

WEST DUNBARTONSHIRE COUNCIL

Report by the Head of Legal, Administrative and Regulatory Services

Licensing Committee – 2 August 2011

Subject: Hearing regarding possible suspension of a Taxi Driver's/Private Hire Car Driver's Licence

1. Purpose

- 1.1** To consider a possible suspension of a Taxi Driver's/Private Hire Car Driver's Licence held by Mr. Stewart Rowan following a complaint which had been submitted by passengers in a taxi driven by Mr. Rowan.

2. Background

- 2.1** On 10 May 2011 a complaint was received by telephone from a member of the public who had witnessed an incident while being driven as a passenger in a West Dunbartonshire licensed taxi.
- 2.2** The complainer was interviewed at their home address by James McArthur (Licensing Officer) and Carol Ann Anderson (Admin. Assistant) along with the complainer's partner who had also been a passenger in the vehicle at the time.
- 2.3** Mr. Rowan was subsequently interviewed with a representative, Mr. David Haddow by James McArthur, (Licensing Officer) and Robert Mackie, Senior Officer (Licensing Services).
- 2.4** Having consulted with Mr. Andrew Fraser, Head of Legal, Admin & Regulatory Services, it was decided that due to the nature of the complaint, a hearing should take place to consider the possible suspension of Mr. Rowan's taxi driver's licence.
- 2.5** A summary of the complaint can be seen at Appendix 1. The personal details of the complainer have been redacted.

3. Main Issues

- 3.1** A licensing authority may order the suspension of a licence if in its opinion the holder of the licence is not, or is no longer, a fit and proper person to hold the licence.
- 3.2** The period of suspension of a licence is the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix.
- 3.3** Where a licensing authority decides to order the suspension of a licence, the suspension generally does not take effect until the expiry of the time within which the holder of the licence may appeal against the suspension (28 days

from the date of the decision to suspend) or, if an appeal has been lodged, until the appeal has been abandoned or determined in favour of the suspension. However, if the licensing authority determines that the circumstances of the case justify immediate suspension, it may order that the licence be suspended immediately.

- 3.4** A licensing authority must, before deciding to suspend a licence, give the holder of the licence, the complainer and the Chief Constable an opportunity of being heard.
- 3.5** Mr. Rowan, the complainer and a representative of the Police authority have been invited to attend the meeting of the Committee on 2 August 2011 in order that a hearing may take place with regard to the possible suspension of the licence.
- 3.6** In considering whether to suspend a licence the licensing authority may have regard to any misconduct on the part of the licence holder which in the opinion of the authority has a bearing on his fitness to hold a licence.
- 3.7** The matters which the Committee will require to consider are as follows:-
 - (a) Whether the alleged misconduct has been established.
 - (b) If the Committee is satisfied that the alleged misconduct has been established, whether, having regard to the misconduct, Mr. Rowan is no longer a fit and proper person to hold a taxi driver's licence.
 - (c) If the Committee is of the opinion that Mr. Rowan is no longer a fit and proper person, the Committee must consider whether his licence should be suspended.
 - (d) If the Committee is satisfied that the licence should be suspended, the Committee must give Mr. Rowan an opportunity of being heard on the length of the suspension and the date from which the suspension should commence.
 - (e) The Committee must then consider what length of suspension is appropriate and whether the circumstances of the case justify immediate suspension.

4. People Implication

- 4.1** There are no personnel issues.

5. Financial Implications

- 5.1** There are no financial implications

6. Risk Analysis

6.1 There is no increased risk to the Council associated with the contents of this report.

7. Equalities, Health & Human Rights Impact Assessment Impact

7.1 No significant issues were identified in a screening for potential impact of this report.

8. Strategic Assessment

There are no strategic implications.

9. Conclusions and Recommendations

9.1 That the Committee considers the terms of this report, the summary of the complaint at Appendix 1 and the terms of any evidence presented at the hearing and thereafter determines whether the licence should be suspended and, if so, the duration of the suspension and date of commencement thereof.

Head of Legal, Administrative and Regulatory Services

Date: 01/07/11

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Appendices: Report detailing complaint against Mr. Rowan.

Background Papers:

1. Letter to Mr. Rowan dated 8 July 2011.
2. Letter to Chief Constable dated 8 July 2011.
3. Letter to complainer dated 8 July 2011.

Wards Affected: N/A.

Complaint Received Against Licensed Taxi Driver Stewart Rowan Dumbarton Taxi Driver's Licence Number 141

Background

On Tuesday 10 May 2011, a complaint was received from [REDACTED] who resides at [REDACTED]. The complaint was initially made by telephone to West Dunbartonshire Councils' Licensing Team and was in relation to an incident, which occurred on Sunday 8 May 2011.

[REDACTED] stated that on that date, she and her partner [REDACTED], who resides at the same address, travelled by taxi from their home address to Dumbarton in a taxi driven by the above named Stewart Rowan. During the course of the journey Stewart Rowan became involved in an altercation with another taxi driver, namely Mr Hakki Kirilmaz, during which it is alleged that several offensive comments were made by Stewart Rowan including some which were perceived by the complainers to be of a racial nature.

