

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 9 MAY 2017**

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey and G Sell

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

Also Present: the applicant in relation to Item 3, B Drinkwater (ULODA), the
applicant in relation to Item 4, the applicant in relation to Item 5,
the applicant in relation to Item 7.

LIC63 **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.

LIC64 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE**

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

The applicant had applied for the grant of a joint private hire/hackney carriage
driver's licence. The application was submitted with a Disclosure and Barring
Service (DBS) certificate. The Disclosure showed three convictions including
Possessing House Breaking Implements by Night, Assault with Intent to Rob
and Theft by Employee. The applicant therefore did not meet the Council's
licensing standards.

In an interview with the Licensing Officer, the applicant explained that in 1977,
he and a friend had met up with people they knew, and some of the group
mugged a man. The applicant and his friend did not want to get involved in the
mugging and stood back. However they were arrested and attended court in
Hertford. There were about twelve people present, some of whom he had never
seen before. They were tried together as a group for a series of muggings that
had taken place in the area over a period of time.

The applicant had no convictions since 1977. He worked as a bus driver from
1979 until he was sixty, and started to work for NCS in May 2015. NCS had
now lost the contract to Diamond Transport and the applicant was transferred to
Diamond, but needed to obtain a Private Hire driver's licence as he would be
driving a smaller eight seater vehicle.

The applicant said that he had driven public buses for over thirty years, as well as driving for universities and schools. There had been no complaints against him for forty six years.

Mr Drinkwater said that the applicant had never had to apply for anything other than a PSV license but that he now required a PHV license. A forty six year old conviction put him below standards, but he hoped the Committee would treat the applicant as an exception. The applicant had also received good references from NCS.

At 10:20am the Committee withdrew to make its determination. At 10:25am the committee returned.

DECISION

The driver's application dated 7th April 2017 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he will remain in the employ of Diamond Transport, to which company he TUPE'd recently; he has been driving minibuses for them under a PSV licence, but now requires a private hire/hackney carriage licence to drive smaller vehicles.

However, the driver's application contained an enhanced DBS check dated 29th March 2017 applied for by Hertfordshire County Council, the contents of which confirmed that the application does not meet Point 5 of the Council's Licensing Standards, which state that a driver must have:-

"No criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed."

The applicant's Enhanced DBS Check revealed the following matters:-
10th October 1968 – Possessing Housebreaking Implements by Night – £15 Fine.

23rd July 1970 – Assault With Intent to Rob – Borstal Training.

24th June 1977 – Theft by Employee – £25 Fine

Though he is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences.

In the course of a telephone interview on 12th April 2017, focused upon the July 1970 offence, the applicant said he was part of a large group of people who had visited a fair together. He did not know all of the people in the group, did not participate in the actual offence, and was supported by this then employer. His original sentence was for three years imprisonment but was reduced on appeal to borstal training. Since then he has by and large, managed to remain in work as a bus and coach driver, and in 2015 took up employment with NCS, an operator licensed in Uttlesford, on school contract work. He began the process

of applying for a licence then, but was assigned to drive a 16 seater vehicle which required a PSV licence only so did not proceed with the application. Since his TUPE transfer to Diamond Transport, the need for a private hire/hackney carriage licence has resurfaced, hence this application.

Unfortunately in aggregate, the applicant convictions are for serious matters and although they took place many years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

However, we have listened to what the applicant and Mr Drinkwater have to say and accordingly we grant this application, and he will receive the paperwork in due course.

LIC65

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

The applicant in relation to Item 4 had not arrived, so the Committee moved on to Item 5.

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

The applicant held a joint private hire/hackney carriage driver's licence which was due to expire on 28 February 2019. He worked for a company called Stansted Travel Services. The applicant was also the proprietor of a private hire vehicle.

The Council's annual online check revealed a motoring conviction for exceeding the speed limit on a motorway. The applicant was convicted and his driver's licence was endorsed with three penalty points. He failed to notify the Council of this conviction which is a breach of licensing condition 18c. The applicant also fell below licensing standards, because he had criminal convictions 'which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974'.

The applicant attended a meeting with the Enforcement Officer and explained the details of the offence. He was driving a vehicle he was testing for a hire company. He was on the M25 where it is four lanes wide and was travelling at 70mph in the third lane, when the variable speed limit was 60mph at the time. He said at the time of the offence it was a sunny day and his visor was down so he didn't see the speed sign. He was offered a fixed penalty notice or the chance to appear at Court, and elected to appear in Court. Following legal advice he later changed his plea to guilty and informed the Court by post. The case was heard in his absence and he was fined £83. He was also made to pay a victim surcharge of £20 and costs of £85.

