

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on MONDAY, 19 FEBRUARY 2018 at 10.00 am**

Present: Councillor R Chambers (Chairman)
Councillors J Davey, A Gerard and E Hicks

Officers in attendance: A Bochel (Democratic Services Officer), M Chamberlain (Enforcement Officer), J Jones (Licensing Officer) and C Nicholson (Solicitor)

LIC37 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that under section 100I of the Local Government Act 1972 the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

LIC38 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The driver in relation to Item 3 had informed the Enforcement Officer that he would be late, and so the Committee moved on to Item 4.

The procedure for determining a private hire/hackney carriage licence was read to the driver.

The Committee considered the Enforcement Officer's report.

Martin Cockburn of 24x7 had advised that the driver had been taking on private unbooked jobs. As a result, he was not was not offered any more work with 24x7 Limited.

The driver said he had not realised that it was wrong to transport friends and family in return for reward without first informing his employer. Losing his job had been very costly for him. He had never been fired from a job before and had used a lot of his savings. He had taken out a loan in order to buy a car to do work for another operator. He said he was ashamed and embarrassed, and he wished to apologise to Martin Cockburn and to the Committee.

In response to a member question, the Enforcement Officer said the driver's car would not have been insured for journeys he had not informed his employer about.

In response to a member question, Martin Cockburn said no complaints had been made by customers about the driver.

At 10:25, the Committee withdrew to make its decision.

At 11:15, the Committee returned.

The decision was read to the driver.

Decision

The driver holds a joint private hire and hackney carriage drivers licence, and has been licensed since November 2015.

In August 2017, the driver's employer became aware of the fact that the driver had been carrying out private work for family and friends, that had not been booked through an operator. The driver admitted he had done so, and advised he did not realise that family and friends amounted to private job.

He has technically committed an offence of undertaking a private hire booking without having an operator's licence. As a result of this, the journeys he undertook would also have not been insured.

24x7 ended his employment. The driver has suffered significant financial hardship in the intervening months, and has tried to create a new job for himself by obtaining his own vehicle, and working for another operator.

Members have heard from the driver of his naivety and foolishness in carrying out the jobs, and not realising that these journeys needed to be booked through an operator. Members note that he had always driven his friends and family around before his was a licensed driver.

It is accepted case law that a journey for non monetary reward still amounts to a hire for reward, and therefore the requirement to book through an operator still applied.

Members consider that the driver was particularly foolish not to realise that accepting £100 for a pre booked journey would amount to a breach of the legislation.

Members have taken note of the driver's contrition in respect of these errors in judgment, and do accept that the driver was naïve and ill informed as to the requirements of him.

Members also note that the driver's former employers 24x7 had not received any other complaints regarding him, and the Enforcement Officer had no other cause for concern.

Members take the matter of undertaking private jobs not through an operator as a serious matter, and also driving without insurance is a particular public safety concern, as it is an integral part of being a responsible road user, and for protection of the public. However, Members do consider that this foolish episode apart, the driver remains a fit and proper person to hold a licence.

However, members consider that this failure to follow the legislative requirements does warrant a sanction as a mark of disapproval of the driver's conduct and as a deterrent to others, and that in the circumstances a suspension of the licence would be appropriate. In considering the length of the suspension Members can take into account the drivers past history, the seriousness of the breach and any other aggravating or mitigating factor, and the financial effect of any suspension upon the driver.

Other than this particular incident, there is no history of any problems, and the driver has admitted his mistakes. However, the issue was a serious one,

resulting in a breach of the law and driving without insurance, and members consider that a significant suspension will be appropriate in this case, as a mark of disapproval of his actions, and as a deterrent to other drivers who might consider doing work for family and friends. Members consider that a suspension of 2 months is appropriate, having considered the likely financial effect that will have on the driver. A longer suspension would cause a disproportionate financial effect, but any less would not recognise the seriousness with which the Council views these misdemeanours.

The driver is advised of his right to appeal against the Council's decision, and can do so by application to the Magistrates Court within 21 days of receipt of the written decision, which will follow this meeting.

LIC39 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Committee returned to Item 3.

The procedure for determining a private hire/hackney carriage licence was read to the driver.

The Committee considered the Enforcement Officer's report.

A Drivercheck of DVLA records on the driver as part had revealed a motoring conviction for an MS90 offence (failure to give information as to identity of driver). The offence was on 01 April 2016 and he was convicted on 25 April 2017 for which he received six penalty points. Including points from a previous speeding offence, the driver therefore had a total of nine penalty points on his licence.

The driver apologised for not reporting his conviction to Uttlesford District Council. He said he would like to think he was a fit person to work as a taxi driver. His work taking children to school was just a small job and he would never put their safety at risk.

