

Licensing and Appeals Sub Committee Hearing Panel

Minutes of the meeting held on Monday, 22 April 2024

Present: Councillor Connolly – in the Chair

Councillors: Hewitson and Hilal

LACHP/24/36. 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/24/37. Application for New Private Hire Driver Licence - AA

The Hearing Panel considered the report from the Head of Planning, Building Control and Licensing regarding the above application. The Applicant and his representative attended the hearing. The Panel also considered the oral representations all parties who attended, as well as the relevant guidance. The matter was considered in line with the established procedure for taxi licensing hearings.

In reaching a decision the Panel took into consideration their Statement of Policy and Guidelines and Statutory taxi and private hire vehicle standards.

The Panel noted that the Applicant had previously held a Private hire vehicle licence which was revoked in August 2023.

The Applicant had been asked to provide a medical certificate which was not provided and as result of his failure to provide the medical certificate his private hire drivers licence was suspended in June 2021. The applicant was stopped by the police in November 2021 driving his licensed vehicle whilst suspended. Following this, a prosecution was issued for plying for hire and no insurance by Manchester City Council. Mr Afzal denied the offences, so a trial took place where he was convicted of the offences. Due to the court imposing 6 penalty points for having no insurance, this resulted in a totting disqualification being imposed due to 6 penalty points already being on the licence for 2 separate speeding offences.

In December 2021 the Licensing Unit received a medical certificate which allowed the Officer to lift the suspension of his hackney carriage driver's licence.

The Applicant's representative advised the Panel that Mr Afzal was granted a licence in 2019 when in fact he should not have been, as he had not provided a medical certificate. The Council had deemed him 'fit and proper' to hold a licence. The representative stated that during the Covid 19 pandemic period drivers could sign a

declaration instead of providing a medical report, but this was not the case for Mr Afzal as his request pre-dated Covid. When he was asked to provide a certificate (in December 2020 and February 2021), he had already been granted a licence. He was asked again to provide a medical certificate one year later whilst in Pakistan but due to the pandemic restrictions at the time, was not able to get back.

The representative questioned why a prosecution had been brought by the Council and told the Panel that whilst the Applicant had a defence in law, he had been poorly represented at trial. He referred to there being no malice in the matter and it being a simple mistake. He however understood that the Panel could not go behind the conviction but urged them to note that there were no other issues with Applicants record and to move away from the guidelines.

Firstly, the Panel reminded themselves that where an individual had been convicted of a criminal offence, they could not review the merits of the conviction (Nottingham City Council v Mohammed Farooq (1998)). The Panel took into consideration the findings of the court, which concluded that the Applicant was aware that he was suspended which resulted in his plying for hire and driving the vehicle without insurance. A serious view is taken of convictions for plying for hire and no insurance as the main purposes of the licensing regime is to ensure the protection of the public.

Secondly, the Panel considered their Statement of Policy and Guidelines with particular reference to the consideration of major traffic offences which states that an application would generally be refused unless a period of 3 years free from conviction had elapsed from the restoration of the DVLA licence, and 5 years where the disqualification related to driving whilst unfit through drink or drugs. The Panel noted that the Applicant's driving licence was restored in late December 2023, meaning that the offence was well within the guidelines. The Panel understood that they had the discretion to depart from the guidelines, however they concluded that no circumstances or mitigation had been provided to depart from their guidelines.

Thirdly, the Panel reminded themselves of the statutory guidance at Section 5.4 with regard to the Fit and proper test. Which states:

“Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a fit and proper person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is no, the individual should not hold a licence. Licensing authorities have to make difficult decisions but (subject to the General principles) the safeguarding of the public is paramount. All decisions on the suitability of an Applicant or licensee should be made on the balance of probability. This means that an Applicant or licensee should not be given the benefit of doubt. If the Committee or delegated officer is only 50/50 as to whether the Applicant or Licensee is fit

and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.”

Having considered all of the evidence and having applied the relevant tests, the Panel concluded on the balance of probabilities that the Applicant was not a fit and proper person to hold a private hire drivers' licence. The Panel therefore refused the application.

Decision

To refuse the application for a Private Hire Driver Licence.

LACHP/24/38. Application for New Private Hire Driver Licence - SAK

The Hearing Panel considered the report from the Head of Planning, Building Control and Licensing regarding the above application. The Applicant attended the hearing along with a supportive friend and was assisted in the hearing with Interpreter that was provided by the Council. The oral representations of all of the parties who attended were also considered, in conjunction with the relevant guidance. The matter was considered in line with the established procedure for taxi licensing hearings.

In reaching its decision, the Panel took into consideration the Council's Statement of Policy and Guidelines and statutory Taxi and Private Hire Vehicle Standards.