The applicant claimed that he did not realise that a motoring conviction was still a conviction like other offences. He apologised at the meeting for failing to notify the Council of the conviction.

The applicant said for the past 10 – 15 years, he had been driving over 50,000 miles per year and had never had any points on his license. He was totally unaware he had committed an offence until he was contacted about it. Between the stretch he was caught on, there are very few signs notifying people of the variable speed limit, and the sun shining in his eyes prevented him from seeing them. He felt aggrieved by the situation, but in consultation with a friend, decided to change his plea to guilty. He had not realised that going to court and being found guilty would result in a criminal conviction. He was very sorry, did not intend to mislead anyone, and does enjoy being a taxi driver.

At 10:50, the Committee withdrew to make its determination. At 11:05am the committee returned.

DECISION

The application before the Panel today is for the revocation of the applicant's joint private hire/hackney carriage licence in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He was first licenced on 3rd March 2016 and his current licence expires on 28th February 2019. He drives for Stansted Travel Services and is the proprietor of a licenced vehicle.

On 1st February 2017 the routine annual check carried out on all licenced drivers revealed a conviction that had not been notified to the Council. This was an SP50 (speeding on a motorway) taking place on 12th October 2015 in respect of which the applicant was convicted on 3 May 2016, for which he received 3 penalty points and a fine.

Since the applicant's licence has been endorsed with three points he no longer meets UDC's Licensing Standards for drivers. Appendix A, para 7 of the Council's Policy states that:-

"No other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974"

The rehabilitation period for a fine is one year and that for three penalty points, three years.

Furthermore, condition 18c of Appendix G further requires drivers to notify UDC in writing of:-

"Any convictions, cautions, or fixed penalty notices (save for in respect of civil parking fixed penalty notices which cannot result in the endorsement of points upon the driver's licence) within 7 days of the date of conviction, caution or the issue of a fixed penalty notice"

The applicant attended a meeting with the Licensing Dept on 21st March 2017. He advised that he had been driving an unlicensed vehicle on the M25. He was in a lane travelling at 70mph when the variable speed limit was 60mph and given the sunny conditions the visor was down and he did not see the sign.

Since he did not own the vehicle he did not receive the Notice of Intended Prosecution till after 14th January 2016. He elected to contest the matter and it was not until he had received legal advice that he pleaded guilty. He was convicted in his absence and awarded three points, a fine of £80 and ordered to pay costs and a victim surcharge. He added that he did not realise a motoring conviction was a conviction and said he was very sorry.

We note that the applicant has fallen below the Council's licensing standards in two respects. These are serious matters. However, he has also expressed contrition.

We have heard from the applicant and appreciate that he did not understand the nature of the distinction between a fixed penalty notice and a conviction in Court. We also appreciate that he is contrite and the fact that he understands the primary role of this Committee is the protection of the public. Given these factors we are prepared to be lenient. We cannot let this go completely unsanctioned and accordingly will suspend the applicant from driving for one day. That is today, and he may resume work tomorrow. However, we do not expect to see him before us again.

LIC66

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

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

The Committee considered the report of the Enforcement Officer.

The applicant held a joint private hire/hackney carriage driver's licence which was due to expire on 31 March 2019. According to the Council's records, he worked for a company called Sadlers who run hackney carriage vehicles.

Uttlesford licensed drivers are required to have an enhanced Disclosure and Barring Service (DBS) check completed when they apply for a licence. They can obtain a licence if upon application they produce an enhanced DBS check that is less than 18 months old and no offences are recorded. When the applicant applied for a license, a request was made seeking a copy of the enhanced DBS along with the applicant's acknowledgement that he would abide with the conditions of licensing. The Licensing Team never received a copy of the enhanced DBS, despite several attempts to contact him.

DECISION

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence dated 12th April 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

31st March 2019. As far as the Council is aware the applicant drives for a company called Sadlers.

Licensed drivers are required to have an enhanced DBS check completed when they apply for a licence. This can be up to 18 months old provided it is clear, but they still need to undergo a new check and submit the result to the Council if their application is successful. The driver's application was dated 16th March 2016 and the DBS check 3rd October 2015.

