

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 24 MARCH 2017**

Present: Councillor R Chambers (Chairman)
Councillors A Anjum, J Davey and S Morris

Officers in
attendance: A Bochel (Democratic Services Officer), M Chamberlain
(Enforcement Officer), T Cobden (Principal Environmental Health
Officer), R Coox (Legal Assistant), E Smith (Solicitor) and M Watts
(Principal Environmental Health Officer).

Also Present: the driver in relation to Item 3, A Schiller (solicitor for the driver in
relation to Item 3), B Drinkwater (ULODA), the driver in relation to
Item 4, a friend of the driver in relation to Item 4.

LIC47 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies were received from the driver in relation to Item 6.

LIC48 **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
paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

LIC49 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE**

The item listed as 3 on the agenda could not be heard at this time, because the
driver in relation to the item had not yet arrived. Item 4 was therefore heard first.

The procedure for determining private hire drivers' licences was read to the
applicant. The Committee considered the report of the Enforcement Officer.

Until October 2016, the driver was driving for 24x7 Limited at Stansted Airport.
On 13 May 2013, the driver had appeared before the Licensing and
Environmental Health Committee, as his licence was up for renewal. He had
been charged with harassment by Essex Police and was on police bail. A
decision was made by members to grant the renewal of his licence. The driver's
licence was suspended for a period of five days between 1-5 May 2014,
inclusive. This was because he failed to declare within seven days that he had
been convicted of an offence.

The driver was interviewed under caution by the Enforcement Officer on 27 May 2016. During the interview the driver admitted to smoking in the vehicle. He also admitted he may not have been wearing the badge when driving the vehicle.

A decision was made by the former Assistant Chief Executive Legal to prosecute the driver. He was given a conditional discharge for 12 months and ordered to pay a victim surcharge of £15 and costs of £1000. It was agreed that he would pay £100 cash on that day and the remaining balance of £915 by 18 November 2016. Due to the conviction, the driver failed to meet the Council's licensing standards for drivers.

The Chairman invited the driver to ask questions. The driver said he felt it was unfair that his previous hearings with the Committee kept being referred to. He said he had already pleaded guilty to the charges and had been convicted, and expressed a desire for closure.

The Chairman explained that previous licencing hearings appeared on DBS checks, and so it was up to the panel to decide if they were relevant to the case. Licencing hearings determined whether the person was a fit and proper person to drive a taxi. Ensuring public safety was paramount to these decisions.

The driver queried why the Council did not suspend him last March when the incident occurred, instead of allowing him to renew his licence. The Enforcement Officer said at the time, the investigation was still ongoing and so there were no grounds for not allowing the driver to renew the licence. The driver also asked why the process had been drawn out. The Enforcement Officer said for a period of time before he could be interviewed, the driver had been on holiday. Following that, much of the process was dependent upon the court dates set which were beyond the Council's control, and the issue had been brought before the committee as early as possible.

The Chairman asked the driver if he wanted to make a statement. The driver said that the incident was a year ago and at the time he was working night shifts. He couldn't really remember what had happened. He looks after his 81 year old mother and she was not well at the time. He has had no convictions on his licence previously and is paying for silly mistakes now. He said he has no intention of getting himself into trouble in the future.

Councillor Morris asked if he still worked as a driver. The driver answered that the majority of the time he worked as a controller, although he did sometimes drive when he was needed to.

The Enforcement Officer asked why the driver left 24/7. The driver replied that he had always been self-employed and at the time his mum was not well. He had not fallen out with 24/7. He just did not know when he would be available to work and it had been assumed that he had left the company.

The Chairman asked the driver if he would like to sum up. The driver said that he had done things he should not have done and that he was currently looking after his mum. He is surprised that people are unsure that he is a fit and proper person to be given a licence to drive a taxi.

At 10:30am the Committee withdrew to make its determination. At 10:45am the committee returned.

