

REGULATORY PANEL

WEDNESDAY 9 FEBRUARY 2011 AT 2.05PM

PRESENT:: Councillor Morton (Chairman), Bell, Bowman C (as substitute for Cllr Mrs Robson) Cape, Graham, Layden, Mrs Parsons, Scarborough, Tootle, Mrs Vasey and Wilson.

RP.09/11 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Hendry and Mrs Robson.

RP.10/11 DECLARATIONS OF INTEREST

There were no declarations of interest submitted for this meeting.

RP.11/11 MINUTES OF PREVIOUS MEETINGS

RESOLVED – That the minutes of the meeting held on 5 January 2011 be noted.

RP.12/11 PRIVATE HIRE DRIVER – ADDITIONAL MOTORING CONVICTION

The Licensing Officer presented report GD.09/11 regarding a Private Hire Driver who had informed the Council of a further motoring conviction which occurred in February 2010.

Mr Oliphant, the driver, was in attendance.

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

The Licensing Officer reported that Mr Oliphant had been licensed as either a Private Hire or Hackney Carriage driver since 2006. The Licensing Manager reported that Mr Oliphant had been convicted of 'using a hand held mobile phone whilst driving' in December 2007 whilst driving his Private Hire vehicle without passengers.

The conditions attached to Mr Oliphant's licence required him to notify the Council, in writing, of any additional convictions within 7 days of receiving the conviction. Mr Oliphant failed to comply with the condition by notifying the Council of the conviction at renewal time on 10 January 2008. He was sent a warning letter regarding both matters informing him that any future occurrences may be referred to the Regulatory Panel.

The Licensing Officer reported that on 17 February 2010 Mr Oliphant was again convicted of 'using a hand held mobile phone whilst driving' and was issued with a Fixed Penalty Notice together with a further 3 points on his licence. Mr Oliphant was not driving a licensed vehicle at the time of the offence. Mr Oliphant did not comply with the condition attached to his licence and notified the Council of the offence at renewal time, 11 months after the offence.

The Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel.

Mr Oliphant then addressed the Panel. He explained that when he had been convicted in December 2007 he had been stationary in a queue of traffic, his mobile phone had rang and he had known it was the office. He answered the phone and was told by the taxi operator that he had not switched his radio on; during the short conversation he had been seen and was then convicted. He stated that it had been an oversight that he had not reported the matter to the licensing office and added that he had not been carrying passengers and had been in a queue of traffic. He explained that the latest conviction had been while he was driving a van, he checked his phone prior to driving on to the M6 to go to Barrow and he had put the phone to his ear in error as he was not receiving or making a call but rather receiving a message. He had been seen by the Police and had shown them that there was no call made or received but had been charged. He had not reported it at the time because his wife and mother had both been in hospital and although it was not an excuse he had not reported it and it was an oversight.

Mr Oliphant confirmed that he was in a van on his way to Barrow where he worked three days a week and driving was his only income. He confirmed that he had Bluetooth in the form of an ear piece and plug in equipment but it was not fixed in the car. On the first occasion he had left his ear piece in the office to re charge, since the conviction he had ensured that the ear piece was in the car at all times. He also informed the Panel that he had just began his shift when the office called to inform him he had not switched his radio on and that was when the Police saw him on the phone. He informed the Panel that the incidents would not happen again and he had found the whole experience very traumatic.

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

RESOLVED – 1) That, having given very serious consideration to the matter, the Panel felt that Mr Oliphant had been convicted of a serious offence that could affect the safety of members of the public and agreed to issue Mr Oliphant with a stern letter of warning with regard to his future conduct and;

required him to sit and pass a Driving Standards Agency Taxi Driving Test within 26 weeks. If Mr Oliphant failed the Test his licence would be automatically revoked;

2) That it be noted that Mr Oliphant was informed that he had a right of appeal and that right would be confirmed in writing.

RP.13/10 HACKNEY CARRIAGE POLICY

The Licensing Manager submitted report GD.13/11 regarding a Hackney Carriage vehicle that was over the age limit for Hackney Carriages and Private Hire Vehicles as set by the Licensing Panel.

