

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2.30pm on 26  
NOVEMBER 2012**

Present: Councillor D Perry - Chairman.  
Councillors D Morson, J Salmon and A Walters.

Also present: Mr Kalam – the driver.  
Mr B Drinkwater, Chairman ULODA (representing the driver).

Officers present: M Perry (Assistant Chief Executive - Legal), M Chamberlain  
(Enforcement Officer), R Dobson (Democratic Services Officer), M  
Hardy (Licensing Officer) and D Scales (Enforcement Officer).

LIC21

**DETERMINATION OF A COMBINED PRIVATE HIRE/HACKNEY  
CARRIAGE DRIVER'S LICENCE**

The Chairman welcomed Mr Kalam to the meeting, and introduced members of the Committee and officers.

The Licensing Officer presented a report regarding an application for renewal of a private hire/hackney carriage driver's licence. He explained that Mr Kalam's licence had been due for renewal on 30 October 2012. Upon Mr Kalam's application to renew his licence the Council had become aware from the accompanying DVLA counterpart licence that Mr Kalam had been issued with six penalty points for an offence of driving a vehicle which was not insured on 19 October 2011. This fact brought Mr Kalam into conflict with the standard conditions attached to the issue of his private hire/hackney carriage driver's licence.

Mr Kalam had made his first application on 7 June 2011, when the DVLA counterpart licence submitted had revealed no endorsements. The advanced disclosure was not completed until 14 November 2011, the date when Mr Kalam's licence was issued.

Mr Kalam had on his application to renew the licence replied 'No' to the question 'have you in the last year been convicted of, or cautioned for, any offence (including motoring offences), been issued with a Fixed Penalty notice or is there any prosecution pending against you?'

Mr Kalam had attended an interview with the Licensing Officer on 30 October 2012, during which he had described the circumstances leading to the imposing of the penalty points on his DVLA licence.

The Chairman thanked the Licensing Officer and invited the driver and his representative to put questions.

In response to questions put by Mr Drinkwater, the Licensing Officer said he was aware the driver had had his full DVLA licence since 1 November 2006;

that the offence had come to light on 19 October 2012; that during interview the driver had thought but was not sure that insufficient funds in his account were the reason for the non-payment of the insurance direct debit. He confirmed that character references supplied on behalf of the driver as testimonials had been circulated to the Committee.

Members asked questions about when the standard conditions of licence were served on the driver and why there had been a delay in the supply of the enhanced disclosure.

The Chairman invited Mr Kalam or his representative to speak. Mr Kalam said, in response to questions put by Mr Drinkwater, that he had had his licence for six years with no penalty points imposed other than in October 2011. His previous employment had been as a security officer during which his shifts had meant it was difficult to collect his mail from the Post Office depot where his mail was delivered to a PO Box address. He said he would sometimes collect his post only at intervals, sometimes as much as 14 days.

Mr Kalam gave an account of the events on 19 October 2011 when his private vehicle had been stopped by the police using automatic number plate recognition on the grounds that the vehicle was not insured. He described how unsuccessful efforts had been made to contact his insurers; the seizure of his car and the release fee he had paid the next day to get it back. On contacting his insurer the next day, Mr Kalam said he had discovered his insurance had lapsed due to insufficient funds being in his account. The direct debit was due on the 7<sup>th</sup> or 8<sup>th</sup> day of the month. The insurance company had notified him in writing but this letter was in his PO Box and he did not collect his post until a week and a half later, whereupon he had learnt that his insurance had been cancelled.

Mr Kalam then went through the dates when he had applied for and received his private hire driver's licence. He said the private hire driver's licence was issued on 14 November 2011, that he collected it on 16 November 2011 and that his DVLA counterpart licence was returned to him on 17 or 18 November 2011. He said he had omitted to tell the Council about his penalty points as he was excited to receive his private hire licence and he had genuinely not thought there was an issue. He said he was unfamiliar with the documentation and that although he had read the conditions accompanying the private hire section he had not given thought to the issue of disclosure of the penalty points.

Mr Kalam said on his application to renew the private hire licence he had stated 'no' in relation to the question of whether he had had penalty points endorsed on his licence, because the offence predated the issue of the new licence. Mr Kalam assured the Committee of his remorse, and that he realised the importance of complying with the conditions of his licence and had learned his lesson. He said his operator was willing to take him back.

Members asked questions in reply to which the driver confirmed he had filled out the application for a licence himself and that he had read the condition

requiring him to reveal to the Council within 7 days any convictions or penalty notices.

Members asked various questions about the insurance of the driver's private car and the reasons for using a Post Office box for his mail.

Mr Kalam said he had used his private car only for travel to work and for social reasons. He now had private hire insurance. He said he had first taken out insurance by telephone. When he had discovered his policy had been cancelled he had borrowed money from his brother and obtained insurance the next day.