The Licensing Dept contacted Sadlers on 15th July 2016 seeking a copy of the enhanced DBS check that had been posted to the applicant on 3rd May. No response was received despite further follow ups and on 15th February 2017 the matter was referred to the Enforcement Service. They too followed the matter up on several occasions, finally advising that he had until 12th April to submit the necessary documentation. The applicant has still failed to do so.

The applicant has not appeared before us today and given the amount of time that has elapsed with no contact from him, we will revoke the applicant's licences under S61 (b) of the 1976 Act with immediate effect, as he is no longer a fit and proper person to hold them by virtue of his failure to comply with the legal disclosure requirements for the holding of the same.

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

LIC67

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

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

The applicant held a joint private hire/hackney carriage driver's licence which was due to expire on 28 February 2019. She worked for a company called A2B Contract Cars. However, the applicant's enhanced DBS check revealed a caution for an offence of shoplifting, which was administered by Essex Police.

The applicant failed to comply with her conditions of licensing, because it was required by condition 18c to 'notify UDC in writing of, any convictions, cautions or fixed penalty notices within 7 days of the date of conviction, caution or the issue of a fixed penalty notice.' She also fell below the licensing standards which stated 'no official cautions for any offences within the last 12 months'.

The applicant attended a meeting with the Enforcement Officer, at which she explained the details of the offence. She said she was with a friend in Asda in Harlow. Her friend asked her to put washing liquid in her shopping bag because she didn't have the money. The security guard then stopped the applicant and asked for the receipt for the item, which she mistakenly thought was for the clock, because she had forgotten the washing liquid was in there.

The applicant wanted members to be aware that she had recently passed her medical and had a clean driving licence and transports four children aged between 11-13 years old with learning difficulties, without a passenger assistant. She wished to point out that she was mortified about the episode and that driving is her only form of employment.

The applicant said that one of the details in the report was wrong. The report said her friend didn't have the money for the washing liquid, but she had actually said that her trolley was full. They had been chatting at the till and she had forgotten the liquid was in her bag. She was also not aware that she had to report a caution to the Council. She had been driving for thirty years and loved her job, and had brought along a range of good references.

In response to the Chairman's question about whether the report accurately reflected the Enforcement Officer's meeting with the applicant, the Enforcement Officer said that it was accurate to the best of his recollection, and produced his contemporaneous note of the meeting for inspection.

The applicant said that driving was her only source of income and that her driving license was clean despite driving for thirty years.

At 11:35, the Committee withdrew to make its determination. At 11:45am the committee returned.

DECISION

The application before the Panel today is for the revocation of the applicant's joint private hire/hackney carriage licence, 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 28th February 2019 and the applicant currently drives for A2B Contract Cars.

UDC licensed drivers are required to have an enhanced DBS check completed on application and at three year intervals thereafter for the Council to be satisfied they still meet standards. A check dated 3rd March 2017 revealed that the applicant had accepted a caution for shoplifting from Essex Police dated 14th November 2016.

However, Standard 9 of the Council's Licensing 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 applicant has also failed to comply with Condition 18c of Appendix G of the Council's Policy.

Condition 18(c) requires a driver to report within 7 days "Any convictions, cautions, or fixed penalty notices (save for in respect of civil fixed penalty parking notices which cannot result in the endorsement of points upon the

driver's licence) within 7 days of the date of conviction, caution or the issue of a fixed penalty notice.”

The applicant met with the Licensing Officer on 22nd March 2017. She had been shopping with a friend in Asda in Harlow, who had asked the applicant to put an item into her bag. The applicant had already purchased and paid for another item of considerably higher value and when she was challenged she assumed Security wanted to see the receipt for that item: she had forgotten the washing liquid. She was held for an hour and offered payment, but the store did not wish to deal with the matter in that manner and when the Police arrived the applicant was arrested and taken to Harlow Police Station.

She did not obtain legal advice and as she had never been in trouble before she was offered a caution.

The friend had stolen other items, unbeknown to the applicant, and she no longer speaks to her. She told the Licensing Officer that she is mortified about this episode, that she transports four disabled children to and from school without an assistant, and that she has a clean driving licence. Nothing like this will ever happen again.

We have read the papers before us with care and we have heard from the applicant. She was obviously contrite and we have taken into account everything she has said, together with the contents of four references, one of which was from her employer.

We accept that the applicant was at least partially the victim of a third party she had no reason to distrust, and that had she had the benefit of legal advice she might not have accepted a caution. This has caused considerable embarrassment to her, and consequences of what has happened will be with her for the rest of her life.