Members noted the police had had to make five requests to the driver and his wife to identify who the driver of the car was when it had been speeding. The driver said at the time it had been a chaotic period in his life because he had been undergoing cancer treatment. The Solicitor advised that members could not take three of the aforementioned requests for identification into account, because these had all been made to the driver's wife.

At 11:45, the Committee retired to make its decision.

At 12:15, the Committee returned.

The decision was read to the driver.

Decision

The driver holds a licence with the Council for a joint private hire/hackney carriage driver and has done so since October 2016. As part of annual due diligence checks by the Council, it was revealed that the driver had been prosecuted for an offence of failing to provide information as to a driver in respect of a speeding offence, details of which are set out in the officer's report. By virtue of the 6 point endorsement, the driver no longer meets the council's licensing standards.

Where an applicant does not meet licensing standards it is for the applicant to make their case that the council should depart from its policy. Essentially the applicant must demonstrate that notwithstanding the fact that he fails to meet the council's licensing policy he is a fit and proper person.

Members note that the circumstances of the offence, and the numerous opportunities the driver had to complete the simple paperwork as requested by the Police. Members note that a police officer attended the driver address to chase up his wife's failure to complete the forms, which only served to highlight the importance of completing the paperwork, and that he was obviously aware of the speeding offence, and that he was expecting to receive additional paperwork thereafter.

Members note that the driver has had a period of ill health, and that during the time that the information notices were sent, the driver had a period of hospitalisation. However, Members also note that the driver was duly convicted at the Magistrates Court of failing to provide the information as requested, despite providing this evidence in explanation of why the forms were not completed. It is not for this Committee to try and look behind that conviction. As it stands the driver no longer meets Council licensing standards, and although the driver has given some information as to how and why he failed to complete the appropriate paperwork, Members do not consider that to be enough explanation or mitigation to enable Members to depart from Council policy. Failure to respond to formal police notices is a serious matter, and Members do not consider that the driver has acknowledged that fact or provided strong enough mitigation in respect of his failure.

In addition, the driver did not consider it serious enough to report his intended prosecution or his conviction and points on his licence to the Licensing Authority, which is also a breach of the conditions of his driver's licence.

In the circumstances, members are not satisfied that the driver is a fit and proper person and that it is therefore not appropriate to make a departure from its policy. The driver licence is hereby revoked under S61 Local Government (Miscellaneous Provisions) Act 1976.

The driver is advised of his right of appeal against the Council's decision, and can do so by application to the Magistrates Court within 21 days of receipt of the written decision, which will follow this meeting.

LIC40

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The driver in relation to Item 5 had not arrived and so the Committee moved on to Item 6.

The procedure for determining a private hire/hackney carriage licence was read to the driver.

The Committee considered the Enforcement Officer's report.

On 04 January 2018, the Council's licensing department carried out a DVLA Drivercheck search on the driver as part of their annual due diligence checks. This revealed that he received six penalty points for a CU80 offence (using a mobile phone while driving) on 05 September 2017.

The driver said he had been unaware that he had to inform the Council when he received points on his licence. He was currently licenced with another district council which did not require him to report points unless he accumulated nine in total.

In response to a question from members, the driver said he did not have a hands-free device in his taxi. The Enforcement Officer said it was the operator's decision whether to install a hands-free system in the car.

In response to a question from members, the driver said he had not been using his phone at the time of the incident, but that police officers had said it was still an offence to be handling it while driving. He had offered for officers to check his phone to demonstrate he had not been using it.

In response to a question from members, the driver said he also worked as a Duty Manager at Pizza Hut.

At 12:35, the Committee retired to make its decision.

At 13:05, the Committee returned.

The decision was read to the driver.

Decision

The driver has had a joint private hire/hackney carriage driver's licence, which has expired and is up for renewal. Following the Council's annual driver check of the DVLA it was revealed that the driver had received a fixed penalty notice and 6 points on his licence, which he did not notify to the Council.

As a result, the driver no longer meets licensing standards as he received 6 points for one offence. By failing to notify the Council he had also breached licensing conditions.

The driver has explained the circumstances surrounding the commission of the offence, and how he did not actually use the phone, only picked it up from the foot well. However, it was serious enough for the Police to issue a fixed penalty notice.

Members have a responsibility to ensure the safety of passengers, and consider this is their paramount concern. It is recognised that using a mobile phone whilst in charge of a moving vehicle is a serious public safety issue, which is why the penalty points for the offence was increased to 6 from 3 points in March 2017.

