



# Uttlesford District Council

Chief Executive: Dawn French

## Licensing and Environmental Health Committee Remote Meeting

**Date:** Tuesday, 29th September, 2020

**Time:** 7.00 pm

**Venue:** Zoom - <https://zoom.us/>

**Chair:** Councillor P Lavelle

**Members:** Councillors S Barker, C Day (vice-chair), R Freeman, V Isham, P Lees, B Light, J Loughlin, L Pepper and M Tayler

**Substitutes:** Councillors A Armstrong, A Coote, C Criscione, P Fairhurst, M Foley, A Khan and E Oliver

### Public Participation

Members of the public who would like to listen to the meeting live can do so [here](#). The broadcast will be made available as soon as the meeting begins.

At the start of the meeting there will also be an opportunity of up to 15 minutes for members of the public to make statements via the virtual meeting platform Zoom subject to having registered their intention to speak by 12 noon two working days before the meeting takes place. Please contact Democratic Services to register to speak on 01799 510410/548 or [committee@uttlesford.gov.uk](mailto:committee@uttlesford.gov.uk).

Technical guidance will be provided on the practicalities of speaking to a virtual meeting at the point of confirming your registration. Further information relating to public participation can be found on page 3 of this document.

## AGENDA PART 1

### Open to Public and Press

#### 1 Apologies for Absence and Declarations of Interest

To receive any apologies for absence and declarations of interest.

- |          |   |           |
|----------|---|-----------|
| <b>2</b> | <b>Minutes of Previous Meetings</b>   | 4 - 109   |
|          | To consider the minutes of Licensing Panel meetings held since the previous Committee meeting on 8 August 2019, including minutes of the meeting held on 25 July 2019 which remain in draft form. |           |
| <b>3</b> | <b>Government Statutory Taxi and PHV Standards Guidance</b>   | 110 - 152 |
|          | To consider the Government Statutory Taxi and PHV Standards Guidance report.  |           |
| <b>4</b> | <b>Implementation of NR3 information sharing Policy</b>   | 153 - 160 |
|          | To consider the report on the Implementation of NR3 information sharing policy.   |           |
| <b>5</b> | <b>To implement new Signs and Dash Badges for Uttlesford Vehicles</b>   | 161 - 167 |
|          | To consider the report on the implementation of new signs and dash badges for Uttlesford vehicles.  |           |
| <b>6</b> | <b>Uttlesford to Mandate that All drivers sign up to the DBS Update service</b>   | 168 - 187 |
|          | To consider the report on drivers signing up to the DBS update service.   |           |
| <b>7</b> | <b>Exemptions for the Emission Policy</b>   | 188 - 193 |
|          | To consider the Exemptions for the Emission Policy report.  |           |
| <b>8</b> | <b>Fees for Drivers, Hackney Carriage and Private Hire Vehicles and Private Hire Operators</b>  | 194 - 199 |
|          | To consider the report on Fees for Drivers, Hackney Carriage and Private Hire Vehicles and Private Hire Operators.  |           |

## REMOTE MEETINGS AND THE PUBLIC

Due to the Government's social distancing measures imposed in the wake of Covid-19, the way in which the public can participate in Uttlesford District Council meetings has changed. Meetings are no longer being held on site or in person and 'remote meetings' will be held on the virtual meeting platform Zoom until further notice. Members of the public are welcome to listen live to the debate of any of the Council's Cabinet or Committee meetings. All live broadcasts and meeting papers can be viewed on the Council's calendar of meetings webpage.

If you wish to make a statement via Zoom video link, you will need to register with Democratic Services by midday two working days before the meeting. There is a 15 minute public speaking limit and 3 minute speaking slots will be given on a first come, first served basis. Those wishing to make a statement via video link will require an internet connection and a device with a microphone and video camera enabled. Those wishing to make a statement to the meeting who do not have internet access can do so via telephone. Technical guidance on the practicalities of participating via Zoom will be given at the point of confirming your registration slot, but if you have any questions regarding the best way to participate in this meeting please call Democratic Services on 01799 510548/410 who will advise on the options available.

The agenda is split into two parts. Most of the business is dealt with in Part I which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

Agenda and Minutes are available in alternative formats and/or languages. For more information please call 01799 510510.

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# Agenda Item 2

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on THURSDAY, 25 JULY 2019 at 10.30 am**

Present: Councillor P Lavelle (Chair)  
Councillors J Loughlin and M Tayler

Officers in attendance: B Ferguson (Principal Democratic Services Officer), E Smith (Solicitor) and A Turner (Licensing Team Leader)

Also Present: G Burke and V Powell (Essex Police); J Adams (Legal Assistant - Applicant), F Choudhury (Applicant), H Choudhury (Designated Premises Supervisor) and D Dadds (Solicitor - Applicant).

## LEH9 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Mr Dadds requested that the meeting be adjourned to allow him to consider the Council's scheme of delegation in light of the rejection of 226 identical letters of representation. He said it was members, not officers, who had delegated authority to dismiss public representations.

The Council's Solicitor said these representations had been considered and highlighted their inclusion in the report.

The Chair granted the request and adjourned the meeting for 15 minutes.

*The meeting was adjourned at 10.40am*

*The meeting was reconvened at 10.55am*

The Chair welcomed all to the meeting, explained procedure and introduced the Panel.

The Chair declared a non-pecuniary interest as the Queen Victoria was situated in his ward.

## LEH10 **APPLICATION FOR A PREMISES LICENCE QUEEN VICTORIA, GREAT DUNMOW**

In response to a question from the Chair, Mr Dadds, as the applicant's Solicitor, confirmed he would be speaking on behalf of his client.

Mr Dadds said the identical letters of representation, which had been drafted by his office, should be considered as material evidence as they demonstrated that over two hundred local people supported the Queen Victoria in its pursuit of a licence. He claimed that officers should have responded in writing to these representations. He said a practical way forward would be to allow him to present the letters as evidence and for the Panel to decide how much weight would be given to the representations during their deliberation.

The Council's Solicitor referenced the Constitution and Regulation 19 of the Licensing Act; she said it would be for Members to determine how much weight was given to the letters, and that the Council had engaged with the public and fulfilled its statutory duty by advertising this licensing application in a local newspaper and on the council's website. However, she said she had no objections to Mr Dadds presenting these letters as evidence during the panel hearing.

Mr Dadds said a procedure needed to be put in place when dealing with representations of the public; each individual should have been written to with an explanation of why their representations had been considered irrelevant.

The Solicitor said the letters had been considered and were referenced in the report. It would be for Members to decide how much weight was given to these representations during their deliberations.

The Chair confirmed that Panel members were aware of the letters. He asked the Licensing Team Leader to present her report to the Panel.

The report set out details of the Queen Victoria application for a new premises licence. The application had been referred to Committee as representations had been received from Essex Police regarding the prevention of Crime and Disorder licensing objective, as there were concerns that the applicant represented a continuation of the previous management who had been charged with illegal working practices on a number of occasions. The Council's Licensing Policy was read out for Members' consideration.

The Chair asked the representatives of Essex Police to set out their case.

Mr Burke presented the report outlining the reasons why Essex Police were objecting to the application on the grounds of the Prevention of Crime and Disorder licensing objective. He said the premises were raided numerous times since 2013 and illegal workers had been found on each occasion. Whilst these illegal working practices were undertaken by previous management, the applicant had been a shareholder in Aldbrook LTD, the owner and operator of the Queen Victoria, since the company's inception in 2011. He said the company's history demonstrated a trend in illegal working practices and, as the applicant represented a continuation of management, there was real concern that the Prevention of Crime and Disorder objective would be undermined if the licence was granted.

Councillor Loughlin asked whether the Queen Victoria had a history of crime and disorder that would be obvious to a member of the public.

Mr Burke said the Queen Victoria had no record of crime spilling out onto the street, nor of disorder and drunkenness. It was due to a trend of illegal employment practices that the Police had objected to the application.

The Chair invited Mr Dadds to address the Panel.

Mr Dadds said he was concerned that this application hearing was being treated as a 'review' of previous licences. He said each application must be judged on its own merits and if the Panel were persuaded that the Prevention of Crime and Disorder objective would not be breached by the new applicant, the licence had to be granted.

Mr Dadds summarised his client's case. He objected to the stipulation that in granting the licence the Council would be undermining the Prevention of Crime and Disorder objective. He said there had been no history of drunkenness or anti-social behaviour, and, as demonstrated by the 226 letters submitted in support, the public house was a liked and respected part of the local community. He said the new licence, if granted, should be conditioned to prevent the previous management from entering the premises and barred from having any role in operational matters; and that robust employment checks were undertaken on all employees to ensure they had the right to work in the UK. He took issue with the Police's claim that the council were having the 'wool pulled over their eyes' as the applicant had never hidden family connections when he had attempted to transfer the previous licence in 2018. He praised the applicant's conduct as he had accepted responsibility for his mistakes, as demonstrated by paying the civil penalty and not appealing the previous licence refusal.

Mr Dadds went on to explain the history of the premises and demonstrated that the applicant had not been managing the public house at the times of the police raids. The applicant had taken his business partners, the two individuals who had been operating the business, at trust. However, the applicant had acquired all shares in November 2018 and was no longer in business with his ex-partners. In future, the applicant would ensure that all employees would go through the necessary right to work checks. Mr Dadds added that he had trained the Designated Premises Supervisor, who would be responsible for the day-to-day running of the business, and was 100% confident that robust checks would be in place if the licence was to be granted.

Councillor Tayler asked what reassurances could be given in respect of implementing adequate right to work checks.

The Designated Premises Supervisor explained the process he would implement at the point of undertaking a right to work check on a potential employee. He said once he had completed the initial check, the ID documentation would be sent to his accountant for further scrutiny.

Councillor Loughlin asked whether there was rental property on the premises.

Mr Dadds said there were no private rooms above the pub as the accommodation was only used by staff who worked late nights.

The Chair asked for clarity with regard to the timeline of events supplied by Essex Police. In this timeline it was stated that the applicant had become the majority shareholder in Aldbrook LTD in 2016. However, Mr Dadds had stated that this had occurred in November 2018. He asked Mr Dadds to clarify.

Mr Dadds said the applicant's ex-business partners had majority control and managed day-to-day operations up until November 2018. He said he did not trust the percentage figures obtained from Company House.

Members discussed modifying the conditions that could be imposed on the licence if granted.

Mr Burke said the Police did not approve of Condition 2 as it replicated existing legislation regarding illegal immigration.

Mr Dadds said he disagreed as Condition 2 stipulated that the Licensing Officer of the Licensing Authority would be able to check employment records, providing reassurance to the Council that robust employment checks were being implemented as standard practice.

*The Panel retired at 12.10pm to make a decision.*

*The meeting was reconvened at 1.55pm.*

*The Chair read the Decision Notice to those present.*

## **DECISION NOTICE – QUEEN VICTORIA, STORTFORD ROAD, DUNMOW**

The application before the Panel today is for the grant of a new premises licence of the Queen Victoria, Stortford Road, Dunmow. The application is dated 31<sup>st</sup> May 2019 and is made by Fazlul Bari Choudhury, the intended DPS being one Hadayouth Ahmed Choudhury. Representations have been made by Essex Police and accordingly the matter has been referred to us for determination.

We have had sight of a detailed report and have considered the extensive background papers, including:-

- (a) Premises licence application
- (b) Plan of premises
- (c) Representation from Statutory consultee (Essex Police) under the Crime and Disorder objective.
- (d) Location map of premises
- (e) A bundle of supplementary information from the Police including a full set of the information held by Companies House in respect of the applicant and the intended DPS, together with the notices issued upon previous determinations by this Committee

226 letters have also been received from local residents supporting the application. However, 221 of these are identical, the senders having simply completed their contact details and accordingly the weight these have been accorded is limited. We understand that they were drafted by the Applicant's solicitor and that they do not address the very serious issue of immigration crime, with which we are primarily concerned today. To all intents and purposes taken together these letters are a petition and we accord them the weight we would give a petition.

We have also seen the Home Office's most recently Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) and Uttlesford District Council's Statement of Licensing Act 2003 Policy 2017-22

By way of background, the Queen Victoria restaurant is situated on the outskirts of the town of Great Dunmow. A plan showing the location of the premises in the village is before us. A previous licence has been in place at these premises held by different persons (all of whom were connected in some way) which was revoked by the Licensing & Environmental Health Committee on 11 September 2018.

The previous licensees were, like the individual applicant today, directors of Aldbrook Limited, and scrutiny of the records held pertaining thereto at Companies House, copies of which have been provided by the Police, shows they resigned within 7 days of the licence revocation. There were concerns that the new directors were too closely connected with the former management to constitute a new business.

An application for a new premises licence was applied for in September 2018, and this application was refused by the Licensing and Environmental Health Committee on 19 November 2018. The Committee were satisfied that the Police had made out their objection, that that application did not relate to a whole new business: and at all material times the Queen Victoria has been operated by closely connected persons. It should be noted that the Hadayouth Ahmed Choudhury nominated as DPS in this application has previously been an applicant on one of those occasions and that the applicant himself has been a director of Aldbrook Limited.

As prescribed by the Licensing Act 2003, where an applicant submits documentation supporting a premises licence application, then an operating schedule must be submitted. This demonstrates how the licensing objectives will be met and also outlines what licensable activities are sought.

The licensable activities being sought on the application are listed below:

(J) Supply of Alcohol for consumption on the premises (on the premises)

Monday to Sunday - 10:00 to 23:00

(L) The opening hours of the premises

Monday to Sunday - 10:00 to 23:30

Copies of the application have been served on all of the statutory bodies, and has attracted representations from Essex Police based on the Crime and Disorder objective. Details of these representations and the supplementary documents submitted by the Police are before us and we have also heard from Gary Burke of the Police Licensing Department supported by Mrs Powell. We also heard from Mr Dadds, the applicant's solicitor. We agreed to him speaking to the residents' letters: however, it was only too clear to us that this application was solicitor led and we do have concerns as to whether any improvements can be sustained when his guiding hand is removed. Mr

Choudhury Jnr's recitation as to the right to work procedure to be followed gave every appearance of having been learned by rote and the Applicant barely spoke.

