

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on TUESDAY, 23 APRIL 2019 at 10.00 am**

Present: Councillor R Chambers (Chairman)
Councillors G Barker and E Hicks

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

Also present: The drivers and applicants in relation to items 3, 4, 5, 6, 9, 10 and 11, B Drinkwater (Uttlesford Licensed Operators and Drivers Association)

LIC97 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED to exclude the public and press for the following items on the grounds that they contained exempt information within the meaning of s.1 etc

LIC98 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER APPLICATION

The Licensing Officer gave a summary of the report. The applicant had 4 convictions between December 1976 and January 1981. He therefore did not meet the Council's Licensing Standards because although the convictions were spent, an applicant must have 'no criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence was imposed.

The applicant had supplied a statement in support of his application, explaining that when he was 17 he had fallen in with the wrong crowd and was easily led astray. A period in borstal changed his life and he had since had no convictions.

The applicant said he was sorry to have committed the offences, and that the borstal training had turned his life around.

At 10.10, the Committee retired to make its decision.

At 10.15, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE

The applicant's application dated 26th February 2019 is for a Private Hire/Hackney Carriage Driver's licence. He has been driving professionally for many years, including delivering Meals on Wheels to the elderly and disabled, for a number of years and if successful today has an offer of employment with 24 x 7 Ltd doing school contract work.

The applicant's application form refers to an enhanced DBS check certificate dated 15th February and submitted to UDC along with his application. Copies of both are before us. In summary, the certificate discloses 4 convictions between December 1976 and January 1981 for offences relating to taking a vehicle without consent, driving with no insurance, fraudulently using a vehicle excise licence, driving whilst disqualified and driving a motor vehicle with excess alcohol.

Conviction no 2 dated 12 May 1977 for theft led to a sentence of 3 months in a detention centre; conviction no 3 dated 9 December 1977 for taking a motor vehicle without consent led to a sentence of 3 months imprisonment, and conviction no 4 on 19 January 1981 for Burglary and Theft-(Non-Dwelling) led to a period of Borstal training. During this latter period the applicant took advantage of the rehabilitation and training opportunities available to him and obtained a number of practical qualifications.

Though he is a rehabilitated person in respect of these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all situations, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences. In support of his application, the applicant provided a short statement explaining the background to these matters and this is included among our papers. Since 1981, he has passed his HGV driving test and thereafter worked as a lorry driver for 6 years. In 1991 he took up a role with Ford Motor Company remaining with them for 22 years before being made redundant in 2013 when the plant was closed.

In 2014 he began work with Sodexo and ECC delivering meals on wheels throughout Essex to elderly and vulnerable people before being made redundant again in November when funding was withdrawn.

Unfortunately though this is strong mitigation, the offences are serious matters and although they took place years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee: and as a result thereof the applicant does not meet Condition 5 of Appendix A to the Council's Licensing Standards for Drivers, namely

"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."

However, we have listened to what the applicant has said. We note his contrition and we consider him a fully rehabilitated person and accordingly we grant this application, and he will receive the paperwork in due course.

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

The Licensing Officer gave a summary of the report.

The applicant did not meet the Council's licensing standards as he had convictions between 2004 and 2008 (see background papers) relating to possession of class 3 drug, shoplifting, making off without paying, having an article with a blade in a public place, common assault, intimidating a witness and offences under the Road Traffic Act 1988. Conviction 3 in June 2007 led to a suspended prison sentence. Although the convictions were spent in accordance with the Rehabilitation Act 1974, point 5 of the Licensing Standards – Drivers states that an applicant 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 supplied a statement in support of his application. He explained that he had a difficult start in life including suffering sexual abuse at the age of 12 after which he got involved with the wrong people which led to him making bad decisions and getting into trouble. He expressed regret for his actions and said that the suspended sentence was a wake- up call that caused him to begin to turn his life around. He had no convictions since 2008.

At 10.25, the Committee retired to make its decision.

At 10.30, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE

The applicant's application dated 21st February 2019 is for a Private Hire/Hackney Carriage Driver's licence. If successful he has an offer of employment from 24 x 7 Ltd on school contract work.

The applicant's application disclosed a number of convictions and a six month disqualification from driving. He also provided an enhanced DBS check obtained from Essex County Council and dated 19th February 2019 giving rather more information. A copy of this is before us, and it reveals 4 convictions between 2004 and 2008 relating to possession of class 3 drug, shoplifting, making off without paying, having an article with a blade in a public place, common assault, intimidating a witness and offences under the Road Traffic Act 1988. Conviction 3 in June 2007 led to a suspended prison sentence.