Mr Carlile, the proprietor, and Mr McCullough from Carlisle Taxi Association, as Mr Carlile's representative, were in attendance.

The Assistant Solicitor outlined the procedure the Panel would follow. Mr Carlile confirmed that he had received and read the Licensing Manager's report and that he was happy for Mr McCullough to represent him.

The Licensing Manager reminded the Panel that the Licensing Panel had, on 10 November 1997, adopted a set of criteria for licensed vehicles to meet, should the licence holder apply for an extension beyond the Council's maximum age limit of 10 years for Hackney Carriage and Private Hire vehicles. The procedure was well known to proprietors and had caused little problems since its introduction. The Licensing Manager explained that when a wheelchair accessible Hackney Carriage approached the age limit of 10 years, Licensing Officers would meet with the proprietor to discuss the future of the vehicle. If the proprietor elected to retain the vehicle it would be subject to 6 monthly bodywork and interior inspections in addition to four monthly mechanical tests at the garage. If the vehicle remained in exceptional condition as outlined in the criteria it would be allowed to continue to be licensed.

The Licensing Manager reported that the Council licensed 90 wheelchair accessible vehicles of which 8 were between 10 and 15 years old and only Mr Carlile's vehicle was 20 years old.

The Licensing Manager outlined the history of its tests and inspections from 2006 to date and highlighted a number of faults. Following the vehicle inspection on 9 September 2010, the Licensing Officer had been concerned about the condition of the vehicle and requested that the Licensing Manager give a second opinion. Without reading the Licensing Officer's inspection results the Licensing Manager carried out an inspection and formed the opinion that the vehicle did not and probably would not, reach the criteria required. As well as the issues listed in the letter to Mr Carlile following the inspection the Licensing Manager stated that Mr Carlile's boot had been full of tools and this was also a breach of the exceptional condition criteria.

The Licensing Manager discussed his findings with Mr Carlile who stated that he had intended to purchase another vehicle when he could afford it. The Licensing Manager agreed to grant an extension for three months, up to 31 January 2011, to enable Mr Carlile to change the vehicle. On 31 January 2011 Mr Carlile visited the Licensing Manager and he had not changed the vehicle or carried out any bodywork repairs. Following a discussion with Mr Carlile it was agreed that he would appear before the Regulatory Panel so he could give the Panel his reasons why he felt they should depart from their criteria. After seeking legal advice the

Licensing Manager also agreed that Mr Carlile could continue to drive pending the decision of the Panel.

Mr Carlile had submitted a letter explaining why he did not agree with the decision of the Licensing Manager and it was attached to the report as appendix G.

The Licensing Manager stated that Members had been given the opportunity to view the vehicle before the Panel had begun.

The Licensing Officer (Mr Sharrock) informed the Panel that he had carried out the first inspection of the vehicle and had asked for another officer's opinion who then in turn asked for the opinion of the Licensing Manager. He stated that he had also viewed the vehicle prior to the Panel and it was clear that Mr Carlile had carried out a lot of work on the vehicle in recent weeks and it looked a lot better than it had on previous inspections. There were, however, still some issues with regard to the roof lining of the taxi and to the condition of the back seat.

Mr McCullough then addressed the Panel on behalf of Mr Carlile. He reminded the Panel that Mr Carlile's vehicle did not present a safety issue as it had passed its test, the issue was cosmetic. He confirmed that the vehicle was 20 years and highlighted the comments made by the Licensing Officer and felt that apart from the roof lining and the seat the vehicle was in good condition. Mr Carlile had carried out a lot of work on the vehicle and Mr Carlile understood that the vehicle had to be in good condition all year round and not just at inspection time. He added that the vehicle was in good condition and the bodywork was not in poor condition and if the Panel wanted Mr Carlile to replace the roof lining and the back seat he could within one month.

Mr McCullough asked the Panel to consider granting Mr Carlile an extension of one month which would take him to his regular inspection on 9 March 2011. He stated that the vehicle was now close to meeting the criteria and had concern regarding the use of the word 'pristine'. He asked the Panel to take into account the work Mr Carlile had put into the vehicle. He realised that it was not the concern of the Panel but informed them that Mr Carlile was 60 years old and would be unable to gain finance. If the vehicle did not pass the inspection on 9 March Mr Carlile understood that he could lose his vehicle licence.