In carrying out the statutory function, the Licensing Authority must promote the licensing objectives as set out in the 2003 Act, namely:-

- a. The prevention of crime and disorder
- b. Public safety
- c. The prevention of public nuisance
- d. The protection of children from harm

There is no hierarchy of importance and all must be given equal weight.

The options that are available to this Committee are to

- Grant the application
- Modify the application by inserting conditions
- Reject the whole or part of the application

When determining an application due regard should be given to the Council's licensing policy and the Secretary of State's Guidance issued in accordance of the Act. The most recent version is dated April 2018 and we are mindful of the contents thereof. It includes new guidance in respect of immigration issues; it is immigration crime that concerns the Police and they make no complaint about ordinary low level crime and/or ASB and nor does any other statutory consultee.

Paragraph 2.6 says

The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.

Paragraph 11.26 relates to reviews, but can be taken into consideration in determining new applications -

'Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

Paragraph 11.27 goes on to say

‘There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- **for employing a person who is disqualified from that work by reason of their immigration status in the UK [our emphasis];**
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. ‘

The relevant sections of the Council’s Licensing Policy are:

3.3 The prevention of crime includes the prevention of immigration crime, and the Licensing Authority will work with Home Office Immigration Enforcement in respect of these matters.

- The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events [our emphasis].**

At this point we interpose that the Applicant proposes to require responsibility for right to work checks to rest with the DPS, subject to checking by the business’ accountants, Messrs T Ahmed of Harrow. This firm has been involved in the share transfers and so forth over the last couple of years that concern the Police so greatly, and we note that they are not a local firm. We are concerned at the adequacy of the oversight they can provide.

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs

- Violent behaviour
- Anti-social behaviour
- **Illegal working**

## Control Measures

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:

- Effective and responsible management of premises
- Training and supervision of staff
- Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA (British Beer and Pubs Association) Security in Design published by BBPA and Drugs and Pubs, published by BBPA)
- Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs or adoption of industry best practice (e.g. Challenge 25 policy)
- Provision of effective CCTV and mirrors in and around premises
- Employment of Security Industry Authority licensed door staff
- Provision of toughened or plastic drinking vessels
- Provision of secure, deposit boxes for confiscated items ('sin bins')
- Provision of litterbins and other security measures, such as lighting, outside premises
- Membership of local 'Pubwatch' schemes or similar organisations
- Right to work checks on staff and retention of documents**

Should the Committee be minded to impose conditions on the grant of a licence, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received. This is made clear in paragraphs 10.8 and 10.10 of the Home Office Guidance. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation.

Specifically, that guidance provides as follows:-

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises

concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided... Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

We reiterate, we have heard from Mr Burke, who presented the Police case supported by Mrs Powell. We have also heard from Mr Dadds who addressed us at some length. Messrs Choudhury barely spoke at all. We note that this application has been submitted under his tutelage and that he has prepared all the documentation submitted on behalf of the Applicant, including the drafting of the standard letter of support signed by 221 people and forming the petition before us today. We note that these people have no concerns about the premises, that no other statutory consultee has appeared before us today and that the Police concede that there are no operational concerns regarding the premises: their concerns relate to immigration crime and we observe that this is a serious matter and does real harm to the individuals trafficked, many of whom are very vulnerable, and to society generally. A business using illegal workers does not pay tax, it does not offer good work, and it harms legitimate businesses by virtue of the fact that its costs are lower. Further, the people working illegally are often unable to access the basic necessities of life such as healthcare and housing, and in some cases the conditions under which they exist are nothing more than slavery.

WE still have concerns regarding the history of these premises. This is not a new business: the Applicant is a former partner in the Jalsa Ghar restaurant and was, and remains, a director of Aldbrook Ltd. He now apparently works full time in the business and so too, we understand, does his wife: the intended DPS is their son and we are concerned that he might not be able to resist parental pressure to cut corners. We understand exactly where the Police are coming from, and we appreciate and share their concerns.

However, as Mr Dadds has said, this is a new application and the applicants have been trained by him. We can but hope that that training will stick and that going forward the Police will keep an eye on these premises, and if there is any failure to adequately promote the licensing objectives, then the matter will come back before us. WE therefore grant the application: we now turn to the conditions upon which we grant it. A draft can be found at pp 29-30 of our document pack, prepared by Mr Dadds. Though they go some way towards satisfying our concerns, they do not go far enough. WE therefore propose the following additions and only set out those changes made by us.

1. Alcohol shall not be sold by any person who is not engaged to work under a contract of employment to work at the premises.
2. Before any person is employed at the premises in any capacity sufficient checks will be made of their bona fides to ensure they are

legally entitled to employment in the UK. All documents will be retained for a period of 12 months post termination of employment and will be made available to the Police, Immigration and Licensing officers upon reasonable request, but in any event within 48 hours of the request. Such checks will include:-

- Proof of identity (such as a copy of their passport)
- Nationality
- Current immigration status
- Details of their full name and address
- Date of birth

Responsibility for the said checks shall rest jointly and severally with the premises licence holder and the designated premises supervisor subject to oversight by the businesses accountants and/or HR consultancy details of which should be provided to the Licensing Authority

7. The premises licence holder shall ensure that all relevant staff shall receive induction training relating to the sale of alcohol and to the terms and conditions of the premises licence. The training shall be recorded, ongoing and made available to a relevant responsible Authority upon reasonable request, but in any event within 48 hours of the request.
8. The premises licence holder shall ensure that all training records shall be retained for 12 months and made available to Police and local authority officers upon reasonable request but in any event within 48 hours of the request.
9. Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business and from the premises themselves.

On this basis we grant the licence and trust we will not see the applicants before us again.

The meeting ended at 2.20pm

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on THURSDAY, 8 AUGUST 2019 at 7.30 pm**

Present: Councillor P Lavelle (Chair)  
Councillors S Barker, C Day, D Eke, M Foley, R Freeman and  
L Pepper  
Officers in attendance: M Chamberlain (Enforcement Officer), T Cobden (Environmental  
Health Manager - Commercial), A Mawson (Democratic Services  
Officer), E Smith (Solicitor), A Turner (Licensing Team Leader)  
and M Watts (Environmental Health Manager - Protection)  
Others in attendance: Mr Drinkwater, Mr Mahoney and Mr Perry.

**LIC11 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies for absence were received from Councillors Isham, Lees and Tayler.

Councillor Pepper declared a non-pecuniary interest as a friend of the manager of 24x7 Ltd, Mr Mahoney.

**LIC12 PUBLIC SPEAKING**

Mr B Drinkwater addressed the committee; a summary of his statement is appended to these minutes.

**LIC13 MINUTES OF PREVIOUS MEETINGS**

The minutes of the following meetings were accepted and signed as an accurate record:

- 24 January 2019
- 29 January 2019
- 30 March 2019
- 26 March 2019
- 23 April 2019
- 28 June 2019
- 22 July 2019

**LIC14 LICENSING PROGRESS AND INFORMATION REPORT 01 APRIL 2018 - 31 MARCH 2019**

The Licensing Team Leader presented the Committee with the report summarising the work undertaken by the Licensing Department.

LIC15 **LICENSED VEHICLE COMPLIANCE TESTING STATIONS**

The Enforcement Officer presented a report to inform members of the current vehicle testing adopted by Uttlesford District Council, which was in addition to the standard MOT test.

Members discussed the need to update the scheme and report back to the Committee as to the planned and structured approach before the next meeting.

The Enforcement Officer agreed to this update timescale.

LIC16 **REQUIREMENTS PLACED ON HOLDERS OF DRIVER'S LICENCES**

The Enforcement Officer presented the report to inform the Committee of the proposal to reinstate two conditions on all drivers' licences issued by Uttlesford District Council.

RESOLVED to approve the reinstatement of the conditions as outlined in the report.

LIC17 **ENFORCEMENT UPDATE**

The Enforcement Officer presented the report to inform the Committee of the enforcement activities between 1 April and 30 June 2019.

The Enforcement Officer also reported on a driver revocation that was done under delegated powers with Cllr Gerard which was noted.

Councillor Freeman commended the work that the Enforcement Team had been doing.

In response to concerns raised about unsafe vehicles and unsafe drivers, the Enforcement Officer and the Environmental Health Manager outlined the methods in which vehicles and drivers were monitored and reported, and said all drivers and vehicles should be up to standard. Unlike private vehicles, commercial vehicles were subject to additional testing.

LIC18 **ENVIRONMENTAL HEALTH (COMMERCIAL) ACTIVITY REPORT Q1 (APRIL TO JUNE 2019)**

The Environmental Health Manager (Commercial) presented the report on the work of the Environmental Health (Commercial) Service that had been undertaken between April and June 2019.

It was explained that 98% of food premises were broadly compliant. Those that were not and those that received a rating of zero were not an imminent risk and therefore were permitted to stay open. There were no enforced closures.

LIC19 **ENVIRONMENTAL HEALTH (PROTECTION) UPDATE**

The Environmental Health Manager (Protection) presented a report to outline the work of the Environmental Health (Protection) Service between April and June 2019.

In response to questions from Members, the Environmental Health Manager (Protection) said that the authority once had a mobile air quality assessment station which went out to a number of locations. This could be looked at once more and its viability would be reported back to the Committee.

In response to questions from Members, the Environmental Health Manager (Protection) said noise control and the building of new homes was the responsibility of the Development Control team, as new developments were subject to environmental scrutiny during the planning process.

*Meeting end 8:45pm*

### Statement of Mr B Drinkwater

Mr Drinkwater introduced himself and his colleagues Mr Andy Mahoney (Managing Director of 24x7) and Mr Doug Perry (ULODA's Honorary President), and outlined their collective accolades.

Mr Drinkwater requested a response to a letter on 10 July, sent to the Council from Roland Pelly, a Director of Pellys Transport & Regulatory Law, drawing together the trade's concerns (24x7 and ACME Bus among others) about the legality of imposing a condition on school contracts drivers, the assessment of training needs and the provision of training for drivers (aka "Watford Training Courses"), and the licensing of vehicles.

Mr Drinkwater said that they had no record of a response to an email sent to The Environmental Health Manager (Commercial) on 21 March.

Mr Drinkwater thanked the Committee and said that he looked forward to an improved working relationship and they would be putting proposals to the Council in good time.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on WEDNESDAY, 21 AUGUST 2019 at 10.00  
am**

Present: Councillor P Lavelle (Chair)  
Councillors C Day and L Pepper

Officers in attendance: A Bochel (Democratic Services Officer), E Smith (Solicitor) and  
A Turner (Licensing Team Leader)

Also present: P Jones and R Saville (Essex Police), D Logue and R  
Sutherland (Solicitor for the Designated Premises Supervisor)

**LIC20 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Councillor Day declared the following:

- He was the Uttlesford District Council Topic Lead for the Police
- He had been a member of Essex Police
- He was in receipt of a Police pension
- He had been a customer of the premises, but did not consider himself to be a regular there

**LIC21 APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - INDIAN VILLA  
THAXTED**

Mr Sutherland requested on behalf of the Indian Villa that the meeting be deferred for three reasons:

- An application to transfer the premises licence to a new Designated Premises Supervisor had been filed the previous day.
- Government regulations stipulated that it was necessary to give ten working days notice of the intention to hold a hearing, and in this case the licence holder had only received 9 days notice.
- His client had fallen ill and was not able to be present to represent himself. Mr Sutherland did not have instructions to proceed with the meeting.

The Solicitor said the Council had not received the fee to transfer the premises licence, and Essex Police had not been advised of the application. She advised that given the correct notice period had not been given, and because the client deserved the right to be heard, that the meeting be deferred.

It was agreed that the meeting would be deferred until a later date. The Chair apologised to those present for any inconvenience caused.

The meeting closed at 10.45.



**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on THURSDAY, 29 AUGUST 2019 at 11.00 am**

Present: Councillor P Lavelle (Chair)  
Councillors C Day, V Isham and P Lees

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

**LIC22 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

**LIC23 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION**

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report.

At 11.15, the Committee retired to make its decision.

At 11.30, the Committee returned.

The decision was read to the applicant.

**DECISION NOTICE –**

The applicant's application dated May 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. Firstly, there is a discrepancy regarding his residential address. The one stated on the report before us is in London and the one given on the application form is in Southend.

Next, 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 received a £600 fine and five penalty points in 2011 for an offence of driving without due care and attention. He also disclosed that he received six penalty points and a £200 fine in 2012 for driving without insurance.

Part of the licensing process requires all applicants to undergo an enhanced Disclosure and Barring Service (DBS) check and the applicant's check was dated 17 May 2019.

The DBS check showed the following convictions:

Conviction 1: Dated 01 December 2008, possessing an offensive weapon in a public place on 18 June 2008: Chelmsford Crown Court: Conditionally discharged for two years and the forfeiture of a metal pole.

Conviction 2: Dated 27 February 2012: failing to surrender to custody as soon as practicable after the appointed time on 21 February 2012: South Essex Magistrates Court: Fined £25 together with one day detention within the Court House, plus a victim surcharge of £15.

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 summary conviction. Given the potential seriousness of the matters revealed by the DBS check, the applicant was interviewed under caution in respect of them on 26<sup>th</sup> June 2019. He provided the following explanation.

Firstly, he confirmed that the London address provided is where his mother lives and the Southend address is where his children live. His current work is as a van driver on a zero hour's contract and he wants other employment.

The applicant read the declaration at the end of the application form fluently and confirmed it was his signature. He explained that he completed the application form the previous month and the mistake with the date must have been a memory lapse. Apparently he was in a car accident some time ago when he lost consciousness and since then he has memory lapses.

As to the convictions, the applicant explained that at the time of the first one, he was an apprentice and for some reason had a trolley jack in his vehicle. He said that he had been involved in a car accident, for some reason armed Police attended and saw the trolley jack, and they believed it was an offensive weapon, while as for the second offence, he believed it was due to unpaid fines but he could not remember what they were for. In short, the applicant did not realise that he had a criminal record and explained that he wanted to be a licensed driver because one of his children is disabled so thought this job would be suitable.

It was decided to deal with the matter by way of formal caution and this was administered by Mrs Smith this morning. 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. We have considered the matter in the light of our obligations to the travelling public and are satisfied, since he currently holds a clean DVLA licence and his Group 2 medical certificate reveals no cause for concern, that he is a fit and proper person to hold a hackney carriage/PHV driver's licence. We therefore grant this application and the applicant will receive the paperwork from the Licensing Department in due course.

