

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on TUESDAY, 3 MARCH 2020 at 10.00 am**

Present: Councillor C Day (Acting Chair)
Councillors R Freeman, A Gerard and L Pepper

Officers in attendance: A Chapman (Licensing Support Officer), C Gibson (Democratic Services Officer), J Jones (Licensing and Compliance Officer), S Mahoney (Senior Licensing and Compliance Officer) and E Smith (Solicitor)

Also present: The drivers in relation to Items 3, 6 and 7

LIC53 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that under section 1001 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.

LIC54 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The Chair brought Item 6 forward in proceedings.

The Licensing and Compliance Officer gave a summary of the report. The driver had notified the Council that she had been convicted for an offence of: *Dishonestly failing to notify change of circumstances affecting entitlement to social security benefit/advantage/payment*. The driver had been fined £175 and given a Community order to carry out 60 hours unpaid work within the next 12 months. The driver's licence now came before members for them to determine whether she remained a 'fit and proper' person as she no longer met the Council's licensing standards.

The driver said that she had made a genuine mistake and that she had not been aware that she had been committing fraud. She indicated that there had been a number of personal problems in her private life that contributed to her overlooking any declaration of a change of circumstances.

In response to Members' questions she explained that she had failed to notify the authorities that she had been earning more than previously declared. She said that her job was very important to her and that she had been driving school contract taxis for almost seven years. She said that she had paid the court fine and had started to pay back the overpayment. She had also undertaken more than 18 hours community service to date.

At 10.15, the Committee retired to make its decision.

At 10.25, 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 private hire licence number PH/HC0798 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 30th June 2022 and the driver was first licenced by this authority on 15th July 2013. She works for A2B Cars on school contract work.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the driver, and we have also seen, as has she, the background documents annexed thereto including email correspondence between her and the Licensing Dept.

On 21 January this year the driver contacted UDC to advise that she had attended Court on 6 January, and provided documents from Barkingside Magistrates Court showing a conviction for an offence of dishonestly failing to notify change of circumstances affecting entitlement to social security benefit/advantage/payment under the Social Security legislation. The driver was fined £175 and ordered to carry out 60 hours unpaid work within the next 12 months.

The driver no longer meets the requirements of the Council's suitability policy on 2 points. Paragraph 2.18 states "*Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until **at least 7 years** have elapsed since the completion of any sentence imposed*". Paragraph 2.41 of the policy states "*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***".

The driver was asked to provide a statement explaining the conviction. In an email dated 26 January a copy of which is before us, she explained that she had overlooked declaring a change of circumstances due to issues in her personal life including marital problems and the deterioration in health of a family friend who she cares for in her home.

We have heard from the driver and the Licensing Officer tells us that she has completed a third of her community sentence, that the costs have been paid in full and that she is well along the road of repayment of the overpaid benefits. She self-reported the matter and in short has done everything correctly. We have taken note of her obvious distress and accept everyone makes mistakes: she has a glowing reference from her manager and returned early from holiday to appear before us today.

Finally, we note that the driver has been licensed by UDC for seven years and we also observe that she has never been before this Committee. We note what she has told us, do not believe it will ever happen again and are therefore going to allow her to retain her licence: we wish her well.

LIC55 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chair returned to Item 3 in proceedings.

The Licensing Support Officer gave a summary of the report. The applicant had applied for a Private Hire/Hackney Carriage Driver's Licence on 4 September 2019 to drive school contract vehicles for 24x7 Limited. Question 11 on the driver application form asks 'Has your licence ever been endorsed for a fixed penalty offence within the last 4 years?' The applicant had answered 'No' to this question. The DVLA Drivercheck had been carried out on 21 October 2019 and this showed three separate offences all of which were convictions that had resulted in three penalty points on each occasion. The applicant now came before members for them to determine whether he was a 'fit and proper' person to hold a licence as he had not met the Council's licensing standards.

The applicant stated that he had made a mistake on the application form but had realised his mistake and had contacted 24x7 Limited shortly after his interview to ask them to correct his mistake. However, this mistake had not been corrected. He said that he had not worked for two years and had not driven a car for 18 months due to a back operation. He said he had previously worked for an Ambulance company and he was blue light trained. He said he had been the first medic on site at the London Bridge terror attack and that this experience had greatly affected him.