Members asked how many letters the driver had received from the insurer warning him that his insurance could be invalidated. The driver said he had only received one letter. He had had insurance set up to be paid by direct debit for a number of years and had never before had any problems.

Mr Kalam then made a statement. He said he was sorry he had not complied with the conditions of his licence by omitting to notify the Council of the fact that he had received 6 penalty points for an offence relating to his private car. The points were incurred due to unusual circumstances, and he hoped the Committee would find this breach of condition an acceptable exception to its policy. He said he had genuinely thought the conditions only applied from 14 November 2011. He had not deliberately omitted notifying the Council of the penalty points on his licence; he had paid the direct debit for car insurance for some years; his private finances had been conducted by post and there had been difficulties due to his shift work in collecting post. His employer wanted him back and he had received praise from his customers. He had lost earnings of between £1,800 and £2,000 since the date of his suspension pending this Committee meeting. He said he was a fit and proper person and was sorry for the breach of his conditions of licence.

Members withdrew at 3.10pm in order to consider the matter, and returned at 4.15pm to give their decision.

## **DECISION**

Mr Kalam applied to this council for a combined hackney carriage/private hire vehicle driver's licence on 7 June 2011. In order for a licence to be granted to an applicant the council must be satisfied that he is a fit and proper person to hold such a licence. In determining whether an applicant is a fit and proper person, the council has adopted licensing standards. The standards state that "whilst each case will be dealt with on its individual merits, applications for a new licence from persons who fail to meet these standards will normally be refused". Where an application is received from somebody who does not meet licensing standards, officers may in their discretion refuse the application under delegated powers or they may refer the case to the committee for determination. Officers do not have delegated powers to grant a licence to a driver who does not meet licensing standards.

When Mr Kalam applied for his licence he produced a clean DVLA driver's licence. As this was his first application to this council he was required to have an enhanced CRB check. Mr Kalam lives in the area covered by the Metropolitan Police Authority. That authority has a history of delays in processing CRB applications. In Mr Kalam's case the CRB check was not received until November 2011 and Mr Kalam's licence was granted on the 14 November 2011. The licence was issued on the basis that Mr Kalam was a fit and proper person as it was believed at that time he met the council's licensing standards.

Unfortunately this was not the case. Between the application for the licence on 7 June 2011 and the grant of the licence on the 14 November 2011, Mr Kalam was stopped on suspicion of driving with no insurance. His car was impounded by the Police. Mr Kalam was issued with a fixed penalty notice for the offence which resulted in 6 penalty points being endorsed on his licence. The date of the offence was 19 October 2011. Because of this offence Mr Kalam did not meet licensing standards and the licence should not have been issued. His application should have been referred to the committee for determination.

The application form for a driver's licence contains the following statement "in the event of a licence being granted to me I undertake to inform the council of any convictions which arise between the date of this application and the grant of my licence". Notwithstanding this undertaking, Mr Kalam did not inform the council of the fixed penalty notice. This matter did not come to the council's attention until Mr Kalam applied to renew his licence in October of this year. As Mr Kalam does not meet the council's licensing standards and the committee had not previously considered whether in light of his conviction it was satisfied that he was a fit and proper person to hold a licence, officers had no delegated authority to grant a licence to him upon application for renewal. The matter therefore comes before the committee today to consider whether Mr Kalam is a fit and proper person and whether the licence should therefore be renewed.

The circumstances surrounding the offence giving rise to the endorsement are that Mr Kalam was the owner of a car. He insured the car through a broker and paid the premium by instalments by direct debit. At least one instalment of premiums was not paid causing the insurance to be cancelled. Mr Kalam said that he was not aware of this. He chose to have his correspondence sent to a post office box. He says that at the time in question he was doing night work and had difficulty in accessing his mail. He would sometimes leave his mail for between one and a half weeks to a fortnight without collecting it. For that reason he did not receive notification that the policy had lapsed. Following the seizure of the car he borrowed money from his brother to effect insurance and having done so and paid the release fee he collected his car the day after it was impounded.

The law is quite clear and is reflected in the licensing officer's report. In determining whether someone is a fit and proper person councils are entitled to have policies providing that they are prepared to depart from them in

appropriate circumstances. What that means is that where a driver does not meet the standards the burden is upon the driver to satisfy the committee that he is nevertheless a fit and proper person to hold a licence.

The case put forward by Mr Kalam in that respect is not convincing. It appears to the committee that Mr Kalam was aware of the fact that a direct debit payment in respect of his insurance was unlikely to be met. Although he was able to borrow funds from his brother to insure his vehicle after it had been impounded he did not take steps to ensure that there were sufficient funds in his account to meet the insurance payment when due. Knowing that the payment was unlikely to be met and that his insurance cover was therefore in jeopardy Mr Kalam still drove his car. The committee regard Mr Kalam's practice of having mail delivered to a post box address as irresponsible. On the balance of probabilities it considers that at least one reminder would have been sent by the insurance company before the policy was cancelled. Had Mr Kalam had post delivered to his home address in the usual way he may have been prompted to take steps to avoid his insurance being cancelled or at least to have been informed that this had happened so that he did not drive.

