

REGULATORY PANEL – SPECIAL MEETING

TUESDAY 4 MAY 2021 AT 4.00 PM

PRESENT: Councillor Ms Ellis-Williams (Chair), Councillors Ellis, Mrs Mallinson (as substitute for Councillor Nedved), Mallinson (J) (as substitute for Councillor Bainbridge), Morton, Patrick, Shepherd, Dr Tickner, Tinnion and Miss Whalen

ALSO

PRESENT: Mr Hoque – Hackney Carriage Driver
Mr Roy – Mr Hoque's representative
Mr Davison – representative of Radio Taxis (from 5.05 pm)

OFFICERS: Assistant Solicitor
Licensing Manager
Licensing Officer
Regulatory Compliance Officer (Apprentice)

RP.19/21 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf on Councillors Bainbridge, Nedved and Miss Sherriff.

RP.20/21 DECLARATIONS OF INTEREST

There were no declarations of interest affecting the business to be transacted.

RP.21/21 PUBLIC AND PRESS

It was agreed that the item of business in Part A be dealt with in public; there were no items of business in Part B to be dealt with when the public and press were excluded.

RP.22/21 COMPLAINT AGAINST A HACKNEY CARRIAGE DRIVER

The Licensing Officer submitted report GD.35/21 regarding a complaint against a Hackney Carriage Driver.

Mr Hoque, Hackney Carriage Driver (the Driver) and Mr Roy, Mr Hoque's representative (the Driver's representative) were in attendance.

The Assistant Solicitor outlined the procedure the Panel would follow.

The Assistant Solicitor further advised the Driver that he had a right to be represented, noting that his representative was also in attendance. A copy of report GD.35/21 had been supplied to both parties prior to the meeting.

The complainant, her daughter and a representative of Radio Taxis were scheduled to respond to questions, but the parties were not yet present in the meeting.

The Assistant Solicitor sought and received confirmation that the Driver and his representative were content to proceed; the representative verifying that he would address the Panel on his client's behalf.

The Chair confirmed that a copy of the Driver's Statement had been circulated to the Panel immediately prior to the meeting but asked that his representative present the Statement to Members at the relevant point in proceedings.

The Licensing Officer reported that the Driver had been the holder of Hackney Carriage Driver licence with this Council from 12 October 2018. The Licensing Office had received a complaint of him not showing a 'duty of care' towards a female passenger on 19 March 2021. The Driver appeared before the Regulatory Panel on the 4 December 2019 for a similar issue and his licence was suspended for a period of six weeks. The Driver had been referred to the Regulatory Panel to consider his fitness and propriety to hold a Hackney Carriage Driver Licence.

The Licensing Officer outlined the background and the Driver's licensing history, which included a copy of his Hackney Carriage Driver Licence. Set out within the report and associated appendices were the facts relative to complaints received against the Driver on 21 January 2019; 29 July 2019 and 18 October 2019.

The Licensing Officer then delivered a comprehensive overview of the current complaint that the Driver had not shown a 'duty of care' towards a female passenger; and interviews undertaken by himself, details of which were provided at Section 2 to report GD.35/21. When contacted in relation to the incident Radio Taxis confirmed the booking and stated that they were aware that drivers sometimes requested partial payment up front during the early hours of the morning when travelling out to rural areas within the district due to bilking, but that was a decision made by the self-employed driver and entirely depended upon circumstances. There was a 'pay up front' advice placed on the Driver's system which indicated there had been a previous issue at that address for persons leaving or arriving at that address.

In response to Members' questions, the Licensing Officer clarified that:

