

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on TUESDAY, 28 JANUARY 2020 at 10.30 am**

Present: Councillor C Day (Chair)
Councillors R Freeman, A Gerard and V Isham

Officers in attendance: A Bochel (Democratic Services Officer), J Jones (Licensing and Compliance Officer), S Mahoney (Senior Licensing and Compliance Officer), E Smith (Solicitor) and R Way (Licensing and Compliance Manager)

LIC46 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Councillor Gerard noted that he was on the panel when the driver in relation to Item 5 last came before the Committee.

LIC47 EXCLUSION OF THE PUBLIC AND PRESS

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

LIC48 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The Solicitor said this item would be dealt with in tandem with Item 4, Determination of a Hackney Carriage Vehicle Licence.

The Licensing and Compliance Officer gave a summary of the report. The driver had notified the Council that he had received a conditional offer of a fixed penalty for using a motor vehicle without third party insurance. He explained that his vehicle had broken down and he had borrowed a friend's car for private use for a day. He was sure that his insurance covered him to do this. He was stopped by the Police and was told he was not insured to drive the car. The driver had accepted a £300 fine and 6 penalty points. The driver's licence now came before members for them to determine whether he remained a 'fit and proper' person as he no longer met the Council's licensing standards.

The driver said he apologised for everything that had happened. He had been certain he had been insured to use the vehicle otherwise he would not have opened himself up to the risk of doing so. It had been a busy day and he had had time to think much. He had managed to give away all his other jobs but didn't want to let the customers down. He wished he could go back and was grateful that nothing more serious had happened.

B Drinkwater said the driver had been a good proprietor and took his responsibilities seriously. The case was a very serious matter but an inadvertent offence.

At 11.25, the Committee retired to make its decision.

At 12.05, 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 number PH/HC1697 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 31st July 2022 and the driver also holds a hackney carriage licence reference no HCV 072 (See post) due to expire upon the same date.

We have had the opportunity of reading two officer's reports in this case, copies of which have been served on the driver, and we have also seen, as has he, the background documents annexed thereto.

On 11th November 2019 the Licensing Department received an email from the driver notifying the Council that he had received a conditional offer of a fixed penalty notice for using a motor vehicle without third party insurance. He explained that his licensed vehicle had broken down and that he had borrowed a friend's car for private use for a day. He was sure that his insurance covered him to do this. He was stopped by the Police and was told he was not insured to drive the car. The conditional offer of diversion from the Courts was for a £300 fine and 6 penalty points. The Council replied by e-mail on 13 November 2019 explaining that this would mean that the driver would no longer meet licensing standards under sections 2.29 and 2.41 of the suitability policy. A copy is before us.

Section 2.29 defines '*a major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also included driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed*'.

Section 2.41 refers to existing licence holders and provides '*As public trust and confidence in the overall safety and integrity of the system of taxi licensing is vital, where a licence holder has received a conviction for any category of offences detailed above, their licence(s) **will be revoked***'. He was informed that he would need to appear before this Committee. Since the date of the report, the Council has received a letter from HMCTS stating that since the driver was potentially liable to disqualification from driving under the totting up provisions he would have to appear before a Court.

On 18 November, at his request the driver informally met with two officers of the Licensing Department. He explained that he had yet not decided whether to accept the 6 points and fine or go to Court, and having checked his insurance policy he realised that he had not in fact been insured to drive his friend's car. The driver further explained that on the evening of 23 October around 10.00pm he had a flat tyre. He had a puncture repair kit on board, but no spare tyre. He had jobs booked for the next day which he which he was able to pass on to other operators, but he could not find anyone to take a job at 3.00am the next morning which he had had booked for several months in advance.

The driver said that as he did not want to let his passengers down he borrowed a friend's car thinking he was covered by his insurance to drive another car with the owner's permission. However, cover of this type usually extends to private, social and domestic usage only. He took the passengers to the airport thereby driving passengers for gain in an unlicensed vehicle. He was stopped by the police at the airport on his way home, and the police impounded the car as he was uninsured to drive it. The driver's own vehicle was repaired on the 24 October. It was explained that taken together, these matters were very serious and that the driver's driver's licence would be referred to Committee for possible revocation.

We have heard from the driver and Mr Drinkwater has spoken most eloquently on his behalf. He provided us with a bundle of references and testimonials, and we have read these and note the contents. However, in response to a question regarding the HMCTS letter, the Licensing Officer confirmed that upon two occasions during the currency of his career as a licensed driver the driver had acquired three penalty points upon his licence, one set of which he did not declare to the Council and for which he was duly sanctioned: He is now rehabilitated in respect of the first three points but both matters related to offences of speeding and we regard this as serious. We also note the letter from HMCTS produced to us today and understand the driver appears before the magistrates next month: we do not have the power to suspend his licence in the employment sense of the word pending their decision.