The committee are also concerned that Mr Kalam did not draw the endorsement to the attention of the council before the licence was issued. He signed an application form containing a clear undertaking that any convictions would be reported. He was given an information pack which contained details of the council's licensing standards when he made his application in June 2011 and ought therefore to have been aware that a serious motoring offence carrying 6 points or more would mean that he did not meet licensing standards. Notwithstanding this he accepted his licence from the council without disclosing the conviction. The committee do not accept Mr Kalam's statement that he thought that the licence conditions only started to apply after his licence was granted. The licensing standards are separate from the licence conditions and are issued before an application is made. Mr Kalam therefore knew or at least ought to have known that he did not meet those standards.

The committee take a view that it is vital that licensed drivers and vehicles should be covered by appropriate insurance at all times. A driver who fails to take all reasonable steps to make sure that their insurance is effective at all times cannot in the committee's view be regarded as being a fit and proper person save for in exceptional circumstances. Mr Kalam has advanced no such circumstances today. He has given an explanation of the circumstances of the offence which exhibit an irresponsible attitude to insurance cover which is not acceptable to the committee. While he has produced testimonials as to the service he supplies to customers these does not convince the committee that similar circumstances may not arise with regard to his insurance in future.

In the circumstances Mr Kalam has failed to satisfy the committee that he is a fit and proper person and the application for renewal of his licence is therefore refused.

LIC22

## **EXCLUSION OF THE PUBLIC**

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 paragraph 3 of part 1 of Schedule 12A of the Act.

The Chairman welcomed the Operator and the Operator's representative, Mr Schiller, to the meeting.

LIC23

## **DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE**

The Enforcement Officer presented a report seeking determination of a private hire operator's licence. The report set out circumstances in which information had come to the attention of the Council's enforcement team suggesting that the operator had been using an unlicensed driver.

The Chairman thanked the Enforcement Officer for his report and invited the operator's representative to put questions.

Mr Schiller questioned the Enforcement Officer, seeking confirmation regarding the list of bookings in question, totalling 392 bookings, and seeking confirmation that the operator had produced licences for the drivers in relation to such bookings. Mr Schiller said the majority of these drivers were licensed as hackney carriage drivers, although one was a private hire driver.

Mr Schiller asked further questions in order to establish that the bookings during a six month period numbered approximately 6,000 jobs; and that of the 392 being considered, 386 were subcontracted to Hackney Carriage licensed drivers. The Enforcement Officer said according to the records there had been bookings which were made to private hire licensed drivers not licensed by Uttlesford. Mr Schiller said that these were without exception made through a private hire operator.

The Assistant Chief Executive-Legal said it was irrelevant whether such bookings were made via another private hire operator, as it was this operator which had taken the booking. He referred to the case of where a booking was taken and performed for no consideration. The issue there was that the booking had not been cancelled but had been fulfilled. The bookings to which Mr Schiller referred were not cancelled but were entered in the operator's records, which therefore indicated that the operator had used drivers and vehicles not licensed by this authority.

Mr Schiller then made a statement on behalf of the operator.

He said the operator was not a typical private hire company as it did not carry out work for the public but undertook chauffeuring exclusively for large corporate clients, taking mainly internet bookings. Following a change in the law in 2008 a phased-in licensing of all the company's chauffeurs was undertaken during a period of six to eight months. The operator's drivers

were carefully vetted due to the nature of the chauffeur work undertaken. The operator had always complied with the law. A company of this sort was unique in Uttlesford. The operator was more than willing to comply with the law. There had been one small error, which Mr Schiller would address.

Mr Schiller said the company's sub-contracted work represented only a very small percentage of its other work. A small amount had had been subcontracted in relation to last-minute contingencies for example where it was important to make a substitution for business reasons in order to preserve a valued corporate client relationship. In such circumstances the operator had subcontracted to private hire operators elsewhere, ensuring that they despatched a driver holding the three types of licence, a vehicle, private hire and hackney carriage driver's licence.

Mr Schiller said the operator had been in business for 20 years and had gained business awards. If the operator had transgressed, this was in a simple way and the operator would put it right. The company wished to work together with the licensing authority to ensure it was in compliance and so as to get on with its business.