- on receipt of a request for a taxi the operator would enter details of the booking into the system which would show instances whereby someone had defaulted upon payment of the fee. That advice would then be conveyed to the driver.
- he believed that the Driver would have been aware that there had previously been an issue with bilking; and it was the Stonegarth address which flagged up on the system.
- he had, as part of the inquiry into this complaint, spoken with Radio Taxis; his understanding being that a 'pay up front' alert would be displayed on the system. The driver would therefore be aware. Radio Taxis further confirmed that they had a 'duty of care' to the drivers and the alerts were in place to let the driver know that there had been an issue with bilking at an address (for the avoidance of doubt Radio Taxis were not suggesting that the issue was with those specific passengers).
- Radio Taxis were the largest taxi operator in Carlisle. An issue had arisen many years before whereby drivers were not responding when the operator attempted to make contact. Bearing in mind the importance of punctuality, a system was put in place so that if a taxi was not booked off or booked on another job, then it would drop to the bottom of a queue. All who drove for Radio Taxis were aware thereof. A Hackney Carriage Driver could, however, apply for hire from a taxi rank in the interim and the system let the operator know that he was working and not available.
- a taxi driver could, and should, refuse someone who wished to enter his taxi without a face covering unless a medical exemption applied.

In response to questions and concerns from the Driver's representative regarding the report, the Licensing Officer explained that:

- as part of the investigation process, he had firstly spoken with Mrs B (the complainant) and then with the Hackney Carriage Driver. Having given due consideration to those elements which required further clarification, he then spoke with Miss B.
- in his role as Investigating Officer, he compiled the facts relevant to the complaint. He would not, in any circumstances, offer an opinion; decision making being for the Regulatory Panel to determine.
- the options were as detailed at Section 4 of the report. It should be noted that the option – to take no further action - was open to the Regulatory Panel.

Referencing the wording at paragraph 3.4, the Chair clarified that sanctions could be both positive and negative in nature.

The Driver's representative thanked Panel for the opportunity to make a Statement, indicating that it was most unfortunate that the complainant and her daughter were not in attendance today to respond to the questions he had prepared and to points of clarification.

The Driver's representative reported that he had only recently been instructed and apologised for the late submission of a Statement of the Driver. Speaking on behalf of the Driver he then made the undernoted Statement:

"I MD Nizamul Hoque of (address redacted) will say:-

1. I am a Taxi Driver by Trade.
2. I make this witness statement from the information within my knowledge, information and belief which I believe to be true, save as where stated otherwise.
3. I make this witness statement to set out my position in readiness for the Regulatory Panel Hearing on 4th May 2021.
4. I accept that I owe a duty of Care to passengers whilst they are in my care. I do not accept that I breached my duty of care to Miss B in carrying out my duties on 19th March 2021.
5. In relation to the complaint about overcharging this was the result of my inexperience. I was horrified to have a complaint of this nature made against me and so voluntarily repaid the entire fare to the passenger which equated to £70.00.
6. Regarding the 29th July 2019, I no longer have parked at this destination. Which is located outside my property.
7. On 18th October 2021 I took the passengers from the Airport to the designated drop off point. The information which I was provided by dispatch only detailed one end destination and I was unaware of the multiple drop off had been booked. I have to rely on the information provided by my company as being accurate. I had never been to the Airport before and I was unsure as to who was responsible for the parking charge. As the passengers had directed me to enter the Express Drop off point I had asked for the car park fee as I thought that was fair. I now understand that I am not entitled to ask for this and I repaid the £7.00 parking fee. I also repaid the £15.00 additional fare to the address. I would repeat that I was only informed of one destination and the Radio dispatch confirmed they were only told about one destination. I accept that when a second destination was requested during the journey I turned on my meter as this was not part of the agreed destination I thought it only fair to request the additional fee. I was unaware of the additional stops that were booked. It is simply not true that I refused to

provide a receipt but I accept that I had forgotten to include the parking charge and the additional fare.

8. I repaid the additional amount to the previous complainant because quite frankly, I am scared. I am deeply hurt that in the decision it was labelled as an offence of dishonesty. I accept that I made a mistake in relation to the parking. I hadn't encountered having to do that before and as for the additional journey my account was supported by Radio Taxis. Nevertheless, the Panel accepted the complainant's account and I was suspended for 6 weeks. I did not challenge the decision made as I don't want to cause any trouble and didn't want to make matters worse.

9. This is my only source of income and the suspension had a significant negative effect on me and my family.

Current complaint

10. I received the job and made my way to the pick up point. It may assist to know that If we refuse a job then we are not given any further jobs for an hour. This is to dissuade drivers from not making themselves available for work.