As a consequence the applicant 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.”

Though he is a rehabilitated person in respect of 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 support of his application, the applicant supplied a statement dated 26 March to the Licensing Officer. A copy of this is before us. He explained that he had a difficult start in life including suffering sexual abuse at the age of 12 after which he got involved with the wrong people which led to him making bad decisions and getting into trouble. In 2007 he was convicted of Common Assault which led to his suspended prison sentence. He explained that he was drunk at the time and was trying to impress a girl. He expressed regret for his actions and says that the suspended sentence was a wake- up call that caused him to begin to turn his life around.

Unfortunately though there is strong mitigation, these are serious matters and although they took place years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

However, we have listened to what the applicant has told us this morning and we are satisfied that he has turned his life around; accordingly we grant this application, and he will receive the paperwork in due course.

LIC100 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION**

The Enforcement Officer gave a summary of the report.

The applicant met the Council's licensing standards for drivers. However, the Environmental Health Manager Protection had felt it necessary to refer the application to Committee because the applicant had received a Council caution for a licensing offence. This was in relation to his failure to disclose three convictions of common assault, for which he then accepted a caution for making a false statement to obtain a licence.

The applicant said he accepted that he had made a false statement, but wanted to be a taxi driver to help others. He had been a retired dentist for five years, and the cautions for assault all related to the one offence. This had been when his wife reported him for throwing a bottle of water at her. He had in fact simply intended to throw it to her. He accepted the caution so that she was not charged for wasting police time.

The applicant confirmed he still lived with his wife and that he had not been drinking at the time of the offence.

At 10.55, the Committee retired to make its decision.

At 11.20, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE

The applicant's application dated 7th February 2019 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he intends to carry out school contract work with 24 x 7 Ltd.

The applicant's application disclosed a number of matters. We have a copy of this document before us.

Question 10 asks 'Has your licence ever been endorsed for a fixed penalty offence within the last 4 years?' The answer given was 'yes.'

Question 12 asks 'Have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?' The applicant disclosed that he had been convicted of drink driving on 2006. He also disclosed that he had attended a speed awareness course in 2018. However, his enhanced DBS check, also included within our papers, shows other matters, namely:-

Conviction 1 dated 14 November 2006, was for an offence of driving a motor vehicle with excess alcohol on 03 November 2006. The applicant was given a community order for 12 months, subject to a supervision requirement throughout, ordered to attend a drink impaired drivers' programme and was ordered to do 180 hours unpaid work. He was also disqualified from driving for 36 months and ordered to pay costs of £70.

Conviction 2 dated 28 March 2007 was for an offence of breaching a community order on 14 February 2007. This resulted in his previous supervision order being extended by 3 months and he was ordered to pay costs of £35. The DBS check also showed three cautions, all for common assault. Two were issued on 08 April 2016, for offences taking place on 04 April 2016 and the other was issued on 09 April 2016, for an offence on 08 April 2016.

We are aware that making a false statement to obtain a licence is an offence under S57(3) of the 1976 Act and that this offence carries a fine of up to £1000 upon conviction. The DBS check revealed a number of serious matters, and the applicant was interviewed under caution in respect of them on 22nd February 2019. He provided the following explanation.

Firstly, he confirmed that he completed the application form by himself, and read the concluding declaration fluently. He then explained that the conviction in 2007 in respect of breaching the terms of a community order was related to the drink driving conviction. He was ill on one occasion when he was scheduled to attend to perform unpaid work under the order, did not attend and did not have a doctor's note, as he did not know he needed one.

In relation to the cautions he did not recall them when he completed the form and did not know that he had to disclose them as the incident out of which they arose took place in his home. He explained that he and his wife were sleeping in separate rooms: he went into her room to give her a glass water bottle. He threw it towards her and it accidentally hit her on the leg. He did not realise until afterwards that she had reported the matter to the Police. He produced copies of the paperwork in relation to the two cautions for common assault. Included was a form called an 'MG4F – Refused Charge' for an alleged offence of rape of a woman 16 years of age or over.

It showed that the applicant was arrested and the case investigated but it was decided no crime took place and the victim had subsequently confirmed to the police that no offence took place. The applicant stated that he believed his wife made these allegations up in order to get the Police to attend and when they sought to involve the medical examiner she admitted nothing happened. He further stated that he and his wife are still married and live together.

