

Regulation and Review Committee Panel

10 January 2019

Present: Councillor J Stirling (Chair)
Councillor J Allan, P Earley, T Mulvenna and J O'Shea.

RQ50/01/19 Apologies for Absence

There were no apologies for absence reported.

RQ51/01/19 Declarations of Interest and Dispensations

There were no declarations of interest or dispensations reported.

RQ52/01/19 Exclusion Resolution

Resolved that under Section 100A (4) of the Local Government Act 1972 (as amended) and having applied a public interest test in accordance with Part 2 of Schedule 12A the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act.

RQ53/01/19 Private Hire Drivers Licence Appeal – Mr G

The Committee received a report by the Senior Manager, Technical Services which outlined the background to an appeal by Mr G against the decision of the Authority to refuse to renew his Private Hire Driver Licence on the grounds that it was not satisfied that he was a fit and proper person to hold this licence.

Mr G attended the meeting and was accompanied by a representative, Mr W.

A Licensing Officer presented the report to the Committee which included information on Mr G's application, his criminal and licensing record with the Authority and the reason for the refusal. The appeal form submitted by Mr G was also included.

Mr W asked questions of the Licensing Officer.

Members asked questions of the Licensing Officer.

Mr W then addressed the Committee on Mr G's behalf. Mr W and Mr G then answered questions from Members.

Following a summing up from the Licensing Officer and Mr W, all parties left the meeting to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- a) Uphold the appeal and agree to renew the licence; or
- b) Dismiss the appeal and refuse to renew the licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and its main concern was the need to maintain high standards amongst licensed drivers and to ensure the protection of the travelling public.

In determining its response the Committee had regard to Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular Chapter 7 which made reference to convictions, cautions, conduct and medical fitness.

Resolved that Mr G's appeal be upheld and his Private Hire Driver licence renewed with a warning as to his future conduct. The Committee considered the circumstances warranted a departure from the Policy and was satisfied that Mr G was a fit and proper person to hold a licence from this Authority.

RQ54/01/19 Combined Hackney Carriage and Private Hire Driver Licence Disciplinary Referral – Mr P

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to a referral relating to the holder of a Combined Hackney Carriage and Private Hire Vehicle drivers licence, Mr P.

The Committee was requested to determine whether any disciplinary action was required and to assess Mr P's continued suitability to carry out the duties of a licensed driver.

A Licensing Officer and Mr P attended the meeting.

The Licensing Officer presented the report to the Committee which included information on the reason for the referral and Mr P's criminal and licensing record. The Licensing Officer then answered questions from Members of the Committee.

Mr P was given the opportunity to ask questions of the Licensing Officer.

Mr P then addressed the Committee.

Members of the Committee asked questions of Mr P and sought clarification on a number of matters.

Following a summing up from the Licensing Officer and Mr P, all parties left the meeting room to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- take no action;
- issue a warning as to the driver's future conduct;
- suspend the driver's licence; or
- revoke the driver's licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and seriously considered all the options available to it.

In determining its response the Committee took into account all that had been presented and contained within the papers submitted to the meeting and had regard to Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular chapter 7 which makes reference to convictions, cautions, conduct and medical fitness.

The Committee determined that due to the circumstances of the case a suspension would act as a sufficient deterrent to avoid repetition and was an effective way of giving Mr P time to reflect on the actions he took when working as a licensed driver; his responsibilities towards his passengers and other road users; and remind himself of the Highway Code and the conditions of his licence.

Resolved that Mr P's Combined Hackney Carriage and Private Hire Driver licence be suspended for a period of four weeks.

RQ55/01/19 Hackney Carriage Vehicle Proprietor's Licence – Appeal against a condition of the licence

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to an appeal by Mr B against the imposition of condition 5 as currently worded to his hackney carriage proprietor's licence.

Condition 5 of the Standard Conditions under the heading Door Decals states 'There shall be attached centrally to each front door of the vehicle the appropriate hackney carriage or private hire vehicle decals supplied by the Authority. The decals must be securely affixed or in the case of Hackney Carriage Vehicles permanently affixed to the vehicle and these must be maintained in a satisfactory condition and be legible'.

Mr B's appeal case was that door decals for Hackney Carriages should be the removable for when the vehicle was being used for weddings and funerals, executive work and at times when it was being used as a "private vehicle" and not be permanently affixed as required by the Authority's Policy.

A Licensing Officer and Mr B attended the meeting.