Brief details of the complaint were noted at this time, and [REDACTED] was asked to submit a detailed account of the incident in writing, at the earliest opportunity.

Summary Of Circumstances

In view of the serious nature of the allegations, licensed taxi driver Hakki Kirilmaz was contacted and on Thursday 12 May 2011, he attended at the licensing office, Rosebery Place, Clydebank. He was informed that the Licensing Team had been made aware of an incident, which had occurred on Sunday 8 May 2011, during which verbal comments may have been made towards him. Mr Kirilmaz confirmed that an incident had occurred, but stated that he did not wish to make a formal complaint in respect of this matter, however he did provide a version of events.

Hakki Kirilmaz stated that on the day in question, whilst in the Dumbarton area, he became involved in an altercation with taxi driver Stewart Rowan. During the confrontation Rowan made the comment *'I was born in this country' to which Kirilmaz states he replied 'what difference does that make'.*

Kirilmaz further states that whilst at St James Retail Park Dumbarton, Rowan challenged him to fight, shouting *'hit me, I'm born and bred in this country, hit me.'*

At this time Kirilmaz decided not to become involved any further and returned to his vehicle.

Kirilmaz was asked if at any time during this incident, Rowan had called him a *'black bastard'*. He stated that at no time did he hear that phrase being used but further stated that had he heard the phrase being used, he would have made an official complaint.

It should be noted at this time that Hakki Kirilmaz was born in Turkey in 1975. He re-located to the Renton area in 1997 and has lived and worked in this area since that time.

At the conclusion of the interview Hakki Kirilmaz re-affirmed his stance that he did not wish to make a formal complaint.

By Tuesday 17 May 2011, written details of this incident had not yet been received .

[REDACTED] was contacted by telephone and was asked if she intended to submit her complaint. At this time she explained that she was partially sighted and that she had been unable to write her letter, but further stated that she wished to pursue the complaint.

In view of the aforementioned circumstances and the seriousness of the allegations, it was decided that Licensing Officer James McArthur and Licensing Admin Assistant Carol Ann Anderson would attend at the home address of [REDACTED] and [REDACTED] in an effort to establish their version of events.

On Thursday 19 May 2011 James McArthur and Carol Ann Anderson attended at [REDACTED], where both [REDACTED] and [REDACTED] were present and provided a detailed account of the incident which had occurred on 8 May 2011.

They stated that on that date, between 1.00pm and 1.30pm, they booked a taxi from Dumbarton & Alexandria TOA to take them from their home address to Dumbarton. The driver of the taxi was Stewart Rowan, although at this time the driver was not known to either [REDACTED] or [REDACTED].

[REDACTED] travelled in the front passenger seat and [REDACTED] travelled in the rear passenger seat for the duration of the journey.

During the journey, the taxi stopped behind another taxi, being driven by licensed taxi driver Hakki Kirilmaz, at a set of traffic lights known locally as the Dalreoch lights.

As the traffic signal changed from red to green, the taxi in front remained stationary and at this time Stewart Rowan sounded his horn and made the comment *'there's one of the rebels'*. Both passengers took this to be a reference to the ongoing dispute between the taxi companies in the Dumbarton and Alexandria area.

[REDACTED] states that at this time, Hakki Kirilmaz made a one-fingered gesture, and in reply Stewart Rowan made the 'wanker' gesture with his hand, towards Kirilmaz.

Both taxis moved off, and on arrival at the next set of traffic lights, both vehicles drew alongside each other. As they did so, both drivers rolled down their windows and Kirilmaz asked Rowan why he had been sounding his horn. Rowan shouted in reply *'you were taking the piss, you weren't moving'*. Stewart Rowan was also heard to shout *'Away back to your own country, I belong in this country, I was born in this country and I work to earn a living'* and Hakki Kirilmaz was heard to reply *'I've got every right to be in this country as you have'*.

[REDACTED] was seated between both drivers at this time and states that he felt extremely uncomfortable, having been caught up in the exchange between both drivers.

Both taxis again moved off, and travelled to St James Retail Park, Dumbarton, where Hakki Kirilmaz stopped outside Argos and, at the request of his passengers, Stewart Rowan stopped at the ATM outside the premises of ASDA.

[REDACTED] got out of the taxi and stood in a queue to use the ATM. At the same time Hakki Kirilmaz approached Stewart Rowan's taxi on foot. Stewart Rowan was seated in his vehicle at this time. Kirilmaz asked Rowan what the problem was.

At this time [REDACTED] was still seated in the rear seat of Rowan's taxi and clearly heard a verbal confrontation between both drivers. [REDACTED] states that Rowan was becoming more aggressive at this point and was shouting *'Come on, you know you want to hit me, it's you who'll lose your licence, not me'*.

Kirilmaz replied *'why don't you hit me'*.

Rowan then replied *'you know you want to hit me ya black bastard'* and continued *'It's alright because I've got a witness in the back of the car'*.

At this time [REDACTED] was using the ATM. He was aware of a verbal confrontation, but did not clearly hear any of the comments made.