11. I was informed by Radio Taxi's dispatch, that the destination address was labelled as a 'pay up front'.

12. I picked the two ladies and they had requested a new destination being the Queensway address. This was approximately 0.6 miles from where I picked them up from and two minutes duration. When we arrived I had told them it was £5.00 they did not have any money.

13. I was told by Miss B that her mother would pay for the fare at the end. Miss B did not disclose this to me upon entering the taxi.

14. Miss B called an individual who claimed to be her mother. She offered to pay the fare by bank transfer but the issue with this is that I do not have a card machine on board in order to take a remote payment. Secondly, if I was paid by bank transfer this could have been reversed quite easily if it was immediately indicated a mistake had been made.

15. My belief was that I had two passengers, who were travelling to an address which has been marked on the Radio Taxi's dispatch system as bad payers. I have nevertheless collected the passengers and taken them to the first destination having told them that payment would be required upfront. As the first destination is very close and in addition to the booked journey then I had asked for the £5.00 for that journey. When they could not even afford to pay this amount then I was suspicious that I would not be paid for the entirety of the journey.

16. When the total amount of the journey would equate to approximately £35.00, that is a substantial risk for me. When I have two passengers, neither of them can pay even £5.00, there is an individual who I don't know offering to pay who could quite easily refuse to pay at the other end and given the notes on the Radio Taxi's Dispatch. Given the time of day the likelihood of not being paid more likely to happen in the late hours. That I am unable to take a payment from which could not be recalled. Then I do not believe that any reasonable Taxi driver would agree to convey the passengers given that high risk, it would not be reasonable for anyone to expect a professional to undertake any job, regardless of nature, when the likelihood of not getting paid is so high.

Duty of Care

17. I do owe a duty of Care to passengers but I do not consider that I breached this duty

18. I would ask the Panel to consider where the Duty of Care would start and finish in these circumstances. I would not see anyone, female or otherwise, put in danger as I have a family of my own. I considered it safe for her to exit the vehicle.

19. Her friend has just made the exact same journey as she would have to make. No harm came to her friend. There was no additional reason why the risk would increase.

20. Mrs B has complained that I left a vulnerable female alone at that time of night. But I left her outside the house that her friend has just walked into. We know that no harm came to her friend and nothing had happened to suggest that risk had increased. I told her to go in her friend's house. Miss B walked towards her friend's house as you would expect any reasonable person to do. This was a few minutes and so it was not as if her friend had fallen asleep in that time. I was satisfied that she was okay.

21. Miss B had her phone with her so she would have been able to contact her friend, her mother and could request another firm to take her to her destination. Her mother could have transferred funds to her daughter's account to ensure that she had the means to pay for the journey. This option did not occur to me until after the event.

22. It was suggested that Miss B walked back to Stonegarth. She had told her mother about this but she does not seem to have dissuaded or encouraged her daughter to contact her friend and remain in the comfort of her friend's house whilst she waited.

23. I would suggest that in the statement Miss B 'would await at that house to be picked up by her mother' indicates that her daughter most likely remained at her friend's house as I suggested and was later picked up by her mother.

24. I would ask that the Panel also consider why it was necessary for her mother to come and fetch Miss B when she could have made arrangements for another firm to take her home. I admit that Mrs B's travel to collect her daughter would have been an inconvenience but it didn't warrant a complaint.

25. I have had to answer to this complaint. Have my livelihood under threat and the welfare of my family put at risk. Miss B and her friend had obviously been drinking that night, I don't think it is reasonable for someone to go out drinking without retaining the means to return home or to place that onus on me or any other driver. Miss B is 22 years of age she is an adult. She should have been able to complete the transaction without having to involve a third party.

26. It cannot be reasonable merely to be able to enter a taxi without any means to pay and be able to rely on a 'duty of care' as an absolute justification for demanding to be taken home. If that were the case then paying for the fare almost becomes optional, a tip. That cannot be right.

27. I consider myself a fit and proper person to carry out this role. But never have I ever abused or assaulted any passenger. I did not take advantage of a passenger and considering the facts available I don't believe that I have done anything wrong.