DECISION

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence dated 1st April 2016, in accordance with S61 (1) (a) (ii) and (b) Local Government (Miscellaneous Provisions) Act 1976.- that "he has since the grant of the licence been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act" or "any other reasonable cause" respectively. The three year licence is due to expire on 31st March 2019 and the driver's last driving role was with 24 x 7 Ltd at Stansted. He has held a licence since 2000.

On 24th March 2016 the Council received notification from a Braintree District Councillor that an Uttlesford licenced vehicle had been seen driven by a presumably licenced driver who had been a) smoking a cigarette in the vehicle and b) was not wearing his private hire badge. The driver was subsequently identified.

Smoking in the workplace, which includes a private hire vehicle, is an offence under S7 Health Act 2006. Furthermore, failure to wear a private hire badge while driving a private hire vehicle is also an offence, in this case under S54(2) Local Government (Miscellaneous Provisions) Act 1976.

The driver was interviewed under caution on 27th May 2016 in the course of which he admitted the S7 offence and accepted that he may not have been wearing his badge while driving the vehicle. The matter was referred to the Council's Legal Department as a result of which the driver was prosecuted for both offences. He entered a not guilty plea, but subsequently changed this at the date of his trial on 7th November 2016. He received a conditional discharge for 12 months and ordered to pay a victim surcharge and costs which he agreed to pay by instalments.

However, paragraph 9 of Appendix A to the Council's Licensing Standards states that a driver must have no:-

"Conditional discharges for any offence within the last 12 months"

The driver does not meet this standard.

We are also aware that he has previously been before this Committee on the occasion of the renewal of his licence in May 2013 and that subsequently he was subject to a suspension in May 2014 for a breach of paragraph 18 (c) of Appendix G of the Council's Licensing Standards, namely the failure to declare a conviction for an offence. He is thus aware of UDC's expectations of its licenced drivers.

We have read the papers before us and listened very carefully to what the driver has said to us this morning. This is a very serious matter and proceedings before this Committee are separate and distinct from those before the Courts. WE are primarily concerned with the safety of the public, and especially the most vulnerable members of our community. The driver has paid his fine and the costs of the Court case and we take this into account. Therefore, we find the driver to be a fit and proper person to continue to hold a private hire/hackney carriage drivers licence.

However, we trust the driver will not appear before us again. We read in the papers of the things that are reported as happening in taxi cabs. Behaviour of that sort is utterly unacceptable to this Committee and if any licenced driver offends we will take a very serious view of the matter. We repeat, once more, that we will not see the driver before us again.

LIC50

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

The committee returned to Item 3. The procedure for determining private hire drivers' licences was read to the applicant. The Committee considered the report of the Enforcement Officer.

The driver is currently driving for a company called Diamond Transport carrying out school contract work in the Hertfordshire area. On 06 February 2017, the driver attended the Council Offices in Saffron Walden without an appointment and produced an enhanced DBS check dated 19 January 2017. This check showed that he received a caution on 19 January 2017 by Hertfordshire Police for an offence of sending letter/communication/article conveying indecent/offensive message on 12 September 2016.

As the driver had received a caution he had fallen below the Council's licensing standards for driver's, as standard 9 reads 'no official cautions (save for cautions administered by Uttlesford District Council) for any offences within the last 12 months.'

The Council's Enforcement Officer met with the driver on 16 February 2017. He confirmed that he carries out school contract work for Diamond Transport, transporting two children. On enquiring about the circumstances of his caution, the driver explained that it was because he sent/posted a picture of a naked female that he had obtained off social media (possibly Whatsapp or Facebook) to the same female. He said that he did not know the recipient and this was the first contact that he had with her and was trying to 'chat her up.' The female made a complaint to Hertfordshire Police and he was arrested, formally interviewed in November 2016 then cautioned in January 2017. He said that he has since deleted his social media accounts.

