

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES (PART II) OF THE MEETING HELD ON FRIDAY 6
DECEMBER 2019**

8. **DRIVER - APPEAL AGAINST PENALTY POINTS**

The Chairman asked everyone present to introduce themselves as follows:-

Councillor Denise Joy – Chairman
Councillor Patrik Garten – Sub-Committee Member
Councillor Margaret Rose – Sub-Committee Member

Robin Harris – Legal Officer
Billy Attaway – Legal Assistant (Observing)
Caroline Matthews – Principal Democratic Services Officer

Mr Fazil Hakimzai – Licence Holder

The Chairman asked those present if they understood the procedure to be followed.

The Senior Licensing Officer advised the Sub-Committee that the office had received emails on two occasions (17th and 18th April) reporting a private hire vehicle (P47 EA65 KRZ) allegedly plying for hire.

On checking with the database, Officers identified that the vehicle in question was owned by Express Cabs. Emails were sent to Express requesting that they provided operator records for the vehicle and the identity of the driver(s) during those times and dates.

A further email was received on 24th April 2019 reporting the same vehicle in Mill Street and the bottom of the High Street where the driver was again allegedly plying for hire.

The driver in all four incidences was identified as Mr Hakimzai. An email was sent to Mr Hakimzai on 24th April 2019 requesting that he attended a meeting with Officers to discuss matters. He responded on the same day to advise that he was out of the country and was not sure when he would be back.

As there was no indication as to when Mr Hakimzai would return and when the matter could be resolved, it was decided that 24 penalty points be issued (6 per occasion) and on 10th May 2019 a letter was sent to Mr Hakimzai advising him of the 24 penalty points and as he had exceeded the maximum of 12 penalty points, the matter would be referred to a

By virtue of Paragraphs 1, 2 and 3 of Part I of Schedule 12A
to the Local Government Act 1972

Licensing Sub-Committee to determine whether he remained 'fit and proper' to hold a private hire driver's licence.

On 11th June 2019 Express cabs, as the operator, were asked if they were aware of Mr Hakimzai's return date, to which they indicated that it would be September.

Mr Hakimzai attended a meeting with the Licensing Officer on 23rd September 2019 and stated that he felt that being issued 24 penalty points straightaway without being given a warning first was harsh.

Following the meeting on 23 September 2019 the Licensing Officer met with the Senior Licensing Officer to review the points raised by Mr Hakimzai and it was decided that he be given the opportunity to take the Maidstone knowledge test and pass four categories which were Compulsory, Safeguarding, Maidstone private hire policy and law and generic policy and law.

Mr Hakimzai was given 3 attempts to pass the knowledge test, with a deadline of 23 October 2019. He failed to achieve the pass marks in the categories required.

As Mr Hakimzai had failed to pass the relevant sections of the topography test and was in disagreement with the issuing of 24 penalty points, the matter had been referred to the Licensing Sub-Committee to consider the matter of either suspending or revoking Mr Hakimzai's private hire driver's licence.

Members were asked if they had any questions to ask the local authority's representative to which they replied they did not.

The licence holder was asked to present his case as follows:-

- He stated that he had only received one email in regard to the penalty points issued.
- He felt it was unfair to get 24 penalty points straight away without receiving a warning first.

In responses to questions from Members, Mr Hakimzai responded as follows:-

- He did not receive the letter sent by recorded delivery until he returned home from his holiday as although his brother had signed for it, he had not informed him that it had been received.
- That rules and regulations were in place for safety reasons and for taxi drivers to do the right thing.
- He should not have had to carry out the Knowledge tests as he had family problems at the time so was very stressed.

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- The incidences were a long time ago and he was not sure he was the driver of the vehicle as the vehicle is driven by more than one driver.
- That he usually stopped for food in the town centre in the early hours of a morning when working as it was the only place to get hot food.
- That he had been a private hire driver for over three and a half years.
- If parked up in the town centre and was approached by a member of the public, he would say that they needed to ring up Express cabs to ask for him to take them to their destination or he would just say that he was on a break.
- That the vehicle was insured for the whole shift, including when he was on a break.

The local authority's representative, in summing up, advised the Sub-Committee that having heard all the evidence, they could either remove the penalty points, take no action, issue a warning, suspend the driver's licence, revoke the driver's licence or consider any other action deemed appropriate.

Mr Hakimzai, in summing up, advised that he wanted to keep his licence and felt the penalty was unfair as he has not previously committed any other offences during the last 6 years since he obtained his licence.

The Sub-Committee adjourned to make their decision.

RESOLVED: That the individual's Private Hire Driver's Licence, as identified in the exempt report, be suspended until 27th March 2020 or until he passes one Maidstone Knowledge Test before the 27th March 2020.

9. OPERATOR - APPEAL AGAINST PENALTY POINTS

The Sub-Committee considered that in the absence of the licence holder, Mr Robert Dyer that there was sufficient evidence to proceed in their absence.

The local authority's representative briefly described the case for Members of the Sub-Committee to consider.

During night time enforcement on the 24th August 2019, Licensing Officers witnessed private hire vehicle P3 (MM13 NFK) pulling into Station Road opposite the Entertainment Exchange in Week Street at 2.19 a.m. The driver was approached by Officers and asked if he had a booking. The driver advised that he had had a booking but had refused the job from Ashford to Staplehurst as it was only for £20 and he considered it was not worth doing.

The Officers advised him that as he did not have a booking, then he should not be waiting where he was and to either return to base or find somewhere more suitable to wait.

On checking the database on return to the office, they found that the driver in question worked for R.W.D. Transport (trading as Cavalier Cars). A request was made to the operator on 5th September 2019 for them to provide their operator records for P3 (MM13 NFK) so that they could confirm whether the driver had legitimate reason to be at the place and time seen by Officers.

On 11th September 2019 an email was received from R.W.D Transport. However the records supplied were not of a sufficient standard to establish whether the driver did have a legitimate reason to be at the time and place in question and a further request was made to the operator to provide the full details of all bookings as per the conditions of their operator's licence.

The operator was unable to provide any further detail and it became clear from the documents provided that they had not been complying with condition 1 of their Operator's licence. For example:-

1. The name of the passenger/hirer was only partially defined
2. It was not clear how the booking had been made (e.g. by telephone, personal call etc)
3. The name of the driver was not evident
4. The registration number of the vehicle allocated for the booking and the private hire vehicle plate number was not evident
5. The time at which the driver was allocated to the booking was not evident
6. Any remarks (including details of any sub-contract) were not evident

However, the records did show the time and location of the pick up.

The Sub-Committee were advised of the options open to them, for example, remove the penalty points, retain the penalty points that had been issued, increase the number of penalty points, take no action, issue a warning, suspend the operator's licence, revoke their operator's licence or take any other action deemed appropriate.

The Sub-Committee adjourned to consider what action should be taken.

RESOLVED: That the decision to issue six penalty points be retained.