

## **Licensing and Appeals Sub Committee Hearing Panel**

### **Minutes of the meeting held on Monday, 22 May 2023**

**Present:** Councillor Grimshaw – in the Chair

**Councillors:** Connolly and Hewitson

#### **LACHP/23/48. Renewal of Sex Establishment Licence - Clone Zone, 36-38 Sackville Street, Manchester, M1 3WA**

The Hearing Panel considered a report from the Head of Planning, Building Control and Licensing. The Hearing Panel also considered the written papers of the parties and the oral representations of the parties who attended as well as the relevant legislation.

The Hearing Panel had been requested to consider site visits to establish whether the premises should be defined as a sex shop under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The Hearing Panel conducted site visits to Clone Zone and a high street chain, similarly selling clothing, undergarments and sex toys/aids. Currently, Clone Zone was having to renew their licence as a Sex Establishment annually, yet the high street chain was not subject to the same legislation. The proprietor of Clone Zone confirmed the percentage of sales from the shop floor of sex toys/aids as 13.9%. He also confirmed that DVD sales had ceased for some time now and that the licensing requirement was solely down to these items being sold.

The Hearing Panel retired to a private session to ascertain whether they considered that Clone Zone sold or displayed sex items to a “significant degree.”

The Hearing Panel invited attendees back into the hearing and reported that they had concluded that the shop did not sell or display sex items to a significant degree, that Clone Zone was similar in nature to the high street chain, albeit aimed at a different demographic, and asked the proprietor if they now wished to withdraw their application now that the premises had technically been removed of any requirement to do so.

The proprietor thanked the Hearing Panel and confirmed that their withdrawal of the application.

#### **LACHP/23/49. Exclusion of the Public**

A recommendation was made that the public be excluded during consideration of the following items of business.

#### **Decision**

To exclude the public during consideration of the following items which involved consideration of exempt information relating to the financial or business affairs of

particular persons, and public interest in maintaining the exemption outweighed the public interest in disclosing the information.

**LACHP/23/50. Urgent Business - Review of a Private Hire Driver Licence - FTR**

The Hearing Panel considered the content of the report and the written and oral representations made by the Licensing Unit officer and FTR who was accompanied by their solicitor and two members of their driver unit.

The Licensing Unit officer addressed the Hearing Panel, stating that FTR was appearing before Sub-Committee for consideration of the review of a private hire driver licence. FTR's private hire driver licence was suspended with immediate effect. FTR was involved in a road traffic accident, whilst driving their private hire vehicle, where FTR collided with a stationary vehicle. FTR had a passenger on board who sustained injuries during the incident. CCTV had been distributed ahead of the hearing. The footage had been provided by a neighbour of the owner of the struck vehicle. FTR confirmed that they were the driver in the incident and stated that the passenger was a drunken female. 2 days later a complaint was received from the partner of the female passenger with more details of the incident and photos of the injuries sustained. The Licensing Unit raised their concerns around FTR leaving the scene without sharing contact details with the owner of the struck vehicle and also not taking the passenger to hospital. FTR was suspended with immediate effect.

In responding to questions from FTR's solicitor, the Licensing Unit officer stated that the aerial view of the incident site was from Google Maps and that this may not accurately represent the scene at the time of the incident, therefore it may not be known if there was room for FTR to have pulled over immediately after striking the vehicle, although it did show the layout of the road and pavement. The Licensing Unit officer also confirmed that the unit had not spoken to the neighbour who supplied the CCTV footage.

FTR's agent stated that FTR accepted his involvement in the incident and explained that they had collected the passenger from a pub who then refused to put on a seatbelt. The passenger had distracted FTR to the point that they could not concentrate on driving which led to the crash. Afterwards, there was traffic on the road and FTR could not pull over until they arrived at the first available junction which FTR then turned into, having deemed this to be the safest available area. FTR had returned to the site of the crash but did not see anyone to exchange details with, offered the passenger to be taken to hospital by another driver from the fleet but she refused, stating that she wanted to return home. A member of the fleet confirmed that they had arrived at the scene to find FTR shaken up. FTR had told the base about the incident and thought that they would tell the authorities. It was the owner of the struck vehicle who contacted the taxi firm base and made it clear that they wanted to have no contact with the driver (FTR) and would not give their contact details, therefore, FTR could not contact the owner of the struck vehicle. The Law states to report any damage within 24 hours, but the agent expressed that the owner knew who the taxi driver was anyway but stated that FTR did not make the right decision by failing to alert the police. FTR informed their insurance company and, similarly, thought that they would pass information on to the police and felt that everything was

taken care of. The female passenger had refused to go to the hospital and went home to her partner. Photos were then distributed of the female and FTR claims that these photos are not representative of how she looked after the incident. No statements had been submitted by the female or the other car owner and FTR had not been charged with anything or had a police interview. FTR had reported the incident to the police, albeit late and this was their first appearance before the Hearing Panel with only 1 previous incident of speeding on their record.