28. I would ask that the council consider that an additional option available to them which is not noted in the options is that no sanction is imposed at all. Sanction is a punishment and I do not consider that I should be punished for an action which any taxi driver in similar circumstances would have done.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes or causes to be made a false statement in a document verified by a statement of truth with an honest belief in its truth.”

The Driver's representative added that:

- point 5 – provided background information regarding the complaints for which the Driver had previously appeared before the Regulatory Panel.
- point 6 – if Members had sight of the photographs they would see that there was not really an obstruction of the footpath. However, the Driver had accepted the point and had not parked there since.
- point 7 – confirmed that the Driver had provided two receipts on that occasion.
- point 18 – the reference to 'her' related to Miss B.

The Driver's representative said that he did not envisage any other taxi driver acting drastically differently. Although appreciating that if the location had been somewhere else things may have been different, he considered it unfair to say that the Driver had neglected his duty of care.

A Member noted that point 7 of the Driver's Statement referenced 'October 2021' which was clearly a typographical error.

Responding to a Member's prior question, the Driver's representative stated that the original destination was the Heads Nook address and therefore only that address could have been the subject of an alert on Radio Taxis' dispatch system.

The Licensing Officer was of the understanding that there had been a previous issue or issues relative to the Stonegarth address.

The Driver added that the job in question emanated from the Stonegarth address. He further believed that the 'pay up front' alert related to the Heads Nook address.

The Chair sought and received clarification that the Driver's representative would respond to questions on his client's behalf. The Driver could, however, also address the Panel.

The Driver's representative responded to questions and concerns from Members, in the following terms:

- it was a matter of metres between where Miss B exited the taxi and her friend's house. He would therefore be content with that.
- the complaint related to a duty of care. Miss B had travelled with her friend and exited the car outside her friend's address at Queensway, the house her friend had just gone into. A 22 year-old should adopt some degree of responsibility for their own actions. His belief was that Miss B was not unsafe due to the close proximity of her friend's location.
- because the journey time to the first destination was short the Driver was essentially prepared to take a risk, which he did; and gave up the £5 fare.
- the Driver would most certainly agree that he exercised his right to refuse the fare when it became apparent that the £5 fee for the journey from Stonegarth to Queensway could not be paid.

In response to questions the Driver:

- indicated that he always wore a mask in his car while on duty. The lights went off automatically when the taxi door was locked and he could not therefore see behind him.

When the passenger opened the door at the Queensway address he discovered that the lady was not wearing a mask.

- explained the position as regards payment of fees and that drivers had some knowledge regarding distance and the associated cost - e.g. a journey of 2.7 miles would cost the customer £10. A deposit was therefore requested.
- When the customers first entered his taxi they only wished to be conveyed to Queensway. On occasion customers only completed the minimum part of a journey which was why he had not requested payment of the fare from the first point.

In response to a Member's question, the Licensing Office believed that the Driver should have asked the passengers to wear masks before entering his car; and that he had the right to refuse entry to those who did not comply. He also believed that the 'pay up front' advice was because there had been issues at the Stonegarth address, not the Heads Nook address.

The Chair welcomed the representative of Radio Taxis to the meeting.

In response to Members' questions the representative clarified that:

- there had been issues with both the Stonegarth and Heads Nook addresses in terms of the payment of fares. Radio Taxis' booking system logged information (including drop off, client names, telephone numbers, addresses and destinations) and rated passengers or addresses. There were therefore multiple ways in which the system recognised and provided the background to a specific job. Clearly taxi companies took many paying jobs, but also no fare jobs. On their circuit drivers did not get paid ten or fifteen times per week.
- if a search of the computer system was undertaken it would identify multiple pick ups from both the Stonegarth and Heads Nook addresses.
- Radio Taxis took the booking which was passed to the driver, but it was the driver's responsibility to get paid for the fare. The 'pay up front' message was a prompt from the office to make the driver aware. The driver had to exercise his own discretion.
- If a 'pay up front' advice appeared on the data head or the PDA in the vehicle, then probably 90% of drivers would not take the fare unless it was cash up front. Many drivers would not do out of fare bookings from the rank unless they received some payment up front from known nonpayers within Cumbria, but not within Carlisle.