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

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report. He confirmed the Group 2 medical certificate was satisfactory.

The applicant said he had had a brain injury and had had to be rehabilitated. He had made a good recovery and was now trying to get his life back on track.

At 11.50, the Committee retired to make its decision.

At 12.20, the Committee returned.

The decision was read to the applicant.

**DECISION NOTICE**

The applicant's application dated July 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 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?' Nothing was disclosed by the applicant.

However, part of the licensing process requires all applicants to undergo an enhanced Disclosure and Barring Service (DBS) check and the applicant's check was dated 25<sup>th</sup> July 2019. It revealed the following convictions:

Conviction 1: Dated 07 April 1992, for offences of theft and criminal damage for which he was fined £20 and £40 respectively and ordered to pay costs. This is an offence of dishonesty.

Conviction 2: Dated 05 April 2011, for offences of driving without due care and attention and failing to give name and address after an accident. He was fined £70, ordered to pay costs and his driving licence was endorsed with 7 penalty points. This matter speaks for itself.

He also received a Police caution on 03 February 2015 for an offence of battery, ie the lowest level of assault.

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 summary conviction. Given the potential seriousness of the matters revealed by the DBS check, the applicant was interviewed under caution by two

Enforcement Officers on 16<sup>th</sup> August 2019. He provided the following explanation.

The answers on the application form were partially typed in and the applicant said this was done by 24x7 Limited and they posted it to him to finalise and sign before he had to post it back to them. We interpose that this practice causes us some concern. The answer to question 12 had already been answered by 24x7 Limited, but the applicant had not amended it, and he could not explain this failure in interview and he did not address this point before us today.

He explained that the convictions in 1992, 2011 and the caution in 2015 were not included on his form because he forgot about them. Apparently he had a serious brain injury in 1995 following an accident, was unconscious for a month, was transferred to a specialist brain injury hospital and remained in hospital for 6 months. This has affected what he can do, and he has problems with his memory. We specifically asked about his Group 2 medical certificate and we were told that there is a caveat upon it insofar as it is recommended that he has an annual medical examination rather than one at the usual three year interval.

The applicant was then specifically asked about the 1992 offence and he had no recollection of this. He did have a vague recollection of the 2011 offence and said that he was driving in icy conditions and was cut up by another vehicle which caused him to crash into a wall. The other car drove off but the applicant waited a while for the Police to arrive but they didn't so he called his brother to collect him because it was cold.

Finally, in relation to the battery offence he explained that he was on a bus and some females were being noisy and he asked them to be quiet. One of the girls kicked him as she got off, there was a verbal altercation and the bus driver called the Police. The applicant maintains there was no physical contact. He signed a caution just to finalise the matter and we accept this.

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 do have serious concerns.

We have read the papers before us and have heard from the applicant. He told us about his accident and his lengthy hospital stay: that he had made good progress and that he wanted to get his life back upon track. We have every sympathy with him, but our concern is as to whether he could safely drive very challenging children. We understand that he holds a clean DVLA licence and that he has passed the Blue Lamp test required as part of the licensing process, but our primary function is the protection of the public and we cannot help but notice that the 2011 conviction arose out of an accident in bad weather and this concerns us greatly. We repeat, children are in a variety of ways the most challenging of passengers: they have an unerring instinct for weakness and they require to be transported by very careful, alert, and imperturbable drivers, and we cannot be certain that the applicant could safely drive rambunctious children in adverse weather conditions.

It is with the greatest regret that we refuse this application. Our function is the protection of the public and in this case we find ourselves serving as the ultimate safety net. We cannot be certain that the applicant is a safe and suitable driver, and it is for this reason that we have reached the decision we have. He has a right of appeal to the Magistrates Court against this decision and he will receive a letter from the Legal Department explaining this.

LIC25 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report.

Members watched a video of the driver's dash-cam when the incident took place.

The driver said he thought the other driver was going straight off the roundabout at the previous exit. However he realised as he was going down the slip road that the other driver was still alongside him. He could not brake as he could not tell if there was another vehicle behind him. He had had a licence for 35 years and had never had so much as a parking ticket.

At 1.00, the Committee retired to make its decision.

At 1.15, 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 Mr Hughes' joint private hire/hackney carriage licence number PH/HC1054 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 28<sup>th</sup> February 2022 and Mr Hughes was first licenced by this authority on 14<sup>th</sup> March 2016. He drives for 24 x 7 Ltd on school contract work and they have reported the issues before us today to the Council. They have not as yet taken any disciplinary steps against him but in the light of our decision today they are likely to do so.

On 07 May 2019, the Fleet Manager at 24x7 Limited emailed the Council to notify them that they had received a complaint from a van driver who was alleging that the 24x7 Limited driver had run into their vehicle and thereafter failed to stop. 24x7 Limited indicated that they felt the driving by the licensed driver was not acceptable, and they identified the driver. The Council's Enforcement Officer made further enquiries with 24x7 Limited who supplied the following information by email on 16 July 2019:

The incident took place on the roundabout joining A12 Boreham interchange. The licensed vehicle involved was registration FJ56 VDP – Citroen Relay.

The speed of the vehicle looks to be 15-20 mph  
There was a slight mark on the vehicle which could have been caused by contact, which simply T Cut out. There was no body work damage upon inspection.  
The matter did not go through insurance.  
No passengers were on board at the time of the incident.

The Enforcement Officer subsequently carried out a telephone interview with the driver on 02 August 2019. He provided the following account. The incident happened on the Boreham interchange of the A12. The driver had come from the A138 from Chelmsford; he had turned right at the second roundabout to head onto the A12 southbound and had moved into the right hand lane as there were no arrows on the road. He thought this was the correct lane to be in to turn right.

He confirmed that the dashcam was situated on the dashboard in the middle, that he did not see the van in question until it was on the roundabout but that it did not indicate to turn right.

As both vehicles entered the slip road the driver was aware of the van's presence on his nearside but said he was concentrating on driving correctly. He was not aware if there were any vehicles behind him as his vision was obscured by the tail lift in his vehicle. He further claimed the van driver was being aggressive down the slip road and by swinging the van to the right towards his vehicle.

The Enforcement Officer asked the driver why he had not let the van pass his vehicle to avoid a collision and the driver said he would not because he was in the right as he had approached the roundabout in the correct lane. He had not slowed down to let the vehicle pass as it was in his opinion an accelerating lane and that if he did it might have caused an accident with a vehicle behind. At the end of the slip road the van went behind the driver's vehicle and he admitted to hearing two noises when both of the vehicles collided along the slip road but he continued on his journey. He also admitted that there was a small dent on his vehicle, but that the damage was not sufficient to justify an insurance claim.

The driver then explained that while he was on the A12 the van driver pulled alongside his vehicle and started to use his mobile phone to take pictures of the driver and the vehicle. The driver then came off at the next junction and the van driver followed behind. At this stage the driver did not know where the van driver was heading.

The driver headed towards Danbury and the van driver followed the driver. The van driver did not indicate that the driver should pull over. The driver pulled in the doctor's surgery and at this point the van driver came over to him and opened the driver's door as the driver came out the vehicle. The other driver went chest to chest with the driver and said 'do you want some?' He then allegedly demanded the dashcam footage but the driver refused, and explained to the Enforcement Officer that he had refused to engage with the driver because of his aggression.

The van driver then reported the matter to 24x7 Limited by telephone in front of the driver. The passenger assistant was at all material times on board the vehicle but that there were no children on board.

We have read the papers in this case most carefully and we have also viewed the dashcam footage. From this latter we note that the van was not indicating an intention to turn right and that the driver thereof was trying to "push in" to a line of traffic on a single lane slip road.

We have also listened to what the driver has had to say.

On the balance of probabilities we consider that both drivers were equally silly. However, we also accept that rear vision from the driver's seat would have been limited and that once on the dual carriageway and subsequently in the car park at Danbury the behaviour of the van driver was far worse. We believe that the driver has used the opportunity occasioned by his suspension from his work to reflect upon the situation and we are satisfied that he has learned his lesson and will not be so obstinate in the future. On this occasion we are prepared to give him the benefit of the doubt, and he will retain his licence, but we never expect to see him before us again.

LIC26      **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

This item had been deferred at the request of the applicant until the meeting on 30 September.

LIC27      **DETERMINATION OF A HACKNEY CARRIAGE VEHICLE RENEWAL**

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report.

The driver said he had not realised prior to his employment that the majority of his work would take place outside of Uttlesford District. Working around Sawbridgeworth was difficult because some roads were in Uttlesford and some were in East Herts. He had applied to work at Sadlers because many taxi firms do not employ drivers who already own their own cars.

In response to a Member question, the driver said he had not applied to Epping Forest District Council, as they received many applications and had closed off the application process for a few months.

At 14.00, the Committee retired to make its decision.

At 15.25, the Committee returned.

The decision was read to the driver.

## DECISION NOTICE –

The application before the Panel today is for the renewal of the driver's hackney carriage vehicle licence number HCV074 under S61 (1) (c) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence expired on 31<sup>st</sup> July and the vehicle was first licensed by UDC last year.

The driver lives in London and is a self employed owner/driver for a company called Sadlers Taxis, working from their Sawbridgworth office. All proprietors of hackney carriage vehicles are required to sign a declaration that they will predominantly work within the Uttlesford District.

The declaration reads:

*I have been advised that, based upon the decision of the High Court in the case of R. (on the application of Newcastle City Council) –v- Berwick-upon-Tweed BC, Uttlesford District Council ought not to licence Hackney Carriages which will be predominantly used outside the District.*

*I hereby declare that it is my intention that the vehicle/s licensed by me will be used predominantly in the District of Uttlesford and I understand that should this not be the case either at the date hereof or at any time thereafter the Council may revoke or refuse to renew the licence under section 60(1)(c) Local Government (Miscellaneous Provisions) Act 1976.*

The driver most recently signed this declaration on 01 July 2019. He previously signed it on 28 June 2018; his circumstances then were as they are now and accordingly he received a letter from the Council's Environmental Health Manager (Commercial) drawing his attention to the declaration and advising that going forward, the Council would be requiring evidence as to his compliance with this requirement. On receipt of his renewal application, containing the same details, the Enforcement Officer became involved and on 23<sup>rd</sup> July, requested that the driver submit details of all hackney carriage work undertaken by him since August 2018.

This was supplied by Sadlers Taxis, and analysis of the information provided by them showed that of 1685 jobs undertaken by him for the previous year, 468 either began or ended within the District of Uttlesford. Expressed as a percentage this amounts to 27.77% of his journeys, that is, a very little more than a quarter.

Since 1847 when the provincial hackney carriage industry first became subject to regulation by the legislature, it has been the case that the regulatory regime was intended by Parliament to be local in nature. This was reiterated as recently as 2008 when Christopher Symons QC sitting as a judge of the High Court in the case of *R (ex parte Newcastle City Council ) v Berwick upon Tweed Borough Council and Others [2008]EWHC 2369* made the following observations:-

*“It seems to me that the question to be asked is not whether a hackney carriage proprietor once a licence is granted would be acting lawfully but rather whether in exercising their discretion a licensing authority can use its discretion to ensure that it maintains control over those vehicles it has licensed. In my judgment a*

*local authority, properly directing itself, is entitled, and indeed obliged, to have regard to whether the applicant intends to use the licence to operate a hackney carriage in that authority's area and also to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area. This should result in each local authority licensing those hackney carriages that will be operating in their own area and should reduce the number of hackney carriages which operate remotely from the area where they are licensed.'*

*"I am anxious not to direct how Berwick, or any other local authority, should exercise their discretion which must be a matter for their own judgment taking into account the need to have available safe and suitable hackney carriages and having proper regard to the safety of the public. However it would seem to me to be difficult for any local authority to justify exercising their discretion by granting a hackney carriage licence to an applicant when the authority knows that the applicant has no intention of using that licence to ply for hire in its area. This is particularly so when the local authority also knows that the intention is to use the hackney carriage in an area remote from that authority's area. I say that because it seems to me it is very difficult to exercise proper control over hackney carriages which are never, or rarely, used in the prescribed area. It is also undesirable for authorities to be faced with a proliferation of hackney carriages licensed outside the area in which they are being used and therefore not subject to the same conditions and byelaws as apply to those vehicles licensed in the area.'*

*'In conclusion in my judgment Berwick has a discretion under section 37 of the 1847 Act to refuse to issue licences to those who have no intention of exercising their right to ply for hire in Berwick and/or to those who intend to use the vehicle predominantly in an area remote from Berwick.'*

This case (*Berwick*) remains good law.

However, our attention has also been drawn to the decision of Kerr J in the case of *R (oao Delta Merseyside Ltd and Uber Britannia Ltd) v Knowsley Metropolitan Borough Council* [2018] EWHC 757. (*Knowsley*) This case is at the same level, namely a decision of the High Court, and postdates *Berwick* by ten years. We have been advised that in the event of conflict between two cases at the same level, then the later supersedes the former unless distinguishable on the facts, and though *Berwick* deals specifically with the licensing of hackney carriages and *Knowsley* with that of private hire vehicle operators, there are troubling dicta in *Knowsley* that suggest that licensing authorities may not restrict the freedom to earn a living.