Finally, the offence that has brought him before us today is an insurance one, and we regard this as crucial. There can be no excuse: Insurance companies run 24/7 helplines and if he could not find or understand his paperwork he could have made a telephone call. We note the circumstances of the day in question and have listened to the mitigation offered by Mr Drinkwater on the driver's behalf: we note his contrition.

However, the primary function of this Committee is the protection of the public and we note the seriousness of the offence. Drivers are required to have insurance for good reason and though there are provisions in place to ensure that victims of uninsured drivers are compensated, it does mean there are additional procedural steps that such people have to take if there is an accident, and the compensation scheme relates to personal injury only. Mercifully there was no accident. However, this journey was carried out for reward in an unlicensed vehicle; since it was a pre-booked journey it was a private hire booking and the driver was therefore operating a vehicle as a private hire vehicle

when it was not licensed as such, which is an offence under S46(1) (e) of the 1976 Act. We therefore feel that it is this that has tipped the balance in favour of immediate revocation in the interests of public safety under S61 (1) (b) of the 1976 Act of the driver's drivers' licence – any other reasonable cause.

There is a right of appeal against this decision which must be exercised within a period of 21 days. During that period the licence normally remains in force and thereafter until the conclusion of the appellate process, but since the revocation was to take immediate effect on the grounds of public safety this grace period is not applicable. The driver will receive a letter from the Legal Department explaining this.

In the light of this decision the question of the driver's licensed hackney carriage reg GU62 JZF had to be considered. As a matter of law, only a licensed driver may drive a licensed vehicle. In the light of the decision we made regarding the driver's driver's licence he will be unable to drive the vehicle for social, domestic and pleasure purposes. After a brief adjournment to enable him to speak with Mr Drinkwater he surrendered the vehicle licence to the Council.

LIC49

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

The Licensing and Compliance Officer gave a summary of the report. The applicant had held a combined private hire/hackney carriage driver's licence from June 2016 to July 2018, when his licence was revoked following a complaint regarding his behaviour and he was no longer regarded a fit and proper person to hold a driver's licence. The applicant had now reapplied to the authority.

The applicant said he was currently working as a taxi driver in London, but it was expensive to live down there. His daughter was autistic and required a great deal of care. She would have a good life here.

In response to a Member question, the applicant said it was important to have a nice manner around customers, to ask whether they wanted to go and whether they wanted to use the meter. He had had no complaints in the last three months and was very careful not to ask personal questions of his customers. He was a different man with different priorities.

At 13.05, the Committee retired to make its decision.

At 13.20, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE –

The application before the Panel today is for the grant of a new joint hackney carriage/PHV driver's licence to the applicant. The applicant previously held a licence from UDC but this was revoked with immediate effect by a panel of this

Committee on 16th July 2018 after a full hearing at which oral evidence was heard from the complainant and from her aunt. We understand they were supported by a female Enforcement Officer, and that the applicant did not exercise his right of appeal against that decision.

Since then, the applicant unsuccessfully applied to Epping Forest DC for a licence but withdrew that application: he also applied, successfully to TfL in May 2019. We have no information regarding the work he is doing under that licence save for a suggestion he may be driving for an app based operator, but in the application before us today he indicated that he would be driving for Audley End Chauffeurs. This statement was followed up by the Licensing Department and an email from the proprietor of that firm indicated that at present they were not recruiting any new drivers. A copy of that email is before us, but since that date he has advised the Licensing Department that he would be willing to offer the applicant a job.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, and we have also seen, as has he, the background documents annexed thereto including the July 2018 decision notice, correspondence from Audley End Chauffeurs, and a lengthy letter written by a legal representative on the applicant's behalf.

We have heard from the applicant and we have listened carefully to what he said in response to our questions. He did not answer those questions. All he spoke of was the high cost of living in London, the better perceived quality of life in Uttlesford and the fact that the Council applies "fewer conditions" to the grant of a licence than does TfL. However, the fact remains that the applicant's previous licence was revoked less than two years ago and the panel then was very concerned about him. Nothing has changed. He has shown no insight and we consider the applicant to be just as much of a risk to the public as he was two years ago.

I repeat, we have listened very carefully to what we have been told and we have considered the Council's policies and licensing standards. However, the fact remains that the applicant's last UDC licence was revoked for cause only 18 months ago, and the matters complained of involved both dishonesty and indecency. He did not appeal and the fact that he could not afford legal representation is irrelevant: the Courts are generally supportive of unrepresented appellants in circumstances such as this. The fact remains, the applicant preyed upon a vulnerable passenger and he has produced no independent evidence as to reformation of character. The primary function of this Committee is the protection of the public and if we are in any doubt as to whether an applicant is a safe and suitable person to hold a licence then our duty is clear – we should refuse the application, and we do so.

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.

LICENCE

This item was deferred due to the driver being unable to attend.

The meeting ended at 13.25.