The agent then invited FTR to speak and answer questions from the agent regarding the collection of the female, her drunken condition, refusal to wear a seatbelt, swaying and shouting, misbehaving and swearing. All this had made FTR lose control of the vehicle. FTR had not seen if she had any injuries due to the late hour other than a bloody nose. FTR offered her tissues and assistance to the hospital from the fleet. FTR's car was damaged and they had left it in the first available safest place. The owner of the other car was nowhere to be seen but FTR felt confident that the car owner would find the taxi and work out what had happened. After the owner had contacted the base, FTR had been contacted and confirmed that they had caused the damage. FTR's insurance company did not inform them to contact the police and neither did the base. Only after having spoken with the Licensing Unit had FTR been informed to do so.

In response to questions from the Licensing Unit officer and Hearing Panel, FTR stated that they had contacted the police on 18 April, that they thought the insurance company and/or the base would contact the police, that they were now aware of their duty to make contact in the event of an accident, that they had not returned to the crash site after the female had been taken home by another driver and had returned the next day, that the female's injuries did not appear to be serious, that they could not force her to wear a seatbelt, that FTR was nervous about speaking to the owner and also nervous about pulling over with the female passenger on board in case she made any allegations, that they had 9 years experience and considered themselves to be a professional driver, that the female in her drunken condition had caused FTR to crash and that they could not recall if the insurance company had asked if anyone was injured in the crash.

A member of the fleet who had arrived to assist the female after the crash addressed the Hearing Panel to give information about their experience. This witness stated that they had arrived and asked the female where she wanted to go. She had told the witness that she wanted to go home so they complied. The witness stated that they had a conversation with FTR whereby they had stated they would take her to the hospital. The witness concurred with FTR that her injuries were minor, stating that the female said there had been some bleeding which had stopped by the time they had arrived to assist.

In responding to questions from the Hearing Panel, the witness stated that the female was quiet when they had assisted her to her home, that they had 20 years service in the taxi trade, had no major accidents in this time, was not a professional first-aider and that they would have taken the female to a hospital or called for an ambulance.

A character reference for FTR was then distributed which stated that FTR had several years service, no complaints and was trustworthy. FTR was an honest, reliable, dedicated and hard-working person.

In summing up their case, the Licensing Unit officer stated that FTR had placed the blame on the female passenger and that there were other actions they could have taken. FTR had not taken ownership of the incident, instead feeling that others should have handled the matter and informed the police on their behalf. FTR left no details for the other car owner at the scene and, with all these factors combined, FTR's actions fell short of expectations for a licenced taxi driver.

The agent for FTR stated that the other driver knew who FTR was quickly and had found out how to make contact for an insurance claim which complies with the Road Traffic Act, that FTR's actions at the late hour of 02:00 were reasonable, FTR did not need to return to the scene as details had been shared, the female passenger did not want to have medical treatment and it was not within FTR's power to force her to do so, only by speculation could anyone try to ascertain what had happened to cause the crash and no charges had been levelled at FTR. The evidence shows that the vehicle owner was angry when they contacted the base, deterring FTR from wishing to make contact with them, FTR should have made contact with the Licensing Unit sooner, but this does not make them not fit and proper to drive a taxi, FTR had not done anything untoward with regards to the passenger and perhaps could have done better but simply misunderstood their obligations. Revocation would be too severe and perhaps a warning or suspension would be an apt outcome for this case.

In their deliberations, the Hearing Panel considered the incident very seriously and felt that FTR had passed the blame and obligations on to others, showing bad judgement in their actions. They noted FTR's otherwise clean history but felt that FTR's licence should be suspended for 3 months with immediate effect on the grounds of public safety and that this would be sufficient warning to FTR on their actions in future.

## **Decision**

To suspend FTR's licence for a period of 3 months with immediate effect on the grounds of public safety.

## **LACHP/23/51. Urgent Business - Review of a Private Hire Driver Licence - MS**

On entering the hearing, MS stated, via the interpreter appointed to them by the council, that they had been advised to attend without their barrister.

The Licensing Unit officer relayed information to the Hearing Panel that MS had been listed for a hearing on 15 May 2023 but this had been deferred due to MS's barrister not being available until mid-June, which would potentially move the hearing date to July. The unit had informed MS that they could appoint an alternative representative for this hearing.

The Chair of the Hearing Panel requested to see a copy of the message sent to MS to ascertain whether they were given enough time to appoint an alternative representative.

The Licensing Unit officer retrieved the email sent to MS and the Hearing Panel considered that MS should be allowed time to attend with their barrister but informed MS that the hearing may have to go ahead at a future date if their barrister was unavailable on this date.

**Decision**

To defer the hearing until 19 June 2023 to allow MS to attend with their barrister.