*"In my judgment Uber and Delta's submissions are correct and KMBC is wrong. I agree with their contention that it is wrong to describe KMBC as having any discretion in the matter of determining applications for driver's licences for PHVs. It is unfortunately part of judicial life that one frequently hears the word "discretion" lazily misused. Here, the issue of the licence is a mandatory consequence of a finding that an applicant is a fit and proper person to hold the licence.*

*I do not accept that the authorities relied on by KMBC justify the proposition that a person may be fit and proper to hold a licence if willing to sign up to work predominantly from Knowsley, yet unfit to hold a licence if unwilling to do so. I accept that the phrase “fit and proper” in this context refers to the personal characteristic and professional qualifications of the driver and not to his or her work preferences and visibility.....*

*I do not think a driver with an impeccable driving record can be fit to hold a licence if working in Knowsley yet become unfit if he or she happens to move to Cornwall. If you are fit and proper in Gateshead, you are fit and proper in Minehead. In none of the cases cited to me involving licences issued to drivers of hackney carriages or PHVs has a court ever held that issues not personal to the applicant, such as location, are relevant to determine fitness to hold a licence.....*

*The same is true of Delta’s fourth and last ground, which is that the policy infringes the freedom of establishment right enshrined in article 49 of the Treaty on the Functioning of the European Union. As is well known, restrictions on that right must be proportionate, ie they must pursue a legitimate aim and adopt a suitable measure for the purpose of achieving that aim, and the measure must be necessary to achieve it, such that it could not be attained by a less onerous method.....*

*I think it is strongly arguable that the policy imposes a disproportionate burden on licence applicants, since they would have to forego their freedom to base themselves predominantly outside Knowsley, and as I have said, the scheme of the 1976 Act permits that....*

*Mr Kolvin, for Uber, submitted that any such condition would offend against the Padfield principle because it would be an attempt to curtail the “right to roam” inherent in the 1976 Act....”*

We are aware that the decision we take today will set a precedent as to how we licence other hackney carriage vehicles within the District. If we grant a licence knowing that some 75% or more of this vehicle’s work is PHV work outside of the District, it makes the requirement to sign the predominant use declaration for hackney carriage vehicle proprietors redundant and makes us potentially a target venue for non-local applicants who the Council will find it very difficult to police. This poses a very real risk to the public.

Mr Chamberlain has provided us with some additional information regarding fees and we have heard from the driver. He may have told us more than he meant to. We note that the vehicle is currently unlicensed, the previous licence having expired at the end of July. It was licensed as a hackney carriage which enables its owner to do PHV work for an operator not holding an Uttlesford operator’s licence, and we note the driver lives in London and mentioned Uber. Had the vehicle been licensed as a PHV then it could only have been driven as such while the trinity of licenses was in place and Sadlers do not, we understand, hold an Uttlesford operator’s licence. (Nor currently, do Uber operate here). That is the factual situation before us today.

Given this factual situation we have two options available to us. The driver has told us that a considerable number of traditional operators are not interested in

engaging owner/drivers as such and therefore a decision not to licence his vehicle would not prevent him from earning a living, which is the principal issue lying behind the dicta of Kerr J in *Knowsley*. If we do grant him a new hackney carriage licence then we do so knowing that the vehicle will be used to carry out PHV work outside of Uttlesford, and the *Berwick* decision remains good law and is directly applicable to the vehicle; the driver cannot honestly sign the declaration contained in the application form. The question for us is therefore, which option causes the least injustice to the driver, and which poses the least risk to Uttlesford.

The legislation is clear and *Berwick* remains good law. We therefore have no alternative, taking into account all the circumstances, but to refuse the application for a new hackney carriage licence for WD13 ECA. The driver is not prevented from working as a PHV driver and thereby earning a living – he is not obliged to be an owner/driver – and there is nothing to prevent him from applying to the authority issuing Sadler’s Sawbridgeworth operator’s licence for the vehicle: in the meantime we gather it would be possible for him to drive one of their vehicles.

We make this decision with regret but we are aware that the intention of the legislature was to ensure local oversight of hackney carriage licensing. The driver has a right of appeal to the Magistrates Court against this decision, exercisable within 21 days, and he will receive a letter from the Legal Department explaining this.

The meeting ended at 15.40.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on MONDAY, 30 SEPTEMBER 2019 at 10.30  
am**

Present: Councillor P Lavelle (Chair)  
Councillors A Armstrong, V Isham and P Lees

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

Also present: A Clayton and R Walker (Felsted School), the driver in relation  
to Item 4

**LIC28 APPLICATION FOR A PREMISES LICENCE - FELSTED SCHOOL**

The Licensing Team Leader gave a summary of the report, which set out an application for a new premises licence in respect of Felsted School, Braintree Road. Representations had been received in respect of this application so the matter had been referred to the Committee for determination.

R Walker said the main reason for the school's application was to consolidate three existing licenses, while adding three additional buildings onto the license. This would allow more flexibility than the use of Temporary Event Notices. The new licence would also allow the school to have events attended by over 499 people. Two events were likely to go over this number of attendees. Only two events were likely to run past midnight, and the school made a point of carrying out sound checks regularly throughout the night at different areas of the site.

In response to a Member question, R Walker said the school did leaflet drops to inform neighbours of upcoming events.

In response to a Member question, R Walker said many of the events were run outside of term time or on a weekend so that there was as much available parking as possible.

In response to a Member question, R Walker said the school would be prepared to accept a cap on the number of outdoor events.

At 10.55, the Committee retired to make its decision.

At 11.40, the Committee returned. The decision was read.

**DECISION NOTICE – FELSTED SCHOOL CAMPUS, BRAINTREE ROAD, FELSTED.**

The application before the Panel today is for a new premises licence to cover more or less the entirety of the school campus. The application is dated 26<sup>th</sup> July 2019 and is made by the school governing body. Representations have been made by Felsted

Parish Council on the grounds of potential noise nuisance, and they are supported by 3 local residents (Interested Parties). We have also received a letter supporting the application from Essex Police, who state they were consulted by the applicant and are satisfied all four licensing objectives are satisfied. Accordingly the matter has been referred to us for determination.

We have had sight of a detailed report and have considered the extensive background papers, including:-

- Application form.
- Current licences
- Letter in support from Essex Police
- Bundle of letters and emails from Interested Parties.
- Plan of premises
- Location map of premises

Our attention has also been drawn to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018 version) and to Uttlesford District Council's Statement of Licensing Act 2003 Policy 2017-22

By way of background facts, Felsted School, Braintree Road, Felsted CM6 3LL is situated in the village of Felsted. The applicant is a large independent school consisting of both preparatory and senior sections, set on a campus site and not particularly close to any residential dwellings in the village itself. The school has multiple buildings and outside spaces and two of the buildings (Lord Richie Hall Appendix 3 and The Cromwell Centre – Appendix 4 of our document pack) have held their own individual premises licences with this authority since November 2005. The school are finding that due to its size they would like more buildings in the school available for licensed activities so have applied for one new premises licence to cover all six buildings. The areas they would like to be covered are outlined in red on the plan before us.

In accordance with the Licensing Act 2003 where an applicant submits an application for a premises licence then an operating schedule must accompany the application. This demonstrates how the licensing objectives will be met and also outlines what licensable activities are sought. These can be read on part M of the application form (appendix 1). The licensable activities and time being sought on the application can be found in Appendix 1 under sections B, E, F, I, J and L.

Copies of this application have been served on all the statutory bodies for the 28 days period and no statutory consultees other than the police have made any representations relating to this application. Essex Police state that after close liaison with the applicant they feel all licensing objectives are adequately covered. This letter is attached as Appendix 7.

The application was advertised in the Dunmow Broadcaster on 8 August 2019 and notices were placed by the applicant on the premises on 5 August for 28 days. The Licensing Authority itself has no statutory obligation to notify local residents of applications of this type, but as a matter of courtesy UDC does contact the occupants of the properties most closely adjacent to the premises: Applicants, however, are obliged to a) place a statutory notice on the premises for 28 days and b) to place an advertisement in a publication circulating in the area in which the premises are situated and this was done. As a consequence, four representations have been received from interested parties (which include Felsted Parish Council) in Felsted raising concerns based on the licensing objectives that relate to the prevention of public nuisance and crime. It is feared by local residents that disturbance to neighbours would be occasional noise from the music events and cars leaving the premises. We have read these letters carefully but have to note the Police do not agree with them.

In carrying out its statutory functions, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

There is no hierarchy of objectives and all have equal weight/importance.

The decisions available to the Committee in respect of this application are to

- Grant the application
- Modify the application by inserting conditions
- Reject the whole or part of the application

When determining an application we have to give due regard to the Council's Licensing Policy. The relevant parts thereof state, inter alia,

5.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that might arise from their operation. The Licensing Authority wishes to proactively maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

5.2 The Licensing Authority intends to interpret "public nuisance" in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

5.3 Applicants need to be clear that the Licensing Authority may apply stricter conditions, including controls on licensing hours, where licensed premises are in or near residential areas and where relevant representations have been received. Conversely, premises which can demonstrate that they have effective controls and measures in place or proposed to prevent public nuisance, may be suitable for 24-hour opening.

5.6 If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

5.7 When addressing the issue of prevention of public nuisance, the applicant should consider those factors that impact on the likelihood of public nuisance. These may include:

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship

- the hours during which the licensable activities will be carried out particularly between 23.00 and 07.00

- A "wind down period" between the end of the licensable activities and closure of the premises the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises

- the design and layout of premises and in particular the presence of noise limiting features

- the occupancy capacity of the premises

- the availability of public transport

- A last admission time

We must also consider the Home Office Guidance issued under S182 Licensing Act 2003. The most recent edition of this is dated April 2018, and the relevant sections of that Guidance state as follows :

2.15 The Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from the premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden on smaller venues.

2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and where their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address and disturbance anticipated as customers enter and leave.

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

If this Committee in its discretion wishes to impose conditions, the only conditions that can be imposed are those that are appropriate and proportionate to promote the licensing objective relative to the representations received, in this case public nuisance.

We cannot, however, impose conditions that duplicate the effect of existing legislation and we bear this in mind in considering some of the representations that have been made to us this afternoon.

We have heard today from Ms Walker on behalf of the Applicant and have read correspondence from the four Interested Parties and from the Police. None of them have attended today and no other statutory consultee has made any representations. Ms Walker has answered our questions fully and frankly, and we grant the application in principle, subject, however to a number of caveats regarding both noise and traffic. The school has agreed to accept restrictions upon the holding of outdoor events, both in terms of the number of events and in terms of the locations upon the campus where they may be held. We will therefore add a condition to the licence prohibiting outdoor events in locations 4, 5 and 6 on the plan to be found at page 31 of our bundle of papers. Furthermore, we propose to limit the number of outdoor events that may be held at the venue in any one calendar year to ten per annum, which Ms Walker indicated they were willing to accept, and we trust that the School's current practices regarding publicising such events, noise monitoring, traffic management and so forth will continue. WE are mindful that the nature of the premises is such that no-one who is not local or who otherwise has no connection with the school – staff or alumni – is likely to use it for a private event and we note that this is an applicant that values its reputation and is embedded in the local community. This is not a "pubco" liable to sell its interest in the premises and move on: they have behaved responsibly in the past, have engaged with both Essex Police and the Licensing Authority. This application has been years in the preparation, and this is a responsible applicant.

We therefore grant the application as asked, subject to the two additional conditions set out herein, and the Applicant will receive a new licence in due course. Any party aggrieved by this decision has a right of appeal against it to the Magistrates Court. This must be exercised within 21 days of the date of service of this decision notice, hence the appeal window will close on 24<sup>th</sup> October. All parties will receive notification from the Legal Department explaining this.

#### **LIC29      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

#### **LIC30      DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Enforcement Officer gave a summary of the report. The Council had received an email from the General Manager at ACME who gave an update into their internal investigation into the driver. The driver had offered his resignation on 19 June and was placed on gardening leave until 19 July, when his employment was due to terminate. They took his private hire/hackney carriage driver's badge and later returned it to the Council. This was due to number of allegations about him when he was a licensed driver.

The driver said allegations he had made a parent smell his arm were untrue. He had suggested they smell his arm to demonstrate that their child had left traces of a smell of urine on his arm. This was because the child had fallen asleep on his arm while he was driving.

In response to a Member question, the driver confirmed ACME had informed him that the parent had made a complaint about him, but he did not contact the parent after he had been told this.

In response to a Member question, the driver said he used to arrive between five and ten minutes before he was due to take the children to school, as had been suggested by his employer. He parked down the road and then used to drive up to the house when he was due to collect the children.

In response to a Member question, the driver confirmed the only safeguarding training he had completed was an e-learning course with the Sea Cadets.

*The driver passed around a character reference from the Christian drop-in group he volunteered with, and a long service medal from the Sea Cadets.*

The driver said he deeply regretted what had happened. He would not put himself in the same situation again.

At 1.00, the Committee retired to make its decision.

At 1.20, 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/HC2949 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 31<sup>st</sup> July 2021 and the driver was first licenced by this authority on 23 August 2018. He formerly drove for ACME Transport Services but his employment was terminated by them on 19<sup>th</sup> July 2019 and they returned his badge to the Council. He therefore is not driving at this present moment.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the driver. The bundle incorporates correspondence received from a parent and from Powers Hall School. The story begins with an email received from ACME Transport Services on 28<sup>th</sup> June who as his employer were investigating a number of allegations made by the parents of children being driven by him to and from school. Briefly, the driver would allegedly talk about his earnings from his taxi work in front of staff and children, which is not acceptable. However, of considerably more concern to us is that the mother of a child passenger called Reuben, started to bring the child to school herself as she was concerned about the driver. She alleged that she wanted the child to sit in the back of the vehicle with a full car seat but that the driver had insisted on putting the child in the front seat using a booster cushion. He had also given nicknames to the children and talked about taking them for a drink and cake at the end of term: further he had actually asked to take both children (Reuben and Riley) out for a drink and cake at the end of term but this was declined by the parents. He had also given a child a breakfast biscuit without the parent's knowledge. Additionally, the driver picked up one of the children very early before school, and there were times when the driver had been late bringing the child home, the parent had asked the child about it and they had claimed that the driver had pulled the car over and was swearing. All of these matters had led to ACME suspending him pending a disciplinary investigation; as a result of this he had tendered his resignation and his notice period

expiring on 19<sup>th</sup> July was spent on garden leave. ACME were concerned enough to take possession of his badge and they have since returned it to the Council.

The driver met with the Enforcement Officer on 18<sup>th</sup> July. In a lengthy discussion he provided the following background information. He said that he been in the Sea Cadets for 30 years and had reached the rank of Chief Petty Officer. In his view, over this period he has had a positive impact on children's lives: Sea Cadets are between 10-18 years of age and some of them had "problems". He was promoted and took charge of two Sea Cadet units and therefore was responsible for some 25 children and 5-6 members of staff at any given time. He had also been a special constable in London for two and a half years, and still engages in voluntary work around three times a month with children at a drop in centre run by a Christian group.

The driver explained that he had never undergone any safeguarding training or any other form of instruction in dealing with children when he was employed at ACME, though he had done an e-learning safeguarding course with the Sea Cadets; ACME had only provided him with a "list" of rules and no other group had provided any formal training.