It had also come to the Council's attention that the driver moved to his current address but failed to notify the Council. At the meeting with Officers, he explained that he moved at the end of last year and told his employer. He was

under the impression that his employer would inform the Council. This is a breach of driver condition 18(a) which reads 'Notify UDC in writing of any change of address within 7 days of the change of address occurring.' The driver also failed to comply with condition 18d as he failed to notify the Council of the investigations by the police within 7 days of becoming aware of the investigation.

The Chairman asked whether Mr Schiller had any questions. Mr Schiller asked the Enforcement Officer whether the interview with the driver was conducted on an informal basis. The Enforcement Officer replied that it was. Mr Schiller then asked if it was fair to say that there were elements of confusion in the interview because the driver's first language is not English. The Enforcement Officer agreed, although he stated that the driver still spoke good English. Mr Schiller asked whether the Enforcement Officer had made enquiries as to the date of the driver's arrest. The Enforcement Officer replied that he had not. Mr Schiller asked whether the Enforcement Officer disputed that the driver had a Duty Solicitor present at the time of his arrest. The Enforcement Officer replied that he did not.

The Chairman asked whether the driver had any complaints about his meeting with the Enforcement Officer. The driver said he did not understand the question. Mr Schiller said that in his discussions with the driver he had stated that he had no complaints about the interview with the officer.

The Chairman asked Mr Schiller if he would like to make a case on behalf of the driver. Mr Schiller explained that the driver was born in Pakistan and moved to the UK when he was 18. He is now 24. He has been to college here, but his English language skills are still limited. He can have a sensible conversation in English but does not have a complete understanding of more complicated formalities. Mr Schiller said the driver first worked for Dominos as a delivery driver and then became a driver for Diamond. He still has a clean licence, and while he did not remember having the Green Book given to him, he did have a discussion with his firm about various rules of being a taxi driver. There have been no complaints made about the driver to Diamond Transport.

During 2016, he was given his first smartphone and was using apps on it to talk to a woman he was trying to 'chat up'. He sent her a picture of a naked woman, and she asked why he had done that. He felt very embarrassed, stopped the conversation and deleted the apps from his phone. In December, the driver moved house, informed his employer and assumed that they would inform the council. The police then arrested him with regard to the picture he had sent. After receiving a DBS check with the caution on it, he showed it to his employer who told him to contact the council, where it was noticed he had not updated his address.

Mr Schiller said that it was not a deliberate attempt to hide information. His client is young and is inexperienced in dealing with formalities. He is also working to improve his English. He has passed his Level 5 English exam and plans to apply for British citizenship. While he had fallen below the standards expected of a driver, he had not been deliberately dishonest, and his caution

had nothing to do with his career as a driver. The driver apologises and is deeply ashamed.

Councillor Morris asked how the driver had come into possession of the photograph. Mr Schiller said it was pre-existing on the internet, and was not a picture of the female that the driver had attempted to 'chat up'. The Chairman asked whether the driver's English was good enough to allow him to communicate with the children he drove if he needed to. The driver replied that they are good children who listen to him and behave when he tells them to. The Chairman also asked whether police checked his phone for other images. The driver said that they confiscated his phone for a month. The Principal Environmental Health Officer asked whether the driver struggled to read English. Mr Schiller said that the driver can read well for everyday needs, but requires help when language becomes more formal and complicated.

Mr Schiller summed up that licencing standards exist for a reason, but that the panel had discretion in one-off cases such as this. The driver is a young man, working on improving his skills, and had made an embarrassing error which he will have to live with for the rest of his life. Revoking his licence would be too strong a means of punishment.

At 11:35am the Committee withdrew to make its determination. At 11:55am the committee returned.

DECISION

The application before the Panel today is for the revocation of the driver's joint private hire/hackney carriage licence dated 4th May 2016, in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The three year licence is due to expire on 30th April 2019 and the driver currently drives for Diamond Transport, Hertfordshire on school contract work.