In response to Members' questions he explained the circumstances surrounding each of the three penalty point offences. He said that he did not have medical evidence that he had been off sick for two years. He confirmed that there had been no other driving offences during his time spent driving ambulances

He said that he had been interviewed by 24x7 Limited in a Harvester Inn and that some of the application form had been prepared in advance. He re-iterated that he had contacted the company shortly after his interview to correct his error but despite being told that the application form would be amended this had not happened. He said that he had made mistakes but had a lot to offer.

At 10.45, the Committee retired to make its decision.

At 11.00, the Committee returned.

The decision was read to those present.

DECISION NOTICE –

The application before the Panel today is an applicant's application for a joint hackney carriage/PHV driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd on the school contract side of the business. This hearing has been deferred to enable him to attend before us today.

Question 11 of the form (a copy of which we have before us) asks "Has your licence ever been endorsed for a fixed penalty notice within the last 4 years?". The applicant replied "No" to this question. However, the routine DVLA Drivercheck carried out on 21st October 2019 as part of the Council's due diligence revealed the following matters:-

- CU30 (Defective Tyre) Offence Date 13th December 2018, Conviction Date 7th June 2019.
- SP30 (Speeding) Offence Date 27th August 2016, Conviction Date 16th March 2017.
- SP50 (Speeding on a Motorway) Offence Date 7th December 2017, Conviction Date 7th May 2018.

All these matters carry with them three penalty points giving the applicant a total of nine at the date of his application. He therefore does not meet the requirements of the UDC suitability policy which states at section 2.28

'Where an applicant has 7 or more points on their DVLA Licence for minor traffic or similar offences, a licence will not be granted until **at least 5 years** have elapsed since the completion of any sentence imposed or the date on which the number of points on the DVLA Licence dropped below 7.'

The applicant's points will not fall to this level until the SP30 offence on 27th August 2016 dropped off, i.e. later this year and therefore he would not be eligible to apply until 5 years after that.

Furthermore, section 2.3 of the policy states 'Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.'

On 13th November 2019, the Licensing Department followed this up. He responded the following day and said that he had realised his error on the application form and had contacted 24x7 Ltd to ask them to add the points to his form, but unfortunately they didn't. He has not explained why he did not contact the Council himself as the declaration on the form is signed by him and he is responsible for the accuracy of the information contained therein.

We have heard from the applicant. He has told us quite a lot. He has told us that he was previously a paramedic and had been the first medic on the scene after the London Bridge terror attack. He also said that he had been waiting 18 months for an operation on his back and that he had participated in a recruitment exercise carried out by 24 x 7 in a Harvester Inn. However, he has produced no documentary evidence as to any of these matters: no employment history, no testimonials, no medical evidence and nor can he recall the name of the person

with whom he spoke at 24 x 7. None of these things would have been difficult for him to obtain and sadly the applicant presented before us as being too facile: we have real doubts as to his veracity. He is not mentioned in any of the extensive reportage surrounding London Bridge, and if what he said is true, he would have been.

We have taken into account para 1.6 of the Council's policy which states 'each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so.' However, the primary function of this Committee is the protection of the public and we cannot find the applicant to be a witness of truth: hence, nor do we consider him to be a safe and suitable person to hold an Uttlesford licence and we therefore refuse this application.

There is a right of appeal against this decision which must be exercised within a period of 21 days. The applicant will receive a letter from the Legal Department explaining this.

LIC56

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

The Chair brought forward Item 7 in proceedings.

The Licensing Support Officer gave a summary of the report. The applicant had applied for a Combined Driver licence to drive for Airport Lynx on 20 January 2020. The applicant had declared on the application form that he had received 6 points in August 2017 for an IN10 (driving with no insurance). The DVLA Drivercheck had confirmed that he had received 6 points on 8 August 2017. The applicant now came before members for them to determine whether he was a 'fit and proper' person to hold a licence as he had not met the Council's licensing standards.