With reference to the one error Mr Schiller had referred to, this related to a particular driver, whom the company had employed on an ad hoc basis in 2007 – 2008 whilst he had held a full time job elsewhere. When the driver was made redundant from his other work, the operator had taken him into employment and had then ensured he obtained his licence. Mr Schiller said the operator's records had, apart from in relation to this particular driver for the reasons he had given, been maintained in good order. He said the operator was sorry for this error, and would learn from its mistake. To suspend or revoke the licence would be disproportionate, and he would suggest Committee members might feel a warning in relation to the error regarding this driver's records would be more appropriate.

The Chairman thanked Mr Schiller. He asked whether the operator could confirm receipt of the emailed guidance from the Assistant Chief Executive-Legal regarding subcontracting. The operator confirmed receipt of the email at the administration email address.

The Chairman referred to case law which he said was explicit that operators should only make use of drivers licensed by their licensing authority.

Mr Schiller said the Dittah and Chaudry case could be distinguished from the present matter in that the jobs were given to another operator as a whole job which was not the position in the cases cited.

The Assistant Chief Executive-Legal asked Mr Schiller to produce the documents for the hackney carriage driver who had taken on quite a number of the jobs which were of concern.

The papers being produced these were found to state the driver and vehicle were private hire licensed and that the papers obtained by the Enforcement Officer indicated the driver was trading as a chauffeur business.

Mr Schiller said the driver informed the operator that he was a hackney carriage driver.

The Chairman asked Mr Schiller for his summation.

Mr Schiller summed up by saying that the operator occupied the top end of the market; that a small percentage of jobs had been called into question, but that for the many years it had been in business, the operator not been the subject of a complaint . The operator was willing to accept the Committee's wishes to adjust its practices in order to ensure full compliance and was a fit and proper body to act as a licensed operator.

The Committee withdrew at 5pm to consider its decision and returned at 5.40pm.

## **DECISION**

The operator is a private hire operator licensed by this authority. On 3 July 2012 this committee met to consider whether it was satisfied that a driver engaged by the operator was a fit and proper person to hold a licence the driver having been convicted of an offence involving violence. During the course of that meeting, evidence was brought by the driver's representative which showed that the driver had driven for the operator between 2007 and 2010 during which period he did not hold a private hire driver's licence from this council. The disclosure of this information caused the council to carry out an investigation of the operator. Enforcement Officers obtained copies of all bookings made by the company for the period between 1 January 2012 and 30 June 2012. These records are kept by the company in accordance with its conditions of licence and section 56 Local Government (Miscellaneous Provisions) Act 1976. On examination of the records officers identified 392 bookings where neither the driver nor vehicle used to fulfil those bookings was licensed by this council.

Mr Schiller in his submissions said that almost all of these bookings were carried out by a hackney carriage operator. He said that the operator kept copies of the licenses for hackney carriages and vehicles engaged to carry out contracts. However when asked to produce copies of the licenses for a driver who has carried out a considerable number of bookings Mr Schiller was only able to produce private hire licenses issued by Transport for London. Mr Schiller subsequently reported that he had spoken to Transport for London who confirmed that the driver concerned held both hackney carriage and private hire driver's licences. However the committee draw an inference that as the operator have produced private hire vehicle licenses and a private hire driver's licence for this individual and that he trades as a chauffeur service similar to the operator that private hire vehicles were used for the contracts subcontracted to him.



Mr Schiller sought to distinguish the Dittah and Choudry cases on the basis that the operator subcontracts to other licensed operators. The committee see no such distinction. The law is quite clear that drivers and vehicles must be licensed by the same authority as the licensed operator. From the evidence before the committee whenever the operator is unable to honour a booking it does not cancel the booking but arranges for it to be fulfilled by other drivers not licensed by this council using vehicles not licensed by this council. That constitutes offences under section 46(1)(e) of the 1976 Act.

There is also the issue of the driver who was employed by the operator as a private hire driver between 2007 and 2010 without a licence. Prior to the change in the law in 2008 this may have been legitimate depending on the circumstances but after the law changed it was not. The explanations put forward by Mr Schiller that he was used "occasionally" are at odds with both the testimonial put forward when the committee considered his licence and the letter submitted by the operator's director when she stated that he had been employed for 4 years. The use of unlicensed drivers who have not had the standard vetting procedure of the council and CRB checks could potentially put the public at risk and such a situation is not acceptable to the committee.

However the committee accepts that to take any action on this occasion other than a warning would cause a disproportionate loss of income to the company and more importantly from the committee's point of view upon the drivers who are employed by the company who would lose the opportunity to earn an income if any more draconian action were taken. The committee therefore places reliance upon the assurance given by Mr Schiller as to the company's future conduct and is prepared to accept that the operator wishes to operate within the law.

The committee therefore gives the operator a warning that it expects it to observe the law fully in the future by not engaging any drivers who are not licensed by this council and by not subcontracting any contracts directly or indirectly which may be performed by drivers or using vehicles which are not licensed by Uttlesford District Council unless they are licensed hackney carriages.

The meeting ended at 5.45pm.

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