The driver then told the Officer that licensed driving is his only form of paid employment. With ACME his basic pay was for a 13.75 hour week which he explained was the basic contract: however, because he was transporting two children from Earls Colne he managed to boost his hours to 21 per week. Firstly, the driver was transporting seven children on a regular basis, though this number dropped to four, and he had no Passenger Assistant throughout this time. He had raised concerns with ACME in the past about this. He confirmed the two of the children upon whom the allegations against him primarily centre (Riley and Reuben) were considerably younger than Sea Cadets, being four and six years old respectively.

In relation to the allegation that he discussed his earnings in front of the children he admits that he may have done this as a passing comment but there was nothing intended by it. He denied using the wording "he's my biggest earner" although he admits he is an open man which he now realises to be a mistake.

Turning to the specific parental complaints, the driver explained that he had asked Riley's mother if the child could sit in the front of the vehicle so he didn't feel all alone with a new driver. He alleged she had been "alright" with him sitting in the front. He then claimed that Reuben initially stayed in the front of the vehicle after getting consent from his mother. However, it became apparent that the child was falling asleep in the vehicle on the return journey and would fall onto the driver as a result. The driver therefore asked the parent for the appropriate child seat and the mother provided it.

The driver admits that he did give the children nicknames but this was in order to be friendly and to bond with them. He was aware that the journeys were long for children and did not want them to be bored. He dubbed himself "Dave the Dinosaur" and would call the boys "Riley Piley" and/or "Riley the Rhino" and the other child was "Reubs". Other children were called "Peter the Parrot" and "Sophia the Snake", and he alleged that they found this amusing.

On the allegation of the drink and cake, the driver was asked at the beginning of the term by the children would he take them to McDonalds, and he apparently agreed that he would. However, he asserted that he never intended to actually do this and said he would consult their parents in the hope that the children would forget. The driver did admit on one particular occasion there were two girls moving school and they wanted to spend a bit of time with him without other children present before they left that particular run; on that occasion the driver had apparently stopped for about 10-15 minutes, when he bought them one cake each, a bag of crisps and a drink. The driver further confirmed that he did buy the girls chocolate because they left his run because their parents had bought him chocolate. He claimed that he had obtained verbal permission off all the parents prior to this; he thought this would be a nice gesture for the girls and nothing untoward happened. It was wholly inappropriate in our view whether or not there was parental consent.

The driver did admit that he did point out to the mother of Reuben that the child did smell of urine occasionally, but this was as a concern about his welfare; he also admits that he did arrive at the child's house at about 7.10am as this was on the job sheet given to him from ACME. He thought this was prudent as the route he would travel along would often get congested. Furthermore, the driver accepted that he did buy a drink for Riley as he would not remove his coat and he was worried the child might dehydrate. When the child left he gave him some yoghurt biscuits and a good luck card because he had been with the child for a while. The mother accepted the gesture with no issues. On another occasion, the driver had concerns about a child's welfare so raised it with a welfare officer at the school. This was because he believed the child to be being bullied and he recognised this as the driver had been abused as a child: because of this, he would never hurt a child and provided the Enforcement Officer with background information on his own experiences..

The driver then explained that whole episode has caused stress to him. He accepted that he had made mistakes but everything that he had done was with the best of intentions. He also asked the Council to note that because of his disability he would struggle to find other employment, and said that he would be prepared to undergo safeguarding training if he was to keep his licence if this satisfied the Council.

We have read the papers before us and we have heard from the driver. We have also, at his request, read a document prepared by him by way of rebuttal of the statements of Reuben's mother and of the Deputy Head of Powers Hall School, and a character reference provided by the Braintree Youth Project Charity. We have also seen his long service medals awarded in respect of his time served in the Sea Cadets. He has expressed profound regret for what has happened, and says that were he to be given another chance, we would never see him before us again.

However, we have enormous concerns. Essex County Council investigated the allegations against the driver, and though they are apparently taking no further action themselves, without doubt they are relying upon the facts that ACME have taken disciplinary action leading to the ending of his employment with them, and that ACME have referred the matter to ourselves. Having read everything before us, we prefer the accounts of Reuben's mother and of the school, and we believe he did contact after disciplinary action had been taken against him by his employer. All in all, we are very concerned about his naivety and his lack of insight, even after we had announced our decision, and so we find ourselves unable to give him the benefit of the doubt. The primary function of this Committee is the protection of the public and we note the seriousness of the allegations. Children are among the most vulnerable members of our society and anyone employed to work with them, particularly lone workers, holds a position of great trust. It is our view that the driver has breached that trust, and as a result we feel that we have no option but to revoke his drivers' licence with immediate effect in the interest of public safety under S61(1) ( b) Local Government (Miscellaneous Provisions) Act 1976 – 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 would ordinarily remain in force, and would continue thereafter until the conclusion of the appellate process, but this does not apply in this case since the revocation is with immediate effect in the interests of public safety. The driver will receive a letter from the Legal Department explaining this.

The meeting ended 1.30.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on TUESDAY, 1 OCTOBER 2019 at 9.00 am**

Present: Councillor P Lavelle (Chair)  
Councillors D Eke, R Freeman and L Pepper.

Officers in  
Attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic  
Services Officer), E Smith (Solicitor) and A Turner (Licensing Team  
Leader).

Also Present: G Burke and R Saville (Essex Police);  
D Logue (Interested party - neighbour to the premises).

LIC29 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

The Chair opened the meeting but the applicant had not arrived. He adjourned the meeting for 15 minutes to give the applicant an opportunity to be present at the start of the meeting.

*The Enforcement Officer was asked to check reception and the foyer to ascertain whether the applicant had arrived. On his return he confirmed that neither the applicant nor the applicant's solicitor had arrived.*

The Chair reconvened the meeting at 9.15am. He welcomed those present and introductions were made.

No apologies for absence were received.

The Chair sought the legal advice of the Solicitor in the absence of both the applicant and his solicitor.

The Solicitor asked the Enforcement Officer to check the entrance of the building and at reception to ensure the applicant had not arrived.

*The Enforcement Officer left the room at 9.18am. He returned at 9.21am and confirmed neither the applicant nor the solicitor had arrived.*

The Solicitor said this matter had already been adjourned and in the interests of natural justice, and for those relevant parties involved, it was only right that an independent hearing took place within a reasonable timeframe. The applicant and his solicitor had been served the correct notice of the hearing, and had been aware since 11 September 2019 that the hearing would be taking place on 1 October even though the applicant's solicitor was unavailable. This had given the applicant and his legal firm ample opportunity to arrange an alternative legal representative. The applicant's solicitor had been asked twice to provide case law on the right to a specific legal representative. He had failed to provide such case law. She advised the Panel that two courses of action were open to them;

to defer the hearing, or to proceed in the applicant's absence. The appellate process for the latter was explained to the Panel.

*At 9.26am the meeting was adjourned to allow the Panel to deliberate.*

*At 9.49am the meeting was reconvened and the Chair read the Panel's decision.*

## **DECISION NOTICE –INDIA VILLA, 20 WATLING STREET, THAXTED**

The applications before the Panel today are for 1) a transfer of the premises licence of the India Villa restaurant, Watling Street, Thaxted, and 2) a review at the behest of Essex Police. There is reason to believe that the transfer application dated 17th August 2019 (which is opposed by Essex Police as the responsible authority) is an attempt to prevent the review application going ahead.

Mr Burke and Ms Savill of Essex Police are in attendance today, as is Mr Logue, a neighbouring resident. There is no appearance by anyone from or on behalf of India Villa though we are satisfied that they have been personally served with the paperwork in this matter and their legal representative, Mr Sutherland of Keystone Law, was told as long ago as 11<sup>th</sup> September that the hearing today would not be deferred to fit around his other commitments, see post.

We have listened to the advice tendered to us by our solicitor, Mrs Smith, regarding the potential consequences of proceeding in absentia and we have also had sight of the correspondence between Mrs Smith, the Licensing Department and Keystone Law. I have been consulted in my role as Chair of the Licensing and Environmental Health Committee and I agreed with officers that there had been ample opportunity for an advocate alternative to Mr Sutherland to be retained and instructed. Mrs Smith has formally advised us this morning that though both the common law and the Human Rights Act do give the citizen the right to a timeous and impartial hearing, and to independent legal representation at that hearing, neither give the right to representation by the individual advocate of choice and no authority has been cited to the Council suggesting that there is such a right. We are aware that the independent Bar can and do accept instructions upon very short notice and since September 11<sup>th</sup> there has been ample opportunity to retain and brief one of its members.

We are mindful that the Police and Mr Logue have attended before us today and that the latter has concerns above and beyond those of the Police. It is not reasonable to expect local residents including Mr Logue to have to continue to accept behaviour of the kind of which he complains. We are also mindful that India Villa have rights of appeal against any decision we make today and that other avenues of challenge to our decision are open to them. We also have had it explained to us, in the presence of the Police and Mr Logue, that the exercise of those rights will keep the licence alive until the conclusion of the appellate process: we can do nothing about this and appreciate that this will not help local residents.

WE have balanced the interests of India Villa against those of neighbouring residents and of the interest of the public generally in the prevention of illegal working, and consider, unanimously, that we should proceed to hear the applications today. We are satisfied that India Villa are aware of the hearing date and given that they have a right of appeal we consider it is in the public interest that we proceed to hear these two applications today.

*At 9.52am the Enforcement Officer left the room to check whether the applicant had arrived at reception. He returned at 9.55am and confirmed that the applicant had not arrived.*

LIC30

### **APPLICATION FOR THE TRANSFER OF A PREMISES LICENCE - INDIA VILLA THAXTED**

The Chair invited the Licensing Team Leader to present the report.

The report set out the details of the India Villa's application for the transfer of a premises licence, which had received an objection on 28 August 2019 from Essex Police under the Crime and Disorder licensing objective. The Police had set out their reasons for objecting to the transfer at Appendix B to the report, as on 21 June 2019 four persons were arrested for immigration offences who were working at the India Villa. The Police report stated that there were clear links between the existing and proposed Premises Licence Holder and suggested that a continuation of illegal working practices would continue if the licence was transferred.

In response to a question from the Solicitor, Mr Logue said he had read the papers and supported the Police's objection to the transfer.

Mr Burke was invited to present the Police's report to the Panel.

Mr Burke summarised the Police report. He reiterated that four persons working at the India Villa had been arrested on 21 June 2019 for immigration offences. It had not been the first time illegal workers had been found at the India Villa as on 14 June 2017 two illegal workers had been found on the premises. He added that the transfer was a 'paper exercise' and the Police believed that the existing and proposed licensee were connected. Thus, current management would continue to run the business in a manner that ignored the Immigration Act and breached the prevention of Crime and Disorder licensing objective.

In response to a member question, Mr Burke confirmed that Surma Villa Ltd was a single share company that had been transferred from a Mr Hussain to a Mr Hussain. He confirmed that they resided at the same address, although were of different age.

At the invitation of the Chair, Mr Logue said he had witnessed a "seamless transition" since the company had been transferred. He said the previous manager, Mr Hussain, was at the restaurant on a daily basis.

*At 10am the Panel retired to deliberate.*

*At 10.15am the Panel reconvened and the Chair read the Decision Notice.*

## **DECISION NOTICE –INDIA VILLA, 20 WATLING STREET, THAXTED (2)**

The application before the Panel today is for a transfer of the premises licence of the India Villa restaurant, Watling Street, Thaxted. The application is dated 17th August 2019 and is opposed by Essex Police as the responsible authority, pursuant to the crime and disorder licensing objective.

We have a report before us and have considered the Licensing Act 2003, the Home Office's most recently Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) and Uttlesford District Council's Statement of Licensing Act 2003 Policy 2017-22. We also have before us a copy of the transfer application and of the Police objection, and note that the Applicant, the police and the previous licence holder have been notified of the hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 and Licensing Act 2003 (Hearings) (Amendment) Regulations 2005 ("the Regulations"). Information to accompany the notice of hearing was also provided in accordance with "the Regulations", and if we refuse the application today then the situation reverts to the pre 17th August 2019 status quo as though the application had never been made.

By way of background, the India Villa restaurant licence has something of a chequered history. Today, we are here to consider the Police objection to the application for the transfer of the premises licence, and decide whether to:

- (a) Grant the application for the transfer of the premises licence from Ashik Miah to Surma Villa Ltd or
- (b) Reject the application for the transfer of the premises licence to Surma Villa Ltd if appropriate to do so in order to promote the crime prevention objective.

We remind ourselves that in carrying out our statutory function, we must promote the licensing objectives as set out in the 2003 Act, namely:-

- a. The prevention of crime and disorder
- b. Public safety
- c. The prevention of public nuisance
- d. The protection of children from harm

There is no hierarchy of importance and all must be given equal weight.

An application for the transfer of an existing premises licence under Section 42 of the Act is normally a straightforward procedure and is dealt with administratively under delegated authority. Notice of the application needs to be served on the Police and also the Home Office if alcohol and/ or late-night refreshment are involved.

Under Section 42 (6) of the Act, however, where a Chief Officer of Police is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective then he must serve notice of this objection upon the Licensing Authority within fourteen days of receiving the application. When such an objection is received from the Police the matter must be referred to the Licensing and Environmental Health Committee for a hearing to determine the application. Such is the position in this case.

An application to transfer a premises licence under the Licensing Act 2003 was received by Uttlesford District Council (“the Licensing Authority”) from Surma Villa Ltd on 22 August 2019 (Appendix 1). Surma Villa Ltd has applied to transfer the premises licence into its name from the current licence holder, Mr Ashik Miah. Records show that Premises Licence no PL0406 was granted to Mr Miah on 25 May 2018. In this case the request was for the transfer to have immediate effect and it was administered by the Licensing Authority accordingly. Section 43 of the Act allows the premises licence to have effect during the “application period” as if the applicant were already the holder of the licence. This began when the application was received by the Licensing Authority and ends when the application is granted, or if it is rejected, at the time the rejection is notified to the applicant. If a decision is made to appeal a determination, then the “application period” continues until the determination by that court.

On 28 August 2019 the Licensing Authority received a notice of objection under Section 42 (6) of the Act from Essex Police including a detailed statement of their reasons for objecting (Appendix 2). These reasons were considered by the Licensing Team Leader to be a valid objection under the Act, and therefore the matter was placed before us to determine the application under Section 44 (5) of the Act.