He also stated that he wants to do the job to help the community.

It was decided to deal with the matter by way of formal caution and this was administered on 28th March. The applicant therefore does meet the Council's Licensing Standards for drivers, but because of the nature of the offences officers felt it appropriate to refer the matter to ourselves. We have read the papers before us and have heard from the applicant. Unfortunately we do not believe that he has told us the whole truth; he has attempted to minimise the seriousness of his drink/driving conviction and nor do we believe that he has told us everything about the events of April 2016. He said, for example, that he threw the water bottle at his wife, not to her. This concerns us, and we are not satisfied that he has shown insight into his past history.

We note that if his application is successful the applicant will be carrying out school contract work. This means in practice he would be transporting potentially some of the most vulnerable members of society, namely disabled children and we are mindful that the offences revealed on his DBS check were alcohol related and of violence and though they are now spent the Rehabilitation of Offenders Act does not apply to proceedings before this Committee, and we cannot ignore them.

Furthermore, the applicant's understanding of English is good and he cannot have failed to understand the application form. Our function is the protection of the public and we have concerns regarding these offences: one is an offence of driving while four times over the limit and the other is a violent offence. Offending committed in a domestic setting is still as serious as any other offending, and there remains a risk to vulnerable passengers.

We therefore refuse this application. The applicant has a right of appeal to the Magistrates Court against this decision and he will receive a letter from the Legal Department explaining this.

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

The Enforcement Officer gave a summary of the report.

The applicant met the Council's licensing standards for drivers, however the Environmental Health Manager Protection felt it was necessary to refer the application to Committee. This was due to the applicant's difficulty in reading and writing in English and because he had received a Council caution for a licensing offence.

This caution was in relation to making a false statement on the following question: have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?

On attending an interview with the Enforcement Office, the applicant said his nephew had filled in the application form for him because his written English was not good. His nephew had written 'no', whereas the correct answer should have been 'yes'. The answers on the application form also failed to disclose three other penalty points. At interview the applicant said he had believed these three points had already dropped off.

The driver said he had made mistakes but was surprised this issue was confronting him now.

At 12.00, the Committee retired to make its decision.

At 12.10, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE

The applicant's application dated 8th January 2019 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he intends to carry out school contract work with M & S Ahmed Srv Ltd.

The applicant's application disclosed a number of matters. We have a copy of this document before us.

Question 4 asks 'Have you ever been refused or had revoked or suspended a hackney carriage or private hire driver's licence?' The answer given was 'yes.' This was expanded by the statement - "dangerous driving – Stevenage Borough Council. Revoked by Stevenage in 2005".

Question 10 asks 'Have you ever been disqualified from driving or had your licence revoked?.' The answer given here was 'yes.'

Question 11 asks 'Has your licence ever been endorsed for a fixed penalty offence within the last 4 years?' The answer given was 'yes SP30 4 points £80 fine 12/05/2018'.

However, the applicant's DVLA Drivercheck, also before us and dated 05 February 2019 shows that he also has another fixed penalty notice, an SP30 offence for which he was convicted on 07 June 2016 and was given three penalty points.

Question 12 then asks 'Have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court, or received a police caution?' The answer given to this question was 'no.'

Again, however, his enhanced DBS check, also included within our papers, shows two matters, namely:-

Conviction 1 dated 12 August 2005, was for an offence of dangerous driving on 15 January 2005. The applicant was fined £250 and disqualified from driving for 12 months; his licence was endorsed and he was ordered to pay costs of £200. Conviction 2 dated 24 May 2005 was for two offences: a) using a vehicle whilst uninsured and b) driving whilst disqualified on 08 December 2005. His DBS appears to show that he was given a community order comprised of 9 months supervision, a requirement to undertake basic skills training for 30 days and 8 penalty points for the driving whilst uninsured offence. For the driving whilst disqualified matter, the applicant was subject to duplicate supervision and skills training requirements, ordered to pay costs of £100 and again, his driving licence was endorsed.

We are aware that making a false statement to obtain a licence is an offence under S57(3) of the 1976 Act and that this offence carries a fine of up to £1000 upon conviction. The applicant was interviewed under caution in respect of this matter on 22nd February 2019 and on that occasion the following matters were raised by him.

The applicant stated that his nephew completed the application form in front of him. His nephew did this because he can't read and write in English very well. He later conceded that he could only read a little bit of English and as a result, his nephew had read him the questions and he gave him the answer. He was noted to read the declaration at the bottom of the application form with difficulty.