[REDACTED] then paid the taxi fare due to Stewart Rowan, who apologised to both of them, explaining that in his opinion Kirilmaz was attempting to delay their journey, whilst at Dalreoch lights.

████████████████████ and ████████████████████ identified the driver of their taxi by means of his identification badge, which was on display within the taxi.

On Tuesday 7 June 2011, taxi driver Stewart Rowan attended at West Dunbartonshire Council Licensing Team, Rosebery Place, Clydebank. He was accompanied by Mr David Haddow, a shareholder of Dumbarton & Alexandria TOA.

Stewart Rowan was interviewed by Licensing Officer James McArthur and Senior Officer (Licensing Services), Robert Mackie.

He was informed of the nature of the complaint and was given the opportunity to comment.

Rowan stated that he remembered the incident and confirmed that at that time both ████████████████████ and ████████████████████ were not known to him.

He stated that the first words spoken on the journey between Renton and Dumbarton were by the female passenger (████████████████████) who, whilst the taxi was stationary at the Dalreoch lights said, 'If he doesn't move, it'll cost me more', and it was in response to this comment that he sounded his horn. This was a reference to the taxi driven by Hakki Kirilmaz failing to move off at the change of traffic signal.

He further stated that on arrival at the next set of traffic lights, whilst his vehicle was alongside the taxi driven by Kirilmaz, he made the comment 'in this country green means go', and then moved off.

He confirmed that whilst in the area of St James Retail Park Dumbarton, he was approached by Hakki Kirilmaz and he (Rowan) made the comment 'There's ma face, hit me' and at that point Kirilmaz walked away.

Rowan denied that any comment he may have used was racially motivated and denied that at any time he used the phrase 'There's one of the rebels' or 'black bastard'. He is of the opinion that the version of events provided by ████████████████████ and ████████████████████ is inaccurate and without foundation, but has no knowledge of any reason they may have for providing such a statement.

He agreed that to engage in a verbal exchange with another driver, and challenge another driver to hit him, whilst paying passengers or members of the public were in or near to his vehicle was unacceptable behaviour.

At this point, the interview was terminated and Stewart Rowan was informed that the circumstances surrounding this incident would be reported to The Head of Legal Services, West Dunbartonshire Council for his consideration.

It has been established that on Tuesday 10 May 2011, ████████████████████ contacted Dumbarton & Alexandria TOA to lodge her complaint. Rowan was immediately summoned to attend a committee meeting to provide his version of events which was very similar to that provided during the interview with James McArthur and Robert Mackie

The minutes of this meeting have been viewed and the conclusion of the meeting has been recorded as 'Hakki instigated the chain of events deliberately to try to get an outcome advantageous to him and get one over on the driver of a committee member's car. References to racial abuse have been deemed to be without foundation. Saying 'does green not mean go in Turkey' isn't racial abuse.'

Remarks

During the course of the interview with ████████████████████ and ████████████████████, James McArthur and Carol Ann Anderson found both persons to be credible and reliable. They were consistent in the information they provided and there appeared to be no apparent motivation to provide false or inaccurate information.

Both were at pains to point out that Hakki Kirilmaz and his family are known to both of them, as the children of both families attend the same school. Since this incident occurred, [REDACTED] has become aware that Stewart Rowan is a distant relative.

Furthermore, both complainers are aware of the ongoing dispute between local taxi companies in the Dumbarton & Vale of Leven area, but were adamant that they have no loyalty to any taxi company or taxi driver, neither do they have any grievance with any taxi company or taxi driver.

St James Retail Park, at the time of this incident, was extremely busy with members of the public and other taxi drivers. Both [REDACTED] and [REDACTED] stated that they felt embarrassed and uncomfortable and felt Stewart Rowan had tried to draw them into a situation in which they wanted no involvement.

They further stated that in their opinion, the comments made by Stewart Rowan were racist and offensive, and his behaviour in general was unacceptable. They felt that Stewart Rowan was the aggressor and was trying to provoke Hakki Kirilmaz throughout.

The Criminal Law Consolidation (Scotland) Act 1995 makes provision for the offence of racially-aggravated harassment.

It would appear from the circumstances surrounding this incident that Stewart Rowan may have been in contravention of this legislation, however none of the parties involved have considered reporting the matter to Strathclyde Police.

The standard conditions issued to licensed taxi drivers on the grant of a licence, state:

*The driver of a taxi, while plying for hire or carrying a passenger, shall be clean and tidy in his person and adhere to the Dress Code for Taxi/Private Hire Car Drivers approved by West Dunbartonshire Council. **The driver of a taxi shall conduct himself in a proper and civil manner** and, whilst carrying a passenger, shall not smoke.*

From the information provided, it would appear Stewart Rowan has breached this condition.

There are no records of previous complaints having been lodged in respect of Stewart Rowan.

In view of the foregoing, it is requested that this report be forwarded to Mr Andrew Fraser, Head of Legal and Administrative Services, West Dunbartonshire Council, for consideration of the suspension of Stewart Rowan's Taxi Driver's Licence.

James McArthur
Licensing Officer
West Dunbartonshire Council