To recap, the decisions available to the Committee in respect of this application are to

- (a) grant the transfer of this premises licence to Surma Villa Ltd or
- (b) to reject the application for the transfer of the premises licence to Surma Villa Ltd if it considers it appropriate to do so for the promotion of the crime prevention objective.

Whatever option is decided upon, clear reasons should be given for the decision.

The premises are already the subject of a review application, which is due to be determined by the Licensing and Environmental Committee on 1 October 2019. The review application was made by the Police on the grounds of crime and disorder relating to immigration offences.

Paragraph 8.101 of the Secretary of State’s Guidance states that objections to transfers are expected to be rare and arise because the police or the Home Office have evidence that the business or individuals are involved in crime, in this case the employment of illegal workers.

The applicant has not attended before us today but we are satisfied that they have had proper notice of this hearing and indeed were personally served by the

Enforcement Officer, at a date giving them ample opportunity to make any necessary arrangements. WE have however, heard from Mr Burke on behalf of Essex Police, who was supported by Mr Logue, a neighbouring resident. WE have read all the papers before us and have been told today by both Mr Logue and by the Enforcement Officer that Mr A Hussain remains in day to day control of the premises. The only thing that has actually been transferred is one £1.00 share in a limited company, and we note from the Companies House documentation provided by the Police that both transferor and transferee reside at the same address. This is not a new business, much less an unconnected applicant and we do not believe that anything will change.

We have taken into account everything we have both read and heard and at this point I repeat the provisions of the April 2018 edition of the Home Office Guidance. I make no apology for doing so. It specifically includes immigration offences in the list of matters Licensing committees are required to take into consideration, and says:-

“There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises for.....

- Employing a person who is disqualified from that work by reason of their immigration status in the UK.

The grounds upon which the Police have made this application are that Licensing Objective One, the prevention of crime and disorder, has been breached. The important word is “prevention.”

This Committee’s primary function is the protection of the public. Though we are not a Court and the standard of proof before us is the civil one of the balance of probabilities, we are satisfied that the Police, supported by Mr Logue have made out their case and that the application for the transfer of the premises licence should be refused. The licence therefore reverts to its previous holder Mr Miah with immediate effect.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the license remains in force. Everyone before us will receive a letter from the Legal Department enclosing a copy of this decision notice and explaining their rights of appeal.

LIC31

## **APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - INDIA VILLA THAXTED**

*The Chair adjourned the meeting at 10.20am.*

*The meeting reconvened at 10.30am.*

At the invitation of the Chair, the Licensing Team Leader presented the report outlining the review of India Villa’s premises licence. She said Essex Police had sought a revocation of this premises licence based on the prevention of Crime

and Disorder licensing objective, as persons had been found working illegally on the premises.

Mr Burke was invited to present the Police's report to the Panel.

Mr Burke said on 21 June 2019 police officers had attended India Villa in relation to a report of harassment regarding a man who was known to work at the restaurant. On inspection, officers requested details of the five members of staff working at the location; only one of the five could supply identification. In all, four men were identified as immigration offenders and detained.

*Three videos of the bodycam footage of the police's inspection of India Villa were shown to the Panel. Two Police Officers were present and are shown to be questioning Mr Hussain regarding a harassment enquiry. The Officers are then shown around the premises, including an upstairs room with seven single beds that appeared to have been slept in. The Officers proceed to ask for the five members of staff working at the restaurant to present their ID. Only one of the five men presents identification. One man ignores the Officer's request to remain in a designated area and flees upstairs. The Officer follows the man upstairs but cannot ascertain his whereabouts. It appears that the man has absconded from the upstairs window.*

Mr Burke informed members that the man who fled the building was later detained by officers nearby. He would also be charged with immigration offences.

In response to a Member question regarding the seven beds that appeared to have been slept in, the Solicitor confirmed that Environmental Health were aware of the health and safety issues at the premises and would be following up.

In response to a question from the Chair, Mr Burke said Mr Hussain had been arrested and his apparent obstruction of justice was part of the ongoing investigation.

In response to a question from the Chair relating to the workers' pay, Mr Burke said one individual detained had confirmed that he was paid less than the minimum wage.

In response to a question from the Chair relating to the Designated Premises Supervisor, Mr Miah, the Licensing Team Leader confirmed that there had been no interaction with the appointed DPS.

In response to a question from the Chair, Mr Burke said only one right to work check dating back to January 2018 was found during the search. He confirmed that not one of the four men detained for immigration offences could provide identification.

Mr Logue was invited to comment on the review. As a neighbour to the premises he feared for his family's safety and highlighted the example of the man who absconded from the upstairs window and jumped over Mr Logue's fence and escaped through his garden. Furthermore, each night his family were woken by

disturbances from the premises and he had witnessed violence outside involving employees of the India Villa. This had disturbed and traumatised his young family. He said Mr Hussein was no longer helpful as he believed Mr Logue had reported him to the Police. Mr Logue said he had no involvement in the matter. He added that the neighbour on the other side of the property had also reported anti-social behaviour.

*At 11.05am the Panel retired to make their decision.*

*The Panel returned at 11.50am and the Chair read the decision.*

## **DECISION NOTICE – INDIA VILLA, 20 WATLING STREET, THAXTED**

The application before the Panel today is for the review of the premises licence of the India Villa restaurant, Watling Street, Thaxted. The application is dated 28<sup>th</sup> June 2019 and is at the behest of Essex Police as a responsible authority, pursuant to the crime and disorder licensing objective. We have already refused a tactical application for the transfer of the licence, made in the hope that thereby this application could be forestalled.

We have had sight of a detailed report and have considered the extensive background papers, including:-

- (a) Premises licence
- (b) Plan of premises
- (c) Review application documentation from Essex Police under the Crime and Disorder objective.
- (d) Letter from a neighbouring resident (Mr Logue)

We have also had sight of the Licensing Act 2003, the Home Office's most recently Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) and Uttlesford District Council's Statement of Licensing Act 2003 Policy 2017-22. Further, we have also been referred to case law which specifically provides that a) deterrence of others is a consideration that this Committee may have in mind (*The Queen on the Application of Bassetlaw District Council v Worksop Magistrates Court [2008] EWHC 3530 Admin*) in making its decision and b) there does not have to be a conviction for an offence under the 2006 Act for a licence to be revoked under the crime prevention objective (*East Lindsey District Council v Hanif t/a Zara's Restaurant and takeaway [2016] EWHC 1265 Admin*)

By way of background, the India Villa restaurant is situated on the main road going through Thaxted, opposite the church. A plan showing its location is before us, and historically, the original application for a premises licence was granted on 18 November 2005. No representations were made in respect of the application and it was granted as applied for; there was no previous Justices' licence.

In June 2017 there was an application to change the Designated Premises Supervisor (DPS). The Licensing Authority received a letter from the Police objecting to the proposed candidate, and at the commencement of the hearing on 31 July 2017 the application was withdrawn. At the same time, the Licensing Authority had also received an application for the review of the premises licence from Essex Police on the 5 July 2017 on the grounds of the prevention of crime and disorder. A hearing was scheduled to take place on 23 August 2017 but the licence was surrendered on 22 August 2017, and the review hearing did not take place.

A new premises licence was applied for in September 2018. No objections were received to this application so it was granted under delegated powers on 13 October 2018, and details of this licence (along with its hours and activities) are set out in our papers. The Council received the application before us on the 28 June 2019 on the grounds of the prevention of crime and disorder. The review application submitted by Essex Police is before us, including witness statements made under S9 Criminal Justice Act and other evidence: it is made pursuant to the crime and disorder objective, the reason being that police officers discovered disqualified persons working illegally on the premises.

The statutory crime and prevention objective in the 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises. In particular, employing a person who is disqualified from work by reason of their immigration status is a criminal activity which, according to the Home Office Guidance to the Licensing Act 2003, should be treated particularly seriously.

In carrying out the statutory function, the Licensing Authority must promote the the licensing objectives as set out in the 2003 Act, namely:-

- a. The prevention of crime and disorder
- b. Public safety
- c. The prevention of public nuisance
- d. The protection of children from harm

There is no hierarchy of importance and all must be given equal weight.

Following receipt of the Police application, procedurally a Notice of Review was issued by Uttlesford District Council's Licensing Department and served by the Council's Licensing Enforcement Officer on 1 July 2019. The Notice was displayed in the front window of the premises and details of the review have been advertised on the Council's website. The Notice advised of the grounds for the review and requested representations should be made between 29 June and 26 July 2019 to Uttlesford District Council in writing. All Statutory consultees were served a copy of the review application on 1 July 2019. No additional comments/representations were received from other statutory consultees during the 28 day consultation period, but one representation has been received during the 28 day consultation period from Mr Logue under the crime and disorder objective. This letter is before us and identifies ongoing alleged public nuisance concerns, both criminal and in terms of antisocial behaviour. The options that are available to this Committee are to

- Allow the licence to continue unmodified
- Modify the conditions of the licence
- Modify the conditions of the licence for a period not exceeding 3 months.
- Exclude a licensable activity from the scope of the licence
- Exclude a licensable activity from the scope of the licence for a period not exceeding 3 months.
- Revoke a licence
- Remove the Designated Premises Supervisor.

We are advised that when carrying out a review of a licence, due regard should be given to the Licensing Act 2003 as amended and Regulations made thereunder, the Council's Licensing Policy and the Home Office Guidance issued under Section 182 of the Licensing Act 2003. The most recent edition of this guidance issued in April 2018 includes new provisions in respect of immigration issues.

We quote these as follows:-

*Paragraph 2.6* says 'The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises'.

*Paragraph 4.22* goes on to highlight the importance placed on immigration offences, as it considers that it is grounds for objecting to the granting of a personal licence on the basis that it would be prejudicial to the prevention of crime and disorder, while *Paragraph 8.99* says (although in respect of objections to the transfer of a premises licence, again highlights that it would be appropriate), 'in exceptional circumstances for objections to be raised by the police or immigration officials where the transfer would be prejudicial to the prevention of illegal working.'

The following paragraphs of the Guidance deal specifically with reviews of the premises licence, where crime and disorder is an issue. They highlight the seriousness with which the Secretary of State expects licensing authorities to treat immigration offences on licensing premises. Again, we quote:-

*Paragraph 11.18* says 'Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.'

*Paragraph 11.26* further says 'Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may

be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder. '

*Paragraph 11.27* goes on to say 'There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- **for employing a person who is disqualified from that work by reason of their immigration status in the UK; [our emphasis]**
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. '

*Paragraph 11.28* provides that 'It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.'

Moving on, the Council's Licensing Policy (which may be found on our website) contains the following relevant paragraphs

- 3.3 The prevention of crime includes the prevention of immigration crime, and the Licensing Authority will work with Home Office Immigration Enforcement in respect of these matters.
- The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and**

**disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events [our emphasis].**

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour
- **Illegal working**

#### Control Measures

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:

- (a) Effective and responsible management of premises
- (b) Training and supervision of staff
- (c) Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA)
- (d) Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs or adoption of industry best practice (e.g. Challenge 25 policy)
- (e) Provision of effective CCTV and mirrors in and around premises
- (f) Employment of Security Industry Authority licensed doorstaff
- (g) Provision of toughened or plastic drinking vessels
- (h) Provision of secure, deposit boxes for confiscated items ('sin bins')
- (i) Provision of litterbins and other security measures, such as lighting, outside premises
- (j) Membership of local 'Pubwatch' schemes or similar organisations
- (k) Right to work checks on staff and retention of documents

We are advised that if the Committee in its decision wishes to impose additional conditions, which is an option open to us among those listed earlier, the only conditions that we can impose are those that are necessary and proportionate to promote the licensing objective relative to the representations received. They must not duplicate the effect of existing legislation.

The Home Office Guidance provides further assistance to us in paragraph 10.8 and 10.10 thereof, when it states that a licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.

The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. We understand that the 2018 Guidance is the first edition to **specifically** include immigration offences in the list of matters Licensing Committees are required to take into consideration, and says:-

“There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises for.....

- Employing a person who is disqualified from that work by reason of their immigration status in the UK.

This repeats and reinforces the position at common law, and we have been referred to the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states

“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are not required.”

We have read all the papers before us, and we have seen bodycam footage provided by the Police. We have also heard oral representations from Mr Burke on behalf of the Police and from Mr Logue, a neighbouring resident. Neither the premises licensee, the DPS or the transfer applicants have attended before us today, and since the transfer application was refused this morning the relevant parties are once more India Villa Thaxted Ltd and Ashik Miah. WE are satisfied that all involved were aware of the hearing before us and taking into account the interests of others involved and of the wider public interest we deemed it

appropriate to proceed after deferring the start of the hearing to take account of traffic.

We have heard a great deal about the operation of these premises this morning, and note that there are a considerable number of matters not within the purview of the Licensing Authority. We understand from Mr Burke that a number of investigations by both Essex Police and UKBA are ongoing and we are informed that the Council's Environmental Health teams are investigating a number of other matters: yet further matters are within the purview of yet other authorities and we trust that the Police are in contact with them.

We are mindful of the four licensing objectives and consider that three of them have been breached: crime and disorder, public safety and public nuisance. Mr Logue has raised matters with us additional to those raised by the Police and we are concerned at the behaviour to which local residents are subjected; this includes issues arising from the multiple occupancy of the upper rooms in the India Villa building and the bodycam footage we have seen shows the disgraceful conditions in which these unfortunate people lived.

We have taken into account everything we have both read and heard and at this point I repeat the provisions of the April 2018 edition of the Home Office Guidance. I make no apology for doing so. It **specifically** includes immigration offences in the list of matters Licensing committees are required to take into consideration, and says:-

"There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises for.....

- Employing a person who is disqualified from that work by reason of their immigration status in the UK.

A civil penalty of up to £20,000 can only be levied if there is a contract of employment: however, the use of the words "disqualified from that work" suggest the Guidance also covers those who under the employment protection legislation are referred to as "Limb B" workers. Illegal working cause nothing but harm to society – those operating unlawfully do not pay taxes and levies that legitimate operations must, putting them at an unfair competitive advantage, it deprives people here legally of the opportunity to secure employment, and for those brought here to work in such conditions, it deprives them of access to proper housing, healthcare and leaves them working in conditions amounting to slavery. Only the traffickers and those engaging illegal labour benefit from this wrong and this is unacceptable.