The applicant then confirmed that his nephew had written the details of the disqualification on the application form. He then explained the reason for the second conviction was because his brother had been involved in an accident and he drove to the scene in his brother's car but the police caught him.

When he was asked why the response to question 12 was 'no' the applicant said it should not have been 'no' but could not remember if his nephew had asked him this question: when the applicant was asked why he did not disclose the other three penalty points he believed that he only had four and thought that the others had dropped off as it was over three years from the offence not the date of conviction.

Finally, applicant stated that he did not check the application form as he trusted his nephew to complete it correctly.

It was decided to deal with the matter by way of formal caution and this was administered on 26th March. The applicant therefore does meet the Council's Licensing Standards for drivers, but because of his poor English officers felt it appropriate to refer the matter to ourselves. We have read the papers before us and have heard from the applicant. We note that if his application is successful he would be carrying out school contract work. We are very concerned that he might be unable to read any instructions in respect of the care of a disabled child in emergencies: and similarly, a vulnerable child might struggle to understand his spoken English. This is a risk we cannot take.

Our function is the protection of the public and we have concerns that the applicant's inadequate grasp of the English language might put people at risk. We therefore refuse this application. The applicant has a right of appeal to the Magistrates Court against this decision and he will receive a letter from the Legal Department explaining this.

LIC102 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION**

The Enforcement Officer gave a summary of the report.

The applicant previously held a private hire/hackney carriage driver's licence between 20 September 2012 and 20 August 2018, when it was revoked. This was because he contacted the Licensing Officer on 24 August 2018, and explained that he had been disqualified from driving for a period of six months by Colchester Magistrates Court under the 'totting-up' provisions. Should a driver re-apply for a licence, it cannot be re-instated if it has been revoked and no appeal was lodged.

The applicant's solicitor Mr Schiller contacted the Council's solicitor on 25 March 2019, and explained that Colchester Magistrates Court overturned the allegation of driving in excess of the speed limit. This now resulted in the applicant only having three penalty points on his DVLA driving licence.

The applicant attended the Council Offices on 03 April 2019, and completed his enhanced DBS application form. He took a new group 2 medical on 04 April 2019, which he passed successfully.

B Drinkwater said the Magistrate's decision to overturn the allegation of driving in excess of the speed limit had changed the applicant's circumstances, as he had never then fallen below licensing standards.

The applicant confirmed the decision had been overturned on the basis of the signage on the road having been inappropriate.

At 12.45, the Committee retired to make its decision.

At 1.15, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE –

The applicant's application dated 25th March 2019 is for a new Private Hire/Hackney Carriage Driver's licence. He has been previously licenced by UDC between September 2012 and August 2018, and if successful intends to resume driving under his operators' licence trading as J and R Cars.

He is represented before us today by Mr Drinkwater.

The applicant's licence was revoked by the Environmental Health Manager – Commercial under his delegated powers on 30 August 2018. The revocation was with immediate effect under section 61(2B) Local Government (Miscellaneous Provisions) Act 1976 and was because the applicant contacted the Licensing Officer on 24 August 2018, and explained that he had been disqualified from driving for a period of six months by Colchester Magistrates Court under the 'totting-up' provisions. It was therefore illegal for him to drive at all. The applicant subsequently surrendered his private hire/hackney carriage driver's licence.

The applicant had the opportunity to appeal this revocation to the Magistrates Court within 21 days of the revocation, however, he chose not to exercise this option. It would have been open to him to enter an appeal and ask for the hearing thereof to be adjourned pending the determination of his appeal against the substantive penalty to which he was subject. He was at all material times in receipt of specialist legal advice so should have been made aware of this possibility. As he did not appeal, the effect of an appeal being to prolong the life of the licence, the licence no longer exists and cannot be re-instated by administrative means.

The driver's solicitor Mr Schiller contacted the Council's solicitor on 25 March 2019, and explained that Colchester Magistrates Court overturned the allegation of driving in excess of the speed limit. This has now resulted in the driver only having three penalty points on his DVLA driving licence. Copies of this correspondence are included with the papers before us.

The driver attended the Council Offices on 03 April 2019, and completed his enhanced DBS application form. The driver has also undergone a new group 2 medical on 04 April 2019, which he has passed successfully.

However, the fact remains that the driver does not meet Condition 11 of Appendix A to the Council's Licensing Standards for Drivers, namely

“Not to have had a hackney carriage and/or private hire driver's licence revoked within the last three years”.

