inappropriate to allow the 14 year old girl into his house and discuss personal matters with her;
6. At the very least, the driver had a tendency to behave in a manner inappropriate for a taxi driver;
7. The Panel’s primary concern was for the safety of the public;
8. The Panel did not consider the driver to be a fit and proper person to be driving a taxi;
9. Accordingly the driver’s Private Hire Driver’s Licence would be revoked.

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

(The meeting ended at 4.50pm)