The applicant explained the circumstances surrounding the 6 point penalty. He stated that his wife had owned one vehicle in her name but that he was the main named driver with his wife as the second driver. He had then purchased a vehicle in his name but the insurance was in his wife's name. He had not realised that he was not covered by insurance on his vehicle. The main reason that he had applied for a licence was in order to be able to see his son regularly.

In response to Members' questions the applicant provided details of a previous offence when he was 15 years old. He explained that his wife had purchased her vehicle in 2015 and he had purchased his vehicle about 8 months later. He said that he thought he was covered by insurance to drive his vehicle but realised the serious consequences of not being insured. He stated that he had previously worked as a senior supervisor in the Metal industry but re-iterated his intention to be able to see more of his son.

At 11.20, the Committee retired to make its decision.

At 11.45, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE –

The application before the Panel today is the applicant's application for a joint hackney carriage/PHV driver's licence. If successful, he has an offer of employment from Airport Lynx.

In his application the applicant declared six penalty points received in August 2017 for an IN10 driving with no insurance offence. This was confirmed by his DVLA Drivercheck dated 20th January 2020 which stated that the date of the award of the points was 8th August 2017. His form also contained a handwritten reference to a juvenile Court conviction in respect of possession of a knife. He freely admits to having been young and stupid at the time and we say no more about it. That lesson has been learned.

This therefore means that he does not meet the requirements of the Council's driver suitability policy. Insurance offences are regarded by this Committee as being very serious matters. Paragraph 2.29 thereof *states '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'*

He would therefore not meet this standard until 2024.

The Licensing Department followed this up by email. The applicant replied, explaining that at the time of the offence he had been driving in the belief that his existing policy of insurance covered him to drive vehicles other than the one specifically mentioned therein. This belief was mistaken. A copy of his explanatory email is before us.

In accordance with our policy a report was sent to the Environmental Health Manager (Commercial) on 4th February 2020 for him to consider the application in conjunction with the Chair of the Environmental Health and Licensing Committee. As a result, the applicant appears before us this morning.

We have heard from the applicant and he has explained to us what he honestly believed to be the case. He is an educated man and at the time of the offence he held a supervisory role having line management responsibility for 15 people, but had to resign this role when it ceased to be a permanent night shift, see post. No blame can attach to him for this.

We have taken into account para 1.6 of the Council's policy which states 'each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so.' However, the primary function of this Committee is the protection of the public and we regard insurance matters as being very serious. There can be no

excuse: Insurance companies run 24/7 helplines and if the applicant could not understand his paperwork he could have made a telephone call.

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. We have listened to the mitigation advanced by the applicant and understand that this career change is prompted by the hours he chooses to work. He wishes to continue to share care of his child following the breakdown of his marriage and can only do so if he secures work on a night shift.

However, this was an insurance offence and this is crucial. He has other "side gigs" and skills so is not restricted to driving work and in Cambridge he could probably secure permanent late or night shifts. However, the point remains that our role is the protection of the public and we cannot accept the risk of an uninsured driver. We cannot countenance another "mistake" and therefore do not find him a fit and proper person to hold a licence. We therefore refuse his application and suggest he comes back in 2024.

There is a right of appeal against this decision which must be exercised within a period of 21 days. The applicant will receive a letter from the Legal Department explaining this.

LIC57 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chair brought Item 5 forward in proceedings.

The Licensing and Compliance Officer stated that the applicant had originally been intending to attend the meeting but had been made aware of information recently received from Dundee City Council and had left the building.

Members agreed to consider this item in the absence of the applicant.

The Licensing and Compliance Officer gave a summary of the report. The applicant had applied for a private hire/hackney carriage driver's licence on 2 January 2020 to work for 24x7 (Kent) Ltd on their school contracts. On his application form, in answer to question 12 '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 declared a SP30 offence from 1996. Part of the application process required applicants to produce an enhanced Disclosure and Barring Certificate and the applicant's certificate dated 9 January 2020 showed 2 convictions.

The Licensing and Compliance Officer stated that there had been further contact with Dundee City Council and they had confirmed that he was currently awaiting trial for a number of very serious offences and as a result his licence had been suspended by them until the matter had been resolved. They had provided an email that outlined extremely serious matters and a copy had been given to the

applicant prior to the meeting. The applicant now came before members for them to determine whether he was a 'fit and proper' person to hold a licence as he had not met the Council's licensing standards.