Members note that the driver wasn't actually talking on the phone, and have accepted his word that he does not use his mobile phone whilst driving. However, bending down to pick up a phone from the foot well, whilst in moving traffic, even slow moving traffic is equally dangerous. The Council's licensing standards are quite clear that 6 points for one offence is considered not acceptable, and the onus is on the driver to satisfy the Council that despite failing to meet licensing standards, he is a fit and proper person. Members do not consider that the driver has provided enough explanation or mitigation to enable Members to depart from Council policy. Receiving a 6 point endorsement is a serious matter, and Members do not consider that the driver has acknowledged that fact or provided any additional information respect of this which would enable the Council to consider him fit and proper. In addition, the driver did not consider it serious enough to report his conviction and points on his licence to the Licensing Authority, which is also a breach of the conditions of his driver's licence. This is despite having only received and signed a declaration to the effect that he would abide by the conditions 6 months earlier. Therefore the Council does not consider the driver a fit and proper person, and refuses to renew his driver's licence under S61 Local Government (Miscellaneous Provisions) Act 1976. The driver is advised that he does have the right to appeal against this decision by application to the Magistrates Court within 21 days of receipt of the written decision notice. All the details will be contained in that letter.

LIC41 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Committee moved on to Item 7.

The procedure for determining a private hire/hackney carriage licence was read to the applicant.

The Committee considered the Licensing Officer's report.

The applicant had declared a conviction for an offence of benefit fraud in 2003 for which she received a conditional discharge and an offence of benefit fraud in 2010 for which she received a suspended sentence of 20 weeks.

She attended the Council offices for an interview with the Licensing Officer to discuss the conviction in 2010. She explained that she had met a man and moved from Essex to Stevenage to be with him. Having moved in together, he then revealed he had lost his job and refused to help to pay the bills. At the time the applicant was working, but when she got acute tendonitis in her shoulder she had to give up her jobs. The applicant began to claim benefits when he moved out. He then moved back in again but she continued to claim. In the end he left when she was investigated for benefit fraud.

The applicant said she had made a mistake by committing benefit fraud. She had only done so because she had been putting her children first and she needed the money to keep the house. She had been an idiot and learnt the hard

way. Since the offence, she had worked as a carer and in bars, and in the process had been entrusted with money and safe keys.

In response to a member question, the applicant said was currently claiming benefits while she was unemployed.

At 13:20, the Committee retired to make its decision.

At 13:35, the Committee returned.

The decision was read to the applicant.

Decision

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence. On her application form she disclosed two convictions details of which are set out in the officer's report. The convictions were for benefit fraud offences, which amount to offences of dishonesty. In respect of one of these offences she received a suspended custodial sentence. By virtue of the custodial sentences for offences of dishonesty the applicant does not meet the council's licensing standards.

Where an applicant does not meet licensing standards it is for the applicant to make their case that the council should depart from its policy. Essentially the applicant must demonstrate that notwithstanding the fact that he fails to meet the council's licensing policy he is a fit and proper person.

Members note that the offences were all at the lower end of the scale. The committee also note that the last offence was 10 years ago and that the applicant has had no convictions of any nature since.

The applicant has explained the personal and financial difficulties she was having at the time of the last offence, and how since she has undertaken responsible employment, including caring for the elderly as a result of which she has had significant trust placed in her in respect of the money and personal effects of her patients.

Members consider that despite her conviction, the applicant is not a risk to passengers or public safety generally. She has a clear drivers licence and has acknowledged and learnt from her mistakes. Members consider the applicant is a fit and proper person and that it is therefore appropriate to make a departure from its policy. The applicant will be granted a driver's licence.

LIC42

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Committee returned to Item 5.

The driver in relation to Item 5 had not arrived and had not surrendered his licence.

Members considered the report of the Enforcement Officer.

On 16 November 2017, the Council's licensing department carried out their annual due diligence checks on the DVLA records of the driver. This revealed that the driver had been convicted for an IN10 offence (using a vehicle uninsured against third party risks) for which he received six penalty points. The driver had also failed to notify the Council within seven days of this conviction and is in breach of condition 18c of his driver's licence.

At 1:40, the Committee retired to make its decision.

At 1:55, the Committee returned.

The decision was read to those present.

Decision:

The driver holds a current joint private hire/ hackney carriage drivers licence. Annual due diligence checks have revealed that the driver has received a fixed penalty notice for which he has received 6 points, which have not been notified to the Council.

The driver no longer meets licensing standards as he has received 6 points for one offence. He has also failed to notify the Council of the offence, which is a breach of his driver's licence conditions.

The onus is on the driver to satisfy the Council that despite failing to meet licensing standards, he remains a fit and proper person. The driver, when contacted by the Council's Enforcement Officer, has provided no details in respect of the offence, and has indicated he wishes to surrender his licence. However, despite numerous reminders, he has failed to do so.

The driver no longer meets licensing standards, and the Council has received no other information from the driver that would enable it to depart from its policy. In the circumstances, Members are therefore not satisfied that the driver is a fit and proper person, and therefore revoke his licence.

The driver is advised that he has a right to appeal against this decision at the Magistrates Court, and that any such appeal must be lodged within 21 days. The revocation will come into effect following the end of the appeal period.

The meeting ended at 2:00.