In response to questions from the Assistant Solicitor, the Driver's representative commented that:

- From his discussions with the Driver, which had been extensive, he would be surprised if the lady managed to even get herself towards bed. It was a matter of minutes, rather than 10 – 15 minutes later. Timing was not a factor.
- Miss B had just exited the taxi; her friend was probably just on the other side of the door and there was nothing which a knock on the door would not fix.
- He understood the Assistant Solicitor's point that Miss B would not have a key to her friend's house, but it was her friend and Miss B had her phone.
- If a person had been identified as a bad payer and one was asking for a guarantor for the fare, who was also a bad payer then the driver was no further forwards in terms of alleviating the risk of non-payment.
- the Driver did not have a card payment machine and it was his belief that, if a bank transfer was made, that could be reversed.
- Contacting the Police was an option. However, in this particular instance, a Friday evening / early hours of the morning, if a driver contacted the Police concerning non-payment of a fare in all likelihood they would not see that as a priority, in which case the Driver's entire shift (his bread and butter) would be written off.

The Licensing Officer emphasised that the issue was one of a duty of care.

The Driver's representative replied to questions from the Licensing Officer and Panel Members, stating that:

- as referenced in point 20 of the Statement, the Driver had instructed Miss B to go into her friend's house.
- the Driver had learnt from report GD.35/21 that the lady had chosen to go to Stonegarth. The Driver would not drop a passenger off and question where they were going, or escort them to the door or kerb crawl alongside that person. Whilst there was no intention to make light of the duty of care, the action taken was what one would expect a reasonable taxi driver to do.
- From their discussions, the Driver believed that his duty of care ended at the point where he chose to end it, namely when Miss B exited the taxi in front of her friend's house. The Driver knew that Miss B's friend had just entered that address.
- It did not make any sense to the representative that Miss B's wellbeing would be at risk unless something was going on which would make it unsafe for the Driver to drop her off at that address.

Referencing comments made in discussion, the Chair expressed the view that the enforcement of COVID-19 restrictions was not part of the complaint under consideration today.

In response to further questioning, the representative of Radio Taxis reiterated that when a client called Radio Taxis, having previously used the company, the information inputted into the booking system, and which appeared on screen, would include a 'cash up front' job note if there had been an issue with payment in the past. That job note would automatically appear on screen for the operator to add it to the PBA. Once the job was sent to the PBA it would be on the driver's job note.

The representative explained the circumstances in which a driver may be willing to go to a pick up address, adding that if a job note included a 'cash up front' note, nine out of ten drivers probably would not take the fare without receiving payment up front. He summarised the options open to drivers in such a scenario, emphasising that people who did not pay for taxis knew what they would do; certain of them booking taxis from an alternative address across the street for instance. It was not unusual for three or four persons to get into taxis and for the individuals to pay part of the journey.

The Licensing Manager summed up by drawing the Panel's attention to the options available to them as detailed in Section 4 of the report.

The Driver's representative had nothing further to add, other than to express disappointment that the complainants had not been in attendance today.

the representative from Radio Taxis left the meeting

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter. The respective parties returned, and it was:

RESOLVED - That the Panel had carefully considered and read the evidence in Report GD.35/21; and listened carefully to the responses and heard from the Hackney Carriage Driver's legal representative and from the representative of Radio Taxis.

Section 59 of the Local Government (Miscellaneous Provisions) Act of 1976 provided that a Licensing Authority should only grant a Hackney Carriage Drivers Licence if it was satisfied that the driver was a fit and proper person to hold such a Licence.

Section 61 enabled the Panel to take action in respect of a Driver if they considered that circumstances existed which would mean that the Driver was not or was no longer a fit and proper person to hold a Hackney Carriage Drivers Licence.

While the Panel felt that it would have been preferable for the Hackney Carriage Driver to wait and ensure that the passenger made it safely into her friend's house, they had on this occasion decided to take no further action.

The Hackney Carriage Driver was advised that he would receive written notification of this decision within the next week or so.

The Chair thanked the Driver and his representative for their attendance today.

[The meeting ended at 6.19 pm]