The appellate process has now reduced the number of penalty points upon the driver's DVLA licence to three, and these fall away next month.

We have read the papers before us and we have listened very carefully to what both the driver and Mr Drinkwater have said. First and foremost, the legislation gives no power to reinstate a licence once surrendered and/or revoked. There was therefore no alternative open to the driver but to apply de novo for a fresh licence. Secondly, in no way can Mr Cobden's letter of 30th August 2018 be construed as a promise to treat the driver as a special case. It would have been both unlawful and inappropriate for him to make such promises and we specifically find that he did not do so. Thirdly, at the date upon which that letter was written the driver had fallen below the Council's Licensing Standards: he had accumulated twelve penalty points leading to his disqualification from driving under the totting up provisions. On 25th March 2019 the case against him was dismissed because the CPS failed to produce the evidence necessary to make out their case to the requisite standard.

We are aware that the driver's remaining points fall away next month and thereafter he will have a clean DVLA. For this reason only we are prepared to grant him a new licence and he will receive the paperwork in due course. We do not expect to see him before us ever again.

LIC103 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Enforcement Officer gave a summary of the report.

On 11 December 2018, Chelmsford City Council received a complaint about the driver who was driving in a Chelmsford City Council licensed hackney carriage vehicle on Saturday 08 December 2018. It was alleged that the driver had driven down the A1099 on the wrong carriageway to then enter the exit of the joining roundabout travelling in the wrong direction to enter Baddow Road in Chelmsford.

At interview at Chelmsford City Council, an officer asked the driver 'did you drive crossing over onto the oncoming lane, entering the exit of the roundabout because as the roads were busy'. The driver replied "yes, the road was busy, but I could clearly see nobody was there." The Officer asked if he was aware that he could not drive on the incorrect carriageway, nor enter an exit junction of a roundabout. The driver apparently shook his head saying "yes, it was a good night and was the first night I had made £100 already."

As a result Chelmsford City Council suspended his hackney carriage/private hire drivers licence with immediate effect in the interest of public safety. Section 11 of the Council's current licensing policy surrounding driver's states a driver should not to have had 'a hackney carriage and/or private hire driver's licence revoked within the last 3 years.' Therefore, the driver no longer met the Council's licensing standards.

During a phone interview with Uttlesford District Council, the driver said the road had been clear when he committed the offence. He had been tired and the distance had only been a few metres. When asked why he did not notify the Council of the suspension of his licence by Chelmsford City Council, he stated

that it was because the suspension was temporary as it was going to their Committee. He said he only found out about the revocation a couple of days before flying to Greece for surgery and so did not think to contact the Council.

The driver said the road had been clear when he committed the offence and he had not been thinking clearly due to health problems. He was sorry for his mistake.

At 1.45, the Committee retired to make its decision.

At 2.00, the Committee returned.

The decision was read to the driver.

DECISION NOTICE

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence number PH/HC1692 dated 19th August 2016 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 31st July 2019. He is currently employed by West End Cars, an operator holding dual licences from UDC and from Chelmsford City Council. The driver similarly was dual licenced, but his licence number 594 issued by that authority was revoked by them on 28th February 2019 as hereinafter appears.

On 11 December 2018, Chelmsford City Council received a complaint regarding the driver's driving of a Chelmsford City Council licensed vehicle on Saturday 08 December 2018. He was alleged to have driven down the A1099 on the wrong carriageway, then entered the exit of the joining roundabout, still travelling in the wrong direction, and entered Baddow Road. The next day, the driver attended the Chelmsford City Council Offices and met their Licensing Officer.

The driver was shown a map and the allegation was explained to him. He denied it and details of his exchanges with the Chelmsford Licensing Officer are set out in the papers before us.

As a result on 12th December, Chelmsford City Council suspended his hackney carriage/private hire drivers licence with immediate effect in the interest of public safety under section 61(2B) Local Government (Miscellaneous Provisions) Act 1976. The combined hackney carriage/private hire driver's licence was thereafter referred to Chelmsford City Council's Regulatory Committee sitting on 28 February 2019. The driver did not attend the meeting and the Committee decided to revoke his licence. The driver did not appeal this decision.

In the meantime, Essex Police investigated the driver for an offence of driving without due care and attention. On 02 January 2019, they offered him a fixed penalty notice carrying three penalty points and a £100 fine.