Members reviewed the papers and considered the new evidence provided by Dundee City Council.

DECISION NOTICE –

The application before the Panel today is the applicant's application for a joint hackney carriage/PHV driver's licence. If successful, he has an offer of employment from 24 x 7 (Kent) Ltd on the school contract side of the business. He attended the Council's offices on schedule this morning but then left after speaking with the Licensing Officer. We are therefore satisfied that he was aware of this hearing, could have remained and chose not to do so and therefore we proceed in his absence.

Question 12 of the form (a copy of which we have before us) 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 declared a 1996 SP30 speeding offence in response to this question.

However, the application process requires applicants to produce an enhanced Disclosure and Barring Service Certificate and the applicant's, dated 09 January 2020, showed 2 convictions as follows:

- Conviction 1 – Offence – Fail to attend Diet on Criminal Procedure (Scotland) Act 1995. Disposal – Sentence deferred 31.03.2015 admonished.
- Conviction 2 – Offence: Send a non-sexual offensive/indecent obscene/menacing message by means of public electronic communications on Communications Act 2003. Disposal – sentence deferred 28.11.2017, community payback order 80 hours unpaid work 80 hours within 6 months local authority Dundee.

These offences are under Scots law but we have no reason to believe that there is any great divergence between their constituent elements and the penalties available to the Courts from their English equivalents.

As a consequence, the applicant does not meet the requirements of the Council's suitability policy on 2 points.

Firstly point 2.3 states *'Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false name or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution'*.

Furthermore, point 2.5 of the suitability policy states *"Generally, where a person has more than one conviction, this will raise serious questions about their safety"*

and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed”.

The Licensing Department followed this up and met with the applicant. He wrote out a statement, a copy of which is among our papers, but in brief, said he had been a taxi driver in Dundee for 17 years and had only had a criminal record check on his initial application. When asked about the 2 convictions the applicant said that the first conviction related to an occasion when he had an argument with his wife. He was told by the police to leave the house that night and he later received a letter saying that he did not need to go to court and that the matter would be dealt with by him being admonished. We assume this is the equivalent of a caution. The second conviction was as a result of the contents of an email he sent to a social worker complaining about the way his daughter's case was being dealt with.

The Licensing Department also made contact with Dundee City Council to confirm whether or not his assertions regarding their practices were correct. They responded to the effect that he was awaiting trial for a number of very serious offences and as a result his licence had been suspended by them until the matter was resolved. Scots law is different and they, unlike an English licensing authority, retain the power to suspend a licence in the employment law sense of the word. A copy of their email is before us and has also been served upon the applicant. He left the building this morning having been provided with a further copy of this document, which is before us, and the contents thereof speak for themselves. They reveal extremely serious matters and newspaper reportage of his other convictions also reveals a history of substance abuse. We cannot find him a fit and proper person to hold an Uttlesford licence and we decline to do so.

We have taken into account para 1.6 of the Council's policy which states 'each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so.' However, the primary function of this Committee is the protection of the public and this case leaves us with concerns.

First of all, the fact that the applicant has been licensed elsewhere is not binding upon us. Each licensing authority acts in accordance with its own policies and procedures and of course we note that Dundee City Council is working within a different legislative framework in any event. However, domestic offences are no less serious than those directed towards strangers and we cannot discount the first incident because of this: further, an intemperate response when under stress is also of some concern since if the applicant's application before us today is successful he will be driving children and they can be extremely challenging passengers. Finally, we note the matters pending against him in Scotland and regret to say that these are so serious that we cannot consider his application favourably. We therefore refuse it.

There is a right of appeal against this decision which must be exercised within a period of 21 days. The applicant will receive a letter from the Legal Department explaining this.

LIC58 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION**

The Chair returned to Item 4 in proceedings.

This item was deferred due to the driver being unable to attend because of a medical appointment.

Members agreed that in future applicants should be asked to provide evidence to officers for any non-attendance.

The meeting ended at 12.15pm.