Again, without apologising for the repetition, the Guidance repeats and reinforces the ratio of the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states

"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public

interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are not required.” We respectfully adopt this. Furthermore, His Lordship then said “...the respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked”. This case is on all fours with the one before us today, and in the light of the revised Guidance reinforcing the point, we agree with His Lordship’s conclusion.

The grounds upon which the Police have made this application are that Licensing Objective One, the prevention of crime and disorder, has been breached. The important word is “prevention” and India Villa, Mr Miah and the Hussein family have all failed to prevent illegal working. We have considered the decisions of *R on the application of Bassetlaw District Council v Worksop Magistrates Court [2008] EWHC 3530* and *East Lindsey District Council v Hanif t/a Zara Restaurant [2016] EWHC 1265* and are satisfied that the licensing objective is engaged. The evidence we have heard in its entirety shows that two other licensing objectives, namely public safety and public nuisance, are similarly engaged and we take note of this.

This Committee’s primary function is the protection of the public. Though we are not a Court and the standard of proof before us is the civil one of the balance of probabilities, we are satisfied that the unfortunate people referred to in the Police submissions were engaged to work unlawfully in this country. Sadly, their behaviour of itself constitutes a breach of the licensing objectives and it causes great distress to neighbouring residents.

We therefore consider that the premises licence should be revoked under S52 (4) (e) of the Licensing Act 2003 and that revocation is an appropriate step with a view to promoting the crime prevention licensing objective. We also, though we accept the revocation renders his role redundant, direct that Mr Miah cease to be DPS and record our view that he is not a fit and proper person to hold such a serious responsibility: as Chair of this Panel I will be writing to my counterpart at Enfield LBC, the authority issuing his personal licence, with our concerns regarding his suitability.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the license remains in force. Everyone will receive letters from the Legal Department explaining this.

The meeting ended at 12.00pm.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
CHAIRMAN'S OFFICE - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on TUESDAY, 15 OCTOBER 2019 at 10.00 am**

Present: Councillor C Day (Acting Chair)  
Councillors P Lavelle, P Lees and M Tayler

Officers in attendance: A Bochel (Democratic Services Officer), M Chamberlain (Enforcement Officer), B Ferguson (Principal Democratic Services Officer) and E Smith (Solicitor)

Also present: The drivers in relation to Items 5, 6 and 7, Mr Garelick (GMB Union) and Mr Hussain (Happicabs).

**LIC32 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

**LIC33 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

*The Chair moved Item 5 forward in the proceedings.*

Mr Hussain, a director of Happicabs sent the Council an email detailing an incident where the driver transported a passenger on the late hours of 23 September 2019 in Chelmsford. This journey was not pre-booked through a private hire operator and at the time the driver was driving a private hire vehicle.

The female passenger entered the driver's vehicle without an invite. She requested that the driver take her home and explained that she did not have a mobile telephone and had very little money to get home. The passenger is a regular customer of Happicabs for over 7 years and was known by the company as someone suffering from various ailments and issues. According to Mr Hussain she has no family and has been diagnosed with a brain tumour. She often drinks and puts herself in vulnerable situations.

The driver then began to drive and called the office to get the job booked to get the passenger home safely. The Office was unable to create a job for the journey. Mr Hussain then became aware of the situation and instructed the driver to drop her off where he picked her up. He did this and returned to the Office for a meeting with Mr Hussain where he was then suspended by the company with immediate effect.

The driver said he had no intention of taking the passenger's money as he was only trying to help someone in need.

The driver tabled proof that he had called the office to try and get the journey booked.

The driver's representative said his client had been put in a very difficult situation and had tried to do the right thing. He said Happicabs had taken appropriate action by suspending the driver until they were 100% sure that the story was true. The actions of the driver demonstrated he was a fit and proper person to hold a private hire licence.

At 10.25, the Committee retired to make its decision.

At 10.35, the Committee returned. The decision was read to those present.

RESOLVED to take no further action on the matter of the driver's driving licence.

#### 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/HC2343 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 30<sup>th</sup> September next year and the driver was first licensed by this Council on 16<sup>th</sup> October 2017. He was summarily suspended from his employment with Happicabs following the incident we have to consider today, though we understand that since then he has been reinstated in his role.

We have had the benefit of a detailed report from the Enforcement Officer and a notification email, plus a note of his subsequent telephone conversation with the driver, are before us. We have also received some supplemental information from Happicabs and we have considered this with great care.

On 24 September 2019, the Enforcement Officer received an email from Mr Hussein, a director of Happicabs, detailing an incident where the driver transported a passenger in the late hours of 23 September 2019 in Chelmsford. This journey was not pre-booked through Happicabs and at the time Mr Uddin was driving a licensed vehicle. The driver had dropped off a customer at Market Road in Chelmsford at approximately 21.30 hours. A female then entered his vehicle without an invite. She requested that the driver take her home and she explained that she did not have a mobile telephone and had very little money to get home. This lady is apparently a regular customer of Happicabs and is suffering from various serious medical and social problems. She has no family, has been diagnosed with a brain tumour and often drinks and puts herself in vulnerable situations.

It is inferred that the driver felt he had no choice but to begin to drive, but he also called the office in order to get the job booked so he could get the passenger home safely. Unfortunately the office were unable to create a job for the journey, Mr Hussain became aware of the situation and instructed the driver to drop the lady off where he picked her up. Instead, he took her to the bus station and returned to the office for a disciplinary meeting with Mr Hussain following which he was suspended by the company with immediate effect.

The Enforcement Officer spoke with the driver over the telephone on 25 September 2019. He provided the following information. He has a clean licence and no criminal convictions. He firstly confirmed that he dropped some passengers off in Market Road, Chelmsford, and that the lady concerned is a regular customer of Happicabs with known medical

problems who just got in the vehicle and thereafter would not move. She asked to be dropped at a regular drop off location, and the driver asked her if she had booked the journey, and she said no as her phone was not with her.

The driver explained to the Officer that he wanted to help her and drop her off, and was not intending to charge her for the journey. He was going to relay this message to the office, and indeed attempted to do so. However, Waqas Hussain then called the driver and asked if he had picked anyone up; he replied that he picked up the customer and Mr Hussain told him to drop the passenger back where he picked her up.

The driver then explained to the Enforcement Officer that the lady started crying when he turned around and told her that he could not do the job. He dropped her off at the bus station (presumably because it was deemed to be safer than the street) and drove off. The driver then went for a meeting with Mr Hussain where he was dismissed.

The driver is aware that all jobs he does should go through Happicabs and confirmed that normally this customer always books through Happicabs. He confirmed that he has a clean driving licence and no convictions, and was aware that it is an offence under section 46(1)(d) Local Government (Miscellaneous Provisions) Act 1976, to operate a private hire vehicle without a private hire operator's licence. If the driver had carried out this booking then he would have carried out the actus reus of this offence. The driver's licence therefore comes before us today to consider whether he remains a fit and proper person to hold a licence.

We have read the papers before us and we have heard from the driver, from Mr Hussein of Happicabs and from Mr Garelick of the GMB trade union, and note that The driver has now been reinstated in his employment. In the circumstances of this case we are pleased to note this.

We have listened to what the driver has to say and it tallies with the account he gave to the Enforcement Officer. It is clear to us that he understands that a paying passenger must have pre-booked their journey.

The primary function of this Committee is the protection of the public and we note the potential seriousness of this allegation. Plying for hire is strictly regulated and a PHV driver in a PHV vehicle may not pick up a random passenger in the street: all journeys must be pre-booked through a licensed operator. The test for the commencement of a prosecution is in two stages and although this lady had not booked her journey (the fact of which is clearly established) it is not in our view a case in which any further action is in the public interest. It is a truism that hard cases make bad law and in this case the driver did the right thing: he has lost some earnings and that is penalty enough where the technical offence is concerned. The passenger was extremely vulnerable and once she was in the car he probably was unable to dislodge her without using force. On being instructed to take her back to the point of pick up, he returned her to a place he felt to be safer, namely the bus station. In the circumstances he did the right thing and we consider it reasonable that he should retain his licence: we wish him well in the future.

LIC34

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

*The Chair moved Item 6 forward in the proceedings.*

The Enforcement Officer gave a summary of the report. Suffolk County Council (SCC) had received a complaint regarding the driver's over-friendly interactions with a child he was transporting to school and his family. The driver had been suspended from Suffolk County Council contracts for over 5 months. SCC were unclear as to whether the behaviour constituted grooming to get close to the child or whether it was naïve and well meaning, misguided behaviour.

In response to a Member question, the driver said the Passenger Assistant had been present with him the whole time as he was transporting the child, and the child had never refused to get in the vehicle. As far as he knew, only one complaint had been made against him.

In response to a Member question, the driver said he had only received training on dealing with children since the complaint had been made.

At 11.05, the Committee retired to make its decision.

At 11.45, the Committee returned. The decision was read to those present.

RESOLVED to revoke the driver's drivers licence.

#### 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/HC2953 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 31<sup>st</sup> July 2021 and the driver is currently employed by 24 x 7 Ltd on the school contract side of the business.

We have had the benefit of a detailed report from the Enforcement Officer and his notes, together with the original correspondence received by him are also before us. The story begins with a complaint to Suffolk Council dated 28<sup>th</sup> March 2019. The matter was referred to us by their LADO (Local Authority Designated Officer for Safeguarding) who holds a statutory responsibility for the safeguarding of both children and vulnerable adults.

Their employee noted:-

“Mum called regarding her son's transport, her son has been biting and hitting recently and he does not usually behave like this. The child has not had problems with the transport before this driver and PA started in September and does not want to get in the taxi now. The driver was trying to giving chocolate, toy trucks to the child and his younger brother and even offered money to mum when she had a baby. This had been on and off since September but has got worse in the last month. This last month is when the behavioural problems started and he refused to go in the taxi and the problems at school started. The child is non-verbal so mum cannot ask him anything he just wants to vent his frustration by his behaviour... The driver stands very close to the door when picking up so the child has to brush past him then he touches his hair, he also tries to get close to mum.”

24x7 Limited investigated the matter and reported back to Suffolk County Council on 13 September 2019. They interviewed the driver and passenger assistant regarding the allegations. They confirmed the following:

The driver admitted buying advent calendars for the passenger and a sibling, and further admitted giving the children some old toy cars that he had as a child as he was going to discard them. He also admitted making a contribution to the new baby's bank account and accepted that he had overstepped the boundaries of a driver and become too friendly with the family.

The child's front door was up a flight of steps and he would often come bounding out the front door. The driver admitted that he and the passenger assistant would wait at the bottom of the steps to catch him if he fell. He denied that he ever stroked the child's hair.

24x7 Limited pointed out to the driver that this should never have happened and he should have stuck to the Council's and Company's protocols and procedures; however, they believe that the driver does not pose a risk to the passengers they carry.

Suffolk County Council also advised the Enforcement Officer that the driver had been suspended from their contracts for over 5 months. They were unclear as to whether the behaviour constituted grooming to get close to the child or whether it was naïve and well meaning, misguided behaviour, but Suffolk County Council Passenger Transport are considering whether the driver will be allowed to resume work on Suffolk contracts, and if so on what conditions. Our decision today will of course be a very relevant consideration.

The Enforcement Officer interviewed the driver over the telephone on 18 September 2019. A copy of his notes is before us, but in summary, we observe that the driver is still driving children for 24x7 Limited and transports eight teenagers in a Vauxhall Vivaro people carrier and has been doing this since the beginning of this school year. He was never suspended from his employment, has no criminal convictions, and a clean driving licence. The driver stated that he was aggrieved at the allegations and by way of evidence as to character told the Enforcement Officer that he was a church verger and a freemason. We are very concerned to note that the allegations were made in December 2018 to 24x7 Limited: clearly Suffolk County Council were dissatisfied with their reaction given that the matter was referred to UDC in March of this year.

Turning to the specifics, the driver told the Enforcement Officer, and indeed this Committee today, that at the material time he was transporting one child with a passenger assistant, who was also interviewed by UDC. He had worked with that passenger assistant for quite a while. The child in question was non-verbal autistic and was about 7 or 8 years old. Prior to the complaint the child's behaviour was sometimes ok and sometimes he would 'kick off' and pinch and bite the PA which they reported to 24x7 Limited. The driver disputed that the child had ever refused to enter the vehicle.

He was then asked about the gifts and he said that the chocolate had been advent calendars bought for the passenger, his younger brother and their mother, with her permission. The driver also said that he gave a £5 note to the father following the birth of a child which he claimed was the type of thing his grandfather did. He explained that as a child himself he used to collect dinky toys and when he moved house he offered them to the children, again with the mother's alleged agreement, and that the giving of these gifts was witnessed by the passenger assistant.

The driver offered the same explanation to the Enforcement Officer as to 24 x 7 for his touching the child's head, namely that the child's front door was up 8-9 steps and that he would come charging out; the driver said that he waited at the bottom in case the child fell over, and that he might have touched the child's head when he got in the vehicle to stop him hitting his head. However, the driver denied that he wanted to get close to the mother. The driver believed that he got on well with both parents and they had three children. The driver did not think that the child came from a broken home.

The Enforcement Officer spoke to the driver's Passenger Assistant the PA on 23 September 2019. She supplied him with the following information: she had worked with the driver for about six months, she thought he seemed to be ok and she got on well with him. She also thought the family in question seemed nice, and the child was from a caring home. At Christmas time she had seen him give chocolate advent calendars to the step grandmother, but did not see him give these to the children.

The driver also saw him give the dinky toys to the children after seeking permission from the mother, but that at the time she had appeared distracted as she was getting another child out of her vehicle. The PA said that the mother had asked either the PA or driver to wait at the bottom of the steps to stop the child falling over when he left the house. She did observe that the child's behaviour had changed and he would get upset if they went off route for diversions; he pinched her a couple of times and she thought it might have been because he had been poorly,

The PA did say that the driver could be a bit over-familiar with the mother and sometimes got in her personal space. She thought it was because he was friendly; possibly both over friendly and naïve, but not a threat to the children. She added that he thought the world of the children, and that some training would be appropriate. She also confirmed that the driver was never alone with the child; she did not see money being given to the father but said she was shocked that this had happened.