The Committee was informed by the Licensing Officer that powers relating to the licensing of hackney carriages were contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. Section 47(1) of the Local Government (Miscellaneous Provisions) Act 1976 allows a district council to attach to the grant of a licence any conditions as it may consider reasonably necessary. Section 47(2) allows a district council to require a hackney carriage licensed by it to be of such a design and appearance or bear such distinguishing marks as shall clearly identify it as a Hackney Carriage.

Chapter 2 of the Authority's Hackney Carriage and Private Hire Licensing Policy makes reference to Vehicle Licences and conditions and states 'General conditions are attached to a hackney carriage vehicle proprietor's licence relating to the identification of the vehicle and safety issues.'

Condition 5 had been approved following a consultation exercise which included the issue of door decals and how they were fitted to vehicles. The majority of respondents agreed with the proposal to permanently affix door decals to hackney carriages.

The decision to distinguish between Private Hire and Hackney Carriages was made because of the exemptions afforded to Private Hire vehicles by section 75(3) of the Local Government (Miscellaneous Provisions) Act 1976, whereby the plate and decals can be removed from a Private Hire vehicle providing it is carrying out, exclusively, executive type work. This exemption does not apply to Hackney Carriages.

The Committee was informed that after being granted a Hackney Carriage Vehicle Proprietor's licence Mr B had written to the Authority requesting condition 5 be 'rescinded' because it was 'unfair' as private hire vehicles were able to remove their decals for executive work and the same should be possible for hackney carriages. Mr B was informed that he had the right of appeal against the conditions within 21 days of the issue of the licence; which he subsequently did.

Before concluding his presentation, the Licensing Officer reminded the Committee that it had discretion and may depart from the Policy if it considered there were compelling reasons to do so. The Committee must act in accordance with the law and may only agree to the grant of a licence where it was satisfied that any conditions attached to the grant of the licence were reasonably necessary.

After Members had asked questions, Mr B addressed the Committee.

Mr B explained why he thought the distinction between private hire and hackney carriages regarding permanently fixed decals was unnecessary; that he would like to undertake executive work; the impact this condition had on his ability to work weddings and funerals; and the impact the condition had on his family life.

Members asked questions and sought clarification on a number of matters. The Committee was reminded that the decision before them today was for Mr B's vehicle only and would not be a change to the Authority's Policy.

The Licensing Officer and Mr B then summed up their respective cases.

All parties then left the meeting room to allow the Committee to consider its decision in private.

The Committee had the following options.

- a) Uphold the appeal and permit the door decals to be mounted on magnets for Mr B's vehicle; or
- b) Dismiss the appeal and not permit the decals to be mounted on magnets for Mr B's vehicle.

In determining its response the Committee had regard to the Authority's Hackney Carriage and Private Hire Licensing Policy and considered all that had been presented at the meeting and contained within the papers.

The Committee considered in turn the different circumstances in which Mr B proposed he would not use the door decals and determined as follows:

- a) A Hackney Carriage cannot undertake executive work; the exemption under section 75(3) of the Local Government (Miscellaneous Provisions) Act 1976 for executive work is for Private Hire Vehicles only.
- b) It was noted that the exemptions in section 75 (1)(c) and (cc) of the Local Government (Miscellaneous Provisions) Act 1976 applies to Hackney Carriages for weddings and funerals meaning Mr B was permitted to remove or cover up decals and remove the roof sign when the vehicle was hired to be used for weddings or funerals. The plate would still need to be displayed under the requirements of the Town Police Clauses Act 1847. Whilst acknowledging that for a wedding or funeral the removal of the decals would improve the cosmetic appearance of the car and that magnetic decals were preferable because once the existing decals were removed they could not be used again, these were not sufficient grounds to justify a departure from the Policy.
- c) With regard to the use of the vehicle for personal journeys, the Members sympathised and understood the difficulties which could arise when waiting for family or friends; however it was an inconvenience which came with the privilege of a Hackney Carriage Proprietor's licence and the law has been clearly interpreted by the Courts as meaning that a hackney carriage is a hackney carriage at all times of the day whether the vehicle is being used for work or not.

The Committee considered all the options available to it but was satisfied that the imposition of condition 5 complied with the requirements of section 47 of the Local Government (Miscellaneous Provisions) Act 1976 and the distinction between private hire vehicles and hackney carriages was reasonable and necessary and that nothing put forward at the meeting justified a departure from the Policy in relation to this matter at this time.

Resolved that the appeal against the imposition of condition 5 (decals should be permanently affixed) for the reasons set out above be dismissed.