Taking this into account we have decided to be lenient in this case and accordingly we will suspend the applicant from driving for seven days starting on 10th May 2017. Accordingly she will not be allowed to drive a licensed vehicle until 17th May 2017. We do not expect to see her before us ever again.

LIC68

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

The committee returned to Item 4.

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

The applicant held a joint private hire/hackney carriage driver's licence which was due to expire on 28 February 2019. He was driving for 24x7 Limited but this employment ended earlier last year and he began employment with another operator.

The Council's licensing department's annual online driver's check revealed the applicant had two motoring convictions that had not been reported to the Council. The first offence was exceeding the speed limit on a motorway for which the applicant received three penalty points. The second offence was using a vehicle uninsured against third party risks for which he was convicted and issued six penalty points.

Under condition 18c of the applicant's conditions of licence, the applicant was required to 'notify UDC in writing of, any convictions, cautions or fixed penalty notices within 7 days of the date of conviction, caution or the issue of a fixed penalty notice.' He failed to comply with this condition on two separate occasions. He also fell below the Council's licensing standard that there should be 'no convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence.' Additionally, he fell below the licensing standards in having criminal convictions 'which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974.'

Officers at the Council had previously attempted to contact the applicant by phone and email, but received no reply. The applicant did contact the Enforcement Officer on 18 April 2017 and was interviewed over the telephone. On being asked questions about the conviction for having no insurance, he said that he had been driving his partner's vehicle and had believed that he was a named driver. He also explained that the insurance policy was being paid for on a monthly basis by his partner but the policy was cancelled by the insurance company when there were insufficient funds to pay.

The applicant added that during the period of time he was driving uninsured, he and his partner had been going through a rough patch and he had moved out of their house. Not checking that the insurance was still being paid was an error on his part and it was because he had been going through a difficult time. He said he felt sorry about what had happened.

At 12:00, the Committee withdrew to make its determination. At 12:20, the committee returned.

DECISION

The application before the Panel today is for the revocation of the applicant's joint private hire/hackney carriage licence in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He was first licenced on 10th March 2015 and his current licence expires on 28th February 2019.

On 1st February 2017 the routine annual check carried out on all licenced drivers revealed two convictions that had not been notified to the Council. The first was an SP50 (speeding on a motorway) on 23rd May 2015 for which he was convicted on 28th April 2016. On his application for renewal on 4th March 2016 he did notify UDC of the offence but failed to confirm the result of the

prosecution. As a consequence he was awarded a seven day suspension by the Council's Solicitor from 6th-12th May 2016 inclusive for failure to comply with Condition 7 of Appendix A of the Council's Licensing Standards for Drivers.

The second related to an IN10 offence (driving without insurance) on 29th April for which he was convicted on 1st December 2016, receiving six penalty points. Enquiries of HMCTS revealed that this conviction actually was recorded on 27th January 2017 and the applicant had also been fined. They had no record of the earlier matter and the Police were unwilling to assist.

Since the applicant's licence has been endorsed with six points in respect of a single offence he no longer meets UDC's Licensing Standards for drivers. Appendix A, para 2 of the Council's Policy states that:-

"No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence"

Furthermore, condition 18c of Appendix G further requires drivers to notify UDC in writing of:-

"Any convictions, cautions, or fixed penalty notices (save for in respect of civil parking fixed penalty notices which cannot result in the endorsement of points upon the driver's licence) within 7 days of the date of conviction, caution or the issue of a fixed penalty notice"

The applicant was sent a letter dated 14th March 2017 asking him to contact the Licensing Dept within 10 days. He did not make contact until 18th April when over the telephone he advised that he had been driving his fiancée's vehicle, in respect of which he believed that a) a policy of insurance was in force and that b) he was a named driver upon that policy. However, the insurance policy had been cancelled because the direct debits had not been paid, and the insurance company had allegedly failed to notify about this. The applicant had therefore elected to plead not guilty but nevertheless been convicted and fined. He also confirmed that he had changed his employment several times in the first six months of 2016 but was now working for Concorde Executive Cars. When asked why he had not notified the Council of the conviction he said "There was no excuse".

We note that the applicant has fallen below the Council's licensing standards in two respects, and he has also failed to co-operate with the Licensing Dept. These are serious matters.

We have heard from the applicant. Driving without insurance is a very serious matter and he has nine points on his licence. We cannot overlook this, and accordingly we have no alternative but to revoke the applicant's joint private hire/hackney carriage licences under S61(b) of the 1976 Act with immediate effect, as he is not a fit and proper person to hold them.

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