On 6th February 2017 the driver attended the Council's offices in Saffron Walden without appointment and disclosed an enhanced DBS check which revealed that on 19th January 2017 he had been cautioned by Hertfordshire Police for an offence of sending a communication/article conveying an indecent/offensive message on 12th September 2016 contrary to S1 (1) (A) Malicious Communications Act 1988. He was subsequently interviewed on 16th February 2017 and disclosed the caution related to the sending of a picture of a naked female obtained from social media to another lady in the course of an attempt at making contact with her; and she had referred the matter to the Police. He has since deleted his social media accounts.

However, Standard 9 of the Council's Licencing Standards for Drivers, to be found at Appendix A of the policy document, states:-

"No official cautions (save for cautions administered by Uttlesford District Council) for any offences within the last 12 months"

Furthermore, the driver has also failed to comply with Condition 18 of Appendix G of the Council's Policy in two respects.

Condition 18(d) requires a driver to report within 7 days "Any investigations being carried out into the activities of the driver by the police or a regulatory authority of which the driver is aware within 7 days of the driver becoming aware of the investigation".

This speaks for itself.

The driver also disclosed in the course of interview that he had moved home at the end of 2016 and had notified his employer. He believed that they would notify the Council, but unfortunately the responsibility for notifying the Council rests with individual drivers.

Condition 18 (a) of Appendix G requires a driver to notify the Council in writing of:-

"Any change of address within 7 days of the change of address occurring"

There are thus three breaches of the Council's licensing standards before this Committee for consideration, and the onus of proof is upon the licence holder to show us that they remain a fit and proper person to hold a taxi licence

We have read the papers before us with care and we have heard from Mr Schiller on behalf of the driver. We accept that the driver is very young, that he is contrite, and that it was a one-off event that has caused considerable embarrassment to him and to his family. The consequences of what has happened will be with him for the rest of his life.

Taking this into account we have decided to be lenient in this case and accordingly we will not revoke the driver's licences under S61(b) of the 1976 Act. However, we do not expect to see him before us ever again; and we would urge him in the strongest possible terms to continue with his study of English and to thoroughly familiarise himself with the content of the Green Book.

LIC51

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

The driver gave no notice that she intended to attend and did not arrive for the hearing.

DECISION

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence dated 1st November 2015, in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- "any other reasonable cause". The three year licence is

due to expire on 31st October 2018 and the driver's last driving role was with 24 x 7 Ltd at Stansted. They notified the Council she had left their employment on 2nd September 2016. She has held a licence since November 27th 2013.

However, on 22nd November a routine driver check showed that on 26th December 2015 the driver received a fixed penalty notice for an SP30 offence which she failed to disclose to the Council , thus breaching Condition 18 (c) of Appendix G to the Council's Licensing Standards, which states:-

“Any convictions, cautions or fixed penalty noticeswithin 7 days of the date of conviction, caution or the issue of a fixed penalty notice”

At the date of this hearing the driver has six penalty points endorsed upon her licence, three having fallen away on 3rd March 2017.

She was invited to a meeting to discuss the matter but failed to respond, as she failed to respond to requests for the production of a new DBS check and Group Two medical certificate, both of which are requirements of the Council's Licensing Standards. In the absence of this information or indeed of co-operation from the driver, officers have referred the matter to this Committee. We are mindful that she has previously appeared before us for breach of conditions, (again, failure to notify under condition 18 (c) of Appendix G) for which she received a five day suspension in November 2014.

It has been suggested to us that the driver may have left the country; she has not responded to communications from the Council. In the absence of any reaction from her within 28 days of today's date we will be minded to revoke the driver's licences under S61 (b) of the 1976 Act as she is no longer a fit and proper person to hold them. She should therefore contact the Council as soon as possible.

There is a right of appeal against revocation and the driver will receive a letter from the Legal Department explaining this.

LIC52

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

The driver in relation to Item 6 could not attend the meeting due to work commitments. The panel agreed that these were reasonable grounds to defer his hearing.

The meeting ended at 12:10.