On receipt of the notification of revocation from Chelmsford City Council, this authority opened a file. The UDC Enforcement Officer carried out a telephone

interview with the driver on 19 March 2019. He explained that he was currently in Greece and had been there for about one month due to neck surgery. He remained willing to proceed with the interview and therefore the driver was asked why he drove the wrong way down the road in Chelmsford. and he explained that it was only a few metres, he was tired and it was about 2am. He explained that he now realised that it was a stupid thing to do.

The driver was asked why he did not disclose the penalty points and he said that he had been busy sorting out his neck operation and he had been out of the UK for periods of time. The surgery was meant to be on 13 January but did not happen until 15 February. The driver was then asked why he did not notify the Council of the suspension of his licence by Chelmsford City Council and he stated that it was temporary as it was going to their Committee. The driver also explained that he only found out about the revocation a couple of days before the telephone conversation.

The driver provided emails on 19 March 2019, to show details of his flights to Greece. He also forwarded an email from the Democratic Services Officer at Chelmsford City Council dated 29 March 2019.

We note that the driver is in breach of the Council's Licensing Standards for Drivers in three respects. Firstly, Clause 11 of Appendix A to the Council's Licensing Standards states:

"Not to have had a hackney carriage and/or private hire driver's licence revoked within the last 3 years."

Furthermore, Clauses 18 c and d respectively of Appendix G require drivers to notify the Council in writing of the following matters:-

"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;" and

"Any investigation 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."

We have read the papers before us and we have heard from the driver. We note that he has some health problems and he also made some complaints regarding the way in which Chelmsford City Council dealt with the matter. We also observe that he initially did not appear to consider the offence to be very serious, and continued working, immediately picking up a passenger and in our view showing limited insight into the matter: we cannot agree with his assessment, we also note he only acknowledged the seriousness of the matter today when it was put directly to him.

We are not a criminal Court and our findings are made on a balance of probabilities. Nor are we bound by the findings made by Chelmsford City Council: our discretion is free standing and it is for us to decide based upon what we have before us to decide whether or not the driver remains a safe and suitable person to hold an Uttlesford hackney carriage/PHV drivers licence. Unfortunately our view is that he is not.

What the driver did in the small hours of 8/9 December last year was very dangerous indeed. Though he said the roads were deserted, if they had not been, or another vehicle or pedestrian had suddenly appeared, the consequences could have been catastrophic. He has said he is sorry, but sorry in this case is not good enough given what might have happened.

Paragraph 8 of Appendix G to the Council's Licensing Standards for Drivers requires drivers to

"Take all reasonable steps to ensure the safety of passengers"

Our view is that this responsibility extends to all members of the public who might be encountered by a licensed driver in the course of his work, and in our view the driver totally disregarded this fundamental obligation to act safely.

The primary function of this Committee is to ensure the safety of members of the travelling public. In doing as he did, the driver clearly ignored this obligation, and though the Police chose to deal with the matter by way of a fixed penalty notice, he was nevertheless committing a criminal offence the consequences of which could have been catastrophic. In the interests of the proper protection of the public we consider that we have no alternative but to revoke the driver's licence with immediate effect under S61 (b) of the 1976 Act as he is no longer a fit and proper person to hold it.

There is a right of appeal against this decision which must be exercised within a period of 21 days. Normally the licence continues in being pending the resolution of the appellate process, but since the revocation was immediate on the grounds of public safety this will not apply. The driver will receive a letter from the Legal Department explaining this.

LIC104 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION**

The Enforcement Officer gave a summary of the report.

Question 12 of the application form asks 'have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?' The applicant had answered 'no.' However an enhanced Disclosure and Barring Service (DBS) check revealed three convictions. Making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976.

On attending an interview with the Enforcement Officer, it was noted that the applicant struggled to understand the application form and had had help from his cousin to fill it in.

The applicant said he had been experiencing financial hardship and difficulties with his ex-wife and was looking to support his son. He had misunderstood the

questions on the application form. His health had not been good, but he needed to get on and work. He had a clean license at the moment.

At 2.55 the Committee retired to make its decision.

At 3.15 the Committee returned.

The decision was read to the applicant.

DECISION NOTICE –

The applicant's application dated 29th January 2019 is for a Private Hire/Hackney Carriage Driver's licence. If successful he hopes to work for 24 x 7 Ltd.

However, his application disclosed a number of matters. We have a copy of the form before us.

Question 12 of the application form asks 'Have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?' The answer given was 'no.'