The Panel was advised by the Senior Licensing Officer (Compliance) that the Applicant had previously held a private hire drivers' licence which was revoked in October 2021. This followed an incident that had occurred in December 2020 which was referred to the Licensing unit from West Yorkshire Police, the full details of which were set out in the report but in summary involved the abandonment of passengers (including children) on the M1 Motorway hard shoulder. The Panel had viewed the footage of the incident prior to the hearing, when reading the reports and had observed the Applicant throwing the passengers luggage out of the vehicle.

The Applicant appealed the Panel's decision to revoke to the Magistrates and Crown Court where he was found not to be 'fit and proper' and the decision of the Sub-Committee was upheld.

The Applicant's supportive friend advised the Panel that the Applicant was sorry for his mistake, and that it should not have happened. The Panel was told that Mr Khan had learnt his lesson over the last 3 and ½ years and this was the only incident on his record. Furthermore the Applicant advised the Panel that he would never do it again.

In the hearing, the Applicant clarified his comments about the reasons that the passengers were abandoned on the hard shoulder; this he said was attributable to them being tourists and therefore unfamiliar with the UK's motorway network. The Applicant also confirmed on questioning that he had paid the passengers £350.00 in compensation for the damaged luggage.

The Panel reminded themselves that their Statement of Policy and Guidelines confirms they can consider a drivers conduct. The Panel then considered statutory guidance concerning the Fit and proper test which at Section 5.4 states:

“Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver’s licence is a fit and proper person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is no, the individual should not hold a licence. Licensing authorities have to make difficult decisions but (subject to the General principles) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given the benefit of doubt. If the committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.”

The Panel acknowledged that this incident happened 3½ years ago and that this was the only matter on this driver’s record, however it became evident that the Applicant still did not understand the significance of his actions on that day. The Panel did not accept the account given by the Applicant in the hearing regarding the event that had occurred that day and viewed the incident as a very serious matter. They had grave concerns regarding public safety following the actions of the Applicant.

Following careful consideration of all of the evidence and applying the relevant tests the panel concluded that on the balance of probabilities the Applicant was not a fit and proper person to hold a private hire drivers’ licence.

Decision

To refuse the application for a private hire driver licence.

LACHP/24/39. Application for New Private Hire Driver Licence - KMM

This hearing was deferred to the next scheduled hearing date (7 May 2024) to arrange for an interpreter to assist the Applicant in the hearing.

Decision

To defer the matter until 7 May 2024.

LACHP/24/40. Application for New Hackney Carriage Driver Licence - NHK

The Hearing Panel considered the report from the Head of Planning, Building Control and Licensing regarding the above application. The Applicant attended the hearing and the oral representations of the parties who attended were also considered, as well as the relevant guidance. The matter was considered in line with the established procedure for taxi licensing hearings.

In reaching its decision the Panel took into consideration their Statement of Policy and Guidelines and Statutory taxi and private hire vehicle standards.

The Senior Licensing Officer (Compliance) advised the Panel that the Applicant had had his Hackney Carriage and Private Hire Driver's Licence previously revoked in September 2021 and that an application for a Hackney Carriage Driver licence was refused in March 2023, due to his complaint history (the full details of which were set out in appendix 2 of the associated report).

It was highlighted that the Applicant had been able to drive during his appeal at which point another complaint was made against Mr Kayani in September 2022. The Applicant had over charged passengers and had had to refund them when the Licensing Unit became involved in the matter.

The Applicant apologised to the Panel for his past conduct and stated that he had now changed his life. He advised the Panel that he had done an anger management course. When questioned about the Provider of the course he provided a certificate. Mr Kayani confirmed it was a very short course completed in just one day.

The Panel considered the complaints made against the Applicant which demonstrated aggressive conduct towards other drivers and passengers. Further complaints indicated overcharging of passengers, driving in a very poor manner and a failure to keep his vehicle in a good condition.

The Panel reminded themselves that their Statement of Policy and Guidelines confirms that they may take into consideration a drivers conduct. The Panel then took into consideration statutory guidance concerning the Fit and Proper test at Section 5.4 which states:

“Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a fit and proper person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is no, the individual should not hold a licence. Licensing authorities have to make difficult decisions but (subject to the General principles) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given the benefit of doubt. If the committee or

delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.”

The Panel noted that the Applicant had undertaken a very short course in anger management but could not be satisfied that this short course would prevent any further incidents from occurring. They resolved that the Applicant had an appalling record of complaints which had even continued when the Applicant was appealing the decision to revoke his licence. As stated in the guidance safeguarding of the public is paramount and the Panel concluded on the balance of probabilities that the Applicant was not a fit and proper to hold a private hire drivers' licence.

Decision

To refuse the application for a hackney carriage driver license.