Members agreed that the vehicle's condition had been improved but had serious concerns that Mr Carlile would be unable to maintain the standard in the future. The Chairman reminded Mr Carlile that the criteria was in place to protect members of the public and although the Council had licensed vehicles older than 10 years old Mr Carlile's was still the oldest vehicle in the taxi fleet.

Mr McCullough reassured the Panel that Mr Carlile understood that he had to keep the vehicle in good condition at all times and that he would be complying with the criteria in the future.

In response to Members' questions Mr McCullough explained that the boot of the vehicle had been wet due to a design fault and that Mr Carlile kept a wooden rack in the boot to prevent customers' luggage from getting wet. He assured the Panel

that the electrical components in the boot were safe. He explained that the Report had stated that Mr Carlile had agreed to replace his vehicle by 31 January 2011 but Mr Carlile had not understood what he was agreeing to at the time. Mr McCullough reassured the Panel that the vehicle was completely safe and he understood that passengers wanted a clean, warm safe vehicle to travel in and he felt that Mr Carlile's vehicle met that standard. Mr Carlile was a mechanic and knew that the modifications that had been made to the vehicle were to improve the safety.

The Assistant Solicitor clarified that the word 'pristine' was not used in the exceptional condition criteria.

The Licensing Manager 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 noted the work that had been carried out on Mr Carlile's vehicle since its last inspection but did have serious concerns that Mr Carlile would not keep the vehicle in good repair in the future.

The Panel agreed not to suspend Mr Carlile's licence today but to review the matter again in one month to allow for further work to be carried out before the vehicle's next inspection on 9 March 2011. If the vehicle failed the inspection, or failed any of the agreed criteria, as set out in the exceptional condition criteria, following the inspection then Mr Carlile would be referred back to the Panel for consideration of the revocation of his Hackney Carriage licence.

RP.14/10 SEX ESTABLISHMENT POLICY

The Licensing Manager submitted report GD.12/11 regarding the introduction of a Sex Establishment Policy.

The Licensing Manager reported that Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called 'Sexual Entertainment Venue' which allowed local authorities to regulate lap dancing and similar entertainment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The City Council had, on 9 November 2010, adopted the new legislation.

The Licensing Manager explained that the Council did not have a written policy regarding the application, determination and grant of sex establishment licences. Although the law did not require a policy best practice suggested that having a policy in place would assist the applicant, persons living in the locality of the premises and the licensing authority.

He added that it was proposed that a draft licensing policy be prepared prior to consultation and suggested that a working group be formed to consider the draft

policy and any representations prior to it being considered by the Regulatory Panel for adoption.

RESOLVED – That Councillors Graham, Tootle and Mrs Vasey formed a Sex Establishment Policy Working Group to consider the draft policy and the first meeting would be held on 14 February 2011.

RP.15/11 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 the minutes) of Part 1 of Schedule 12A of the 1972 Local Government Act.

RP.16/11 HACKNEY CARRIAGER DRIVER – ALLEGED OFFENCE (Public and Press excluded by virtue of Paragraph 7)

The Licensing Manager presented Report GD.11/11 regarding a Hackney Carriage Driver who had been arrested and interviewed with regard to an alleged offence.

DB, the applicant, was in attendance at the meeting.

The Assistant Solicitor outlined the procedure the Panel would follow. DB confirmed that he had read the Licensing Officer's report. The Assistant Solicitor advised DB that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Manager provided details of the applicant's licensing history and recent alleged offence. He added that he had suspended DB's Hackney Carriage driving licence on 28 January 2011.

The Licensing Manager 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, having given serious consideration to the matter and taken into account the nature of DB's alleged offence, public safety and representations made at the Panel, the Panel agreed to confirm the continued suspension of DB's Hackney Carriage driver's licence until the next meeting of the Regulatory Panel to be held on 23 March 2011, pending the investigation by the Licensing Office in conjunction with the Police, without prejudice to any further action the Panel may take following the outcome of the investigation.

(The meeting ended at 3.27pm)