Part of the licensing process requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check and the applicant's check was dated 22 February 2019 and revealed a number of matters including offences of dishonesty and what are popularly known as "hate crimes":

Conviction 1 dated 05 May 2011, is for three offences of failing to notify a change of circumstances affecting entitlement to benefit. The applicant was given a suspended imprisonment for three months suspended for 12 months, a 12 month supervision order and a five month curfew with electronic tagging. He was also ordered to pay prosecution costs of £1469.19.

Conviction 2 dated 14 December 2011 was for a further two offences. One offence was commission of a further offence during the operational period of a suspended sentence and the other offence was in respect of racially/religiously aggravated harassment/alarm/distress – words/writing, ie a "hate crime". His suspended sentence of imprisonment was extended by six months to 18 months in total, plus he was given a conditional discharge and ordered to pay costs of £45.

The final conviction on 28 August 2014 was for two offences. One offence was commission of a further offence during the operational period of a suspended sentence and he was fined £100 for this matter.

The other offence was making a false statement/representation to obtain benefit. For this offence, the applicant was given a 4 month suspended prison sentence suspended for 12 months, a 12 month supervision order, a four month curfew a victim surcharge of £80 and costs of £1000.

These are all very serious matters and the Rehabilitation of Offenders legislation does not, because of the public protection function of the licensing process, extend to proceedings before this Committee. We are aware that making a false

statement to obtain a licence is an offence under S57(3) of the 1976 Act and that this offence carries a fine of up to £1000 upon conviction.

The applicant attended an interview under caution on 14 March 2019, at the Council Offices in Saffron Walden which was conducted by two Enforcement Officers. He was accompanied by a cousin who was there to assist with interpretation and who had completed the application form on his behalf. The applicant confirmed that he signed the form but his cousin had completed the application form. In the circumstances the cousin was then asked to leave the room: The applicant was able to read the declaration on the application form to the Officers.

The applicant explained that he asked his cousin to complete the application form because his reading and writing in English was not very good. He had only known this cousin for 3 to 4 months. When he was shown the application form, the applicant claimed that he did not understand what spent convictions were in relation to question 12. He was not sure if his cousin read the question out to him before his cousin answered it: however, he thought it meant "had he ever been to prison", and he then claimed not to understand the question despite saying that he had just understood it.

When the applicant was shown the DBS certificate he thought that they were not criminal offences and did not know he had to tell the Council about them. He stated that he had applied for a licence with Uttlesford because it is hard to get a driver's licence in Cambridge and it is too busy there. The applicant then explained by way of mitigation that he has been suffering financial hardship while on benefits and problems with his ex-partner restricting access to see his son.

We understand that the case has been reviewed by the Environmental Health Manager – Protection and he has decided that it is in the public interest to seek to prosecute the applicant for the alleged offence of making a false statement to obtain a private hire/hackney carriage driver's licence. This means that the applicant does not meet Standard 10 of Appendix A of the Council's Licensing Standards for drivers, namely, "No pending prosecutions for any criminal or motoring offence".

This is in addition to Standard 5 of the same Appendix, which provides "No convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed".

We have read the papers before us and have heard from the applicant. Unfortunately we cannot find him to be a safe and suitable person to hold a licence. He has a number of convictions for dishonesty and one under S31(1) (c) Crime and Disorder Act 1998: his English language skills are not good: and there is a caveat to his Group 2 medical certificate essentially restricting him to driving an automatic vehicle.

Though he was very distressed when he appeared before us, all of these are extremely serious matters. The applicant has twice re-offended during the currency of a suspended sentence and the "hate crime" conviction causes us

very great disquiet. All these matters, and particularly this one, are directly relevant to whether or not the applicant is a fit and proper person to hold a drivers' licence and we are very much afraid that he is not. Our function is the protection of the public and quite apart from his criminal record we have concerns that the applicant's inadequate grasp of the English language and potential medical issues might put people at risk.

We therefore refuse this application. The applicant has a right of appeal to the Magistrates Court against this decision and he will receive a letter from the Legal Department explaining this.

LIC105 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Enforcement Officer gave a summary of the report.

The driver's last enhanced DBS check and group 2 medical expired on 30 June 2018. The driver had also failed to produce a new DVLA driver mandate which also expired on 30 June 2018. This meant that the Council now could not check his DVLA record.

The Enforcement Officer had telephone calls with the driver who explained that he now held licences with TFL but wanted to keep his licence with Uttlesford to keep his options open.

At 3.20, the Committee retired to make its decision.

At 3.25, the Committee returned.

The decision was read to those present.

'DECISION NOTICE –

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence no PH/HC1284 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He has been licenced in Uttlesford since 30th July 2015 and his current licence is due to expire on 30th June 2019. His last known driving role under the terms of this licence was with 24 x 7 Ltd.

We also note that according to the Licensing Department's records, the driver is resident at one particular address in Loughton but when he spoke recently to the Enforcement Officer he advised that he had moved home. Any such moves must be notified to the Council in writing within seven days of the move under Clause 18a of Appendix G of the Council's Licensing Standards and this he has failed to do.

The Council requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check, a group 2 medical examination, and to provide a DVLA

mandate to allow annual scrutiny of driving records when they apply for a licence and every three years after that. These checks assist the Council in establishing whether an individual is a 'fit and proper' person to hold a licence. The driver has not supplied any of these documents, and all three expired on 30th June 2018.

Normal practice at UDC is to send out reminder letters to drivers for DBS checks that are due to expire on the first working day of the month which precedes the month when the check expires. The reminders for medicals are typically sent out on the 15th day of the month preceding the expiry of that check.

The driver was formally contacted in writing on 1st May 2018 and again on 29th May, and for a third time by the Enforcement Officer on 14th January 2019 and was then told that if he wanted to remain licensed in Uttlesford then he must provide these documents by 30th January 2019. He has not done so, but did contact the Council by telephone and said he held a TfL licence but wanted to retain his Uttlesford licence to keep his options open.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet "...Group 2 medical standards as published by the Dept of Transport."

Compliance with this standard is a legal requirement, and the fact a licence is held with another authority does not absolve the individual from compliance with this requirement. Without an up to date certificate we have no means of knowing whether this requirement is satisfied. This Committee considers that failure to provide an up to date medical, DVLA or DBS check is a breach of Council policy; the checks are vital to establish that a driver is medically fit enough to drive, and has not received any criminal convictions in the period since their last DBS check. Lacking that up to date information, and mindful of the paramount importance of public safety, we are not satisfied that the driver is a fit and proper person to hold hackney carriage and private hire licences in Uttlesford and therefore revoke them.

The fact he is also licensed by TfL does not absolve him from complying with Uttlesford's requirements and we remind ourselves of the breach of standard 18a Appendix G. Keeping his options open is not a good reason for disapplying our requirements which are in place for the protection of the travelling public: his TfL licence is not a passport to an Uttlesford licence and we are required to make our decision based upon our estimation as to the driver's fitness to hold it.

The driver has a right of appeal against this decision to the Magistrates Court, and that any such appeal must be lodged within 21 days. He will receive a letter from the Legal Department explaining this.

LIC106 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Enforcement Office gave a summary of the report.

The Council required all drivers to under a group 2 medical when they apply for a licence and then every three years after that. These checks assist the Council in establishing whether an applicant is a 'fit and proper' person to hold a licence. The driver's last group two medical expired on 30 June 2018. Despite contact with the driver, no medical certificate had yet been received.

At 3.30, the Committee retired to make its decision.

At 3.35, the Committee returned.

The decision was read to those present.

'DECISION NOTICE

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence no PH/HC0025 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He has been licenced in Uttlesford since 8th July 2015 and his current licence is due to expire on 30th June 2019. His last known driving role was with 24 x & Ltd but they advise that he left their employment in November 2018.

The Council requires all drivers to undergo a group 2 medical examination. This is a legal requirement and the driver has not supplied a medical certificate. Reminders for medical certificates are typically sent out on the 15th day of the month preceding the expiry of the current one, and accordingly the driver was contacted in writing on 29th May 2018 and again on 9th January 2019, when he was told that if he wanted to remain licensed then he must provide a certificate by 25th January 2019. He has not done so.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet "...Group 2 medical standards as published by the Dept of Transport."

Compliance with this standard is a legal requirement, and without a certificate we have no means of knowing whether this requirement is satisfied. This Committee considers that failure to provide an up to date medical certificate is a breach of Council policy; it is vital to establish that a driver is medically fit enough to drive. Mindful of the paramount importance of public safety, we cannot be satisfied that the driver is a fit and proper person to hold hackney carriage and private hire licences and we therefore revoke them, with immediate effect.

The driver has a right of appeal against this decision to the Magistrates Court, and that any such appeal must be lodged within 21 days. Normally, the revocation would come into effect following the end of the appeal period, but since the revocation is because of failure to supply a medical certificate in the interests of public safety, this period of grace will not apply. He will receive a letter from the Legal Department explaining this.

The meeting closed at 3.35.