The driver's licence therefore comes before us today to consider whether he remains a fit and proper person to hold a licence in light of this safeguarding complaint. We are concerned to note that the date of their referral of the matter to us suggests that Suffolk County Council were dissatisfied with the response of 24 x 7 to their concerns, and we are similarly troubled to note he is still driving children in Essex, albeit a larger group and older, presumably on the basis safety lies in numbers. Where children are concerned we do not agree.

We have read the papers before us and we have heard from the driver. We have asked him a number of questions regarding the safeguarding training he has received and we are extremely concerned at the limitations thereof. We also note that he is extremely sorry for what has happened, but nevertheless the primary function of this Committee is the protection of the public and we note the seriousness of the allegations. Children are among the most vulnerable members of our society and anyone employed to work with them, particularly lone workers (as the driver now is), holds a position of great trust. Suffolk County Council clearly do not feel him to be worthy of that trust, and we agree. It is our view that the driver has abused that trust, and as a result we feel that we have no option but to revoke his drivers' licence with immediate effect in the interest of public safety under S61(1) ( b) Local Government (Miscellaneous Provisions) Act 1976 – 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 would ordinarily remain in force, and would continue thereafter until the conclusion of the appellate process, but this does not apply in this case since the revocation is with immediate effect in the interests of public safety. The driver will receive a letter from the Legal Department explaining this.

LIC35

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

*The Chair moved Item 7 forward in the proceedings.*

The Enforcement Officer gave a summary of the report. A Community Protection Officer for Maldon District Council and an accredited officer of Essex Police was performing road safety duties with a hand held speed camera in Maldon. He was approached by the driver who appeared to be very agitated and confrontational, and seemed aggrieved that the Officer was doing speed checks without putting signage up. The driver stated that the Officer appeared to be holding a gun and looked dangerous and repeated this a number of times.

The Officer clearly identified himself as an Essex Police accredited Officer doing speed checks and supplied his name and said that the driver could make enquiries with Essex Police if he was unhappy with the situation. The driver said the Officer should get his “governors to kick your arse,” he also said that the Officer was a “sarcastic tosser” and an “idiot” a “jerk” and said that he should get “his arse kicked.”

*A video of the driver’s encounter with the police officer was shown to the panel.*

The driver said he had been on edge at the time when he went over to speak to the officer. He had not known he was with the police and his ID had been tucked into his jacket. He had thought he had a gun. He had never had any experiences like that before. He had genuinely believed something wasn’t right and had lost his temper, particularly when the officer did not seem to take the matter seriously and refused to let the driver take a photo of his ID.

In response to a Member question, the driver said he had reported the incident to Essex Police, and had received a response.

*Copies of this response were circulated to Members.*

In response to a Member question, the driver said that with hindsight he would have been more measured and called the police. Such behaviour was not typical of him.

The driver said he hoped the situation could be used to educate people about what could be done better.

*Copies of a reference from the Head Teacher at a school he drove for were circulated to the Panel.*

At 12.40, the Committee retired to make its decision.

At 13.00, the Committee returned. The decision was read to those present.

RESOLVED to take no further action on the driver’s drivers licence.

DECISION NOTICE –

The application before the Panel today is for the suspension or revocation of the driver’s private hire licence number PHD0452 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to

expire on 31 August 2021 and the driver was first licenced by this authority on 24<sup>th</sup> September 2009. He works for 24 x 7 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 he, the background documents annexed thereto including email correspondence and notes of a telephone conversation between him and the Enforcement Officer.

The driver is before us today because on 12 July 2019, A Community Protection Officer for Maldon District Council and an accredited officer of Essex Police, was performing road safety duties with a hand held speed camera in Fambridge Road, Maldon. He was approached by a driver of a silver Skoda Karoq registration number LK19 AAY which is private hire vehicle 2352. The driver of the vehicle, who was subsequently identified by 24x7 Limited as the driver, appeared to very agitated and confrontational. Their exchange was recorded by the officer on his body cam, and we have had the opportunity of viewing the footage.

Briefly, the driver appeared aggrieved that the Officer was doing speed checks without putting signage up. Only Community Speedwatches manned by volunteers are required to do so. The driver stated that the Officer appeared to be holding a gun, looked dangerous and repeated this a number of times. However, the Officer clearly identified himself as an Essex Police accredited officer doing speed checks, supplied his name and said that the driver could make enquiries with Essex Police if he was unhappy with the situation. The driver said the Officer should get his "governors to kick your arse," called him a "sarcastic tosser", an "idiot" a "jerk" and repeated that he should get "his arse kicked." He was subsequently spoken with by Officer Logie of the Road Crime Support Team on 16 July 2019, who reported that the driver would not let him speak and he had therefore to terminate the call. The notes and records kept by both officers were forwarded to UDC for attention.

The Enforcement Officer carried out a telephone interview with the driver on 11 September 2019. He provided the following information. He had seen the Officer on the side of the road pointing a hand held device. The driver believed it to be a firearm and he was genuinely concerned. Though the Officer was wearing a hi-vis top, the driver did not consider his demeanour professional as he was unshaven and clothes appeared old.

The driver then dropped his passenger off and came back to challenge the Officer, who was allegedly objectionable and "got in his [the driver's] personal space" although he accepted that he did get in the Officer's space on one occasion. He then said that the Officer did not have any signage to indicate that he was doing speed checks. The driver said that he did not call the Police at the time as he could not afford to hang about to wait for their attendance which is why he decided to deal with the matter himself: he had been in the security industry before as a doorman. His sole employment is now driving.

The Enforcement Officer then asked why the driver why he swore at the Officer and he explained that he did not believe that "tossler" is a swear word and that when he has been called one, he does not take offence. The driver does believe that the Officer should have allowed him to take a photo of his ID so that he could remember the details. In conclusion, he admitted that with hindsight he made a genuine mistake and offered to apologise to the Officer. The driver has since submitted an email of apology via the Enforcement Officer to the Officer.

However, we are mindful of the conditions of licence for private hire/hackney carriage drivers, condition 1 of which states drivers will 'be polite.' On 12<sup>th</sup> July he was not.

We have heard from the driver. He answered our questions frankly and read out a prepared statement, He was very critical of the behaviour of the Officer and of the way Essex Police handled his subsequent telephone call, saying that the former should have “embraced the opportunity” to educate him regarding the technology being used.

He told us about the challenges the children he drives face, and he read aloud to us a letter of reference obtained from the Headteacher of the school attended by them. This letter was very positive and we note their strong support of him. We have had an explanation as to what the camera Officer was holding looks like and we note that it would have been perfectly open to him to drop it down to his side when speaking to the driver. We do not consider he did all he could have done to defuse the situation and neither party should have allowed this situation to escalate to the point that it did. We also note that a formal apology was offered very quickly.

We note that the driver has been licensed by UDC for ten years and we also observe that he has never been before this Committee. We are therefore going to allow him to retain his licence, but we do consider that he should keep a tighter rein on his temper in the future and we do not expect to see him before us ever again.

## LIC36 **DETERMINATION OF A PRIVATE HIRE VEHICLE LICENCE**

The Enforcement Officer gave a summary of the report. The driver had previously been working for Happicabs but was no longer working for them and the authority had no knowledge that he was working for any other firm. The driver had been contacted by the authority as he had failed to renew his driver’s licence and had had his badge confiscated, before he drove off in his private hire vehicle. The driver had failed to attend two interviews with officers, and so his private hire vehicle licence had been brought to the panel for consideration by members.

RESOLVED to revoke the driver’s private hire vehicle licence.

### DECISION NOTICE

The application before the Panel today is for the revocation of the driver’s private hire vehicle licence number 99 under S61 (1) (c) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The vehicle was first licensed by UDC on 2<sup>nd</sup> January 2017. The driver’s joint PHV/hackney carriage driver’s licence no PH/HC3226 expired on 30<sup>th</sup> June 2019 and his last lawful driving role was with Happicabs.

The driver’s drivers licence was issued for a period of six months only due to his immigration status. He was notified by email of 1<sup>st</sup> July 2019 of the steps he needed to take in order to renew this, and among other things, he was required to produce specific documentation evidencing his right to work. In response to this he arranged an appointment with the Licensing Officer for 4<sup>th</sup> July, which he failed to attend. Instead, he appeared at the Council Offices unannounced the following day, without the necessary documentation, and accordingly the member of the Licensing Dept staff he saw took his badge from him. However, he then drove off in the Zafira license plate no 99 and was seen by that staff member to do so.

Our attention has been drawn to the 1997 decision of the Divisional Court in *Benson v Boyce* [1997]RTR266; [1997] EWHC 35, per Mance J (as he then was)

*“...There is no suggestion in the present case that the relevant vehicle was a hackney carriage anywhere, and the vehicle was being driven in the controlled district where it was both licensed and used characteristically as a private hire vehicle. I consider that the correct interpretation of S46(1) (b) [of the 1976 Act] is that it applies to all driving in a controlled district of a vehicle characterised under S80(1) as a private hire vehicle, whatever the specific activity in connection with which the vehicle is in fact being driven”*

We add that the S46(1)(b) referred to by his Lordship is S46(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976, which makes the driving of a licensed PHV vehicle without a PHV drivers' licence an offence, for which the penalty is a fine of up to £1000 on conviction. We also understand that historically, there was a practice of granting PHV drivers' spouses a limited licence so that the vehicle could be used as the family car, but these days the level of car ownership is such that this is rarely needed.

The driver has twice failed to attend for interview under caution and we understand that the matter is likely to be referred to Legal Services for prosecution. We therefore have no alternative, taking into account all the circumstances, but to revoke the PHV licence for NU64 VHM. The driver is not prevented from applying to relicence the vehicle or from working as a driver and thereby earning a living provided the trinity of licenses – driver, operator and vehicle, all issued by the same authority are in place. The revocation has immediate effect so the vehicle may be legally driven.

The driver has a right of appeal to the Magistrates Court against this decision, exercisable within 21 days, and he will receive a letter from the Legal Department explaining this.

LIC37

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

The Enforcement Officer gave a summary of the report. The Licensing Department carried out a Drivercheck on the driver's DVLA records on 16 August 2019. This revealed that he was convicted of two offences on 12 February 2019 of IN10 (no insurance) and CU80 (using a mobile phone). It showed that he received 8 penalty points for these offences. The Enforcement Officer did make enquiries with HM Courts & Tribunals Service (HMCS) and they responded with details of the convictions. It showed that he was convicted in his absence of driving whilst using a mobile phone and driving without insurance only one day after obtaining a private hire/hackney carriage driver's licence.

RESOLVED to revoke the driver's drivers licence.

### 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/HC0062 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 31 January 2022 and the driver was first licenced by this authority on 11<sup>th</sup> February 2019. His last known driving role was with Happicabs who advised the Council that he had ceased to work for them some time in April.

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 he, the background documents annexed thereto, including a DVLA DriverCheck dated 16<sup>th</sup> August 2019, the Council's Licensing Standards, and some email correspondence with Happicabs and HMCTS.

The driver is before us today because the Drivercheck revealed two convictions dated 26<sup>th</sup> April 2019 for two offences committed on 12<sup>th</sup> February - an IN10 offence in respect of no insurance and a CU80 offence of using a mobile phone while driving. He was fined £660, ordered to pay costs of £90 and a victim surcharge of £66, and received a total of eight penalty points for these offences. We note that they were committed the day after he was granted a licence by this authority.

The Enforcement Officer wrote to and emailed the driver on 23 August 2019 to explain that his licence would be referred to the Licensing and Environmental Health Committee. The Officer gave him seven days to contact him to arrange a meeting, but no response was received.

Our attention has been drawn to section 2.29 of the suitability policy which reads '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 includes 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.'*[Our italics]*

We are also mindful of section 2.41 which reads '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 primary function of this Committee is the protection of the public and we note the seriousness of the offences. 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. Driving while using a mobile phone only exacerbates matters and we repeat these offences took place the day after the driver was granted his licence. He did not attend Court, he did not respond to correspondence from the Enforcement Officer, and he did not attend before us today. While mercifully there was no accident we therefore feel that the safety of the public requires the revocation under S61 (1) (b) of the 1976 Act of the driver's drivers' licence with immediate effect – any other reasonable cause. This is because the nature of the offences is such that allowing him to continue to drive could have a serious impact upon the safety of the travelling public.

There is a right of appeal against this decision which must be exercised within a period of 21 days. Normally, during that period the licence remains in force and thereafter until the conclusion of the appellate process, but since the revocation was with immediate effect in the interests of public safety this period of grace does not apply. The driver will receive a letter from the Legal Department explaining this.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on MONDAY, 4 NOVEMBER 2019 at 10.30 am**

Present: Councillor P Lavelle (Chair)  
Councillors C Day, R Freeman and L Pepper

Officers in attendance: A Bochel (Democratic Services Officer), E Smith (Solicitor) and  
A Turner (Licensing Team Leader)

Also present: P Li (Translator), Mei Y W (Manager), Xue H C (Licence Holder)

**LIC38 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Councillor Freeman declared a personal non-pecuniary interest as a member of Saffron Walden Town Council.

**LIC39 APPLICATION FOR A PREMISES LICENCE - SAFFRON WALDEN CHINESE**

The Licensing Team Leader gave a summary of the report, which set out an application for a new premises licence in respect of Saffron Walden Chinese. One representation had been received from an interested party living next door to the premises raising concerns based on the licensing objectives that relate to the prevention of public nuisance and crime and disorder.

In response to Member questions, Xue H C confirmed through P Li that the intention was for the restaurant to stop serving both food and alcohol at 11pm. She confirmed that she knew this would have the effect of pushing last food orders back to 10.30pm.

At 11.10, the Committee retired to make its decision.

At 11.30, the Committee returned. The decision was read to those present.

**DECISION NOTICE – 1-3 EAST STREET SAFFRON WALDEN.**

The application before the Panel today is for a new premises licence for the above address. The application is dated 1<sup>st</sup> August 2019 and is made by Saffron Walden Chinese Ltd. Representations have been made by a neighbouring resident on the grounds of potential nuisance. We have also received copy correspondence from Essex Police, indicating they wished additional conditions to be placed upon the licence. The applicant has agreed to this and therefore the Police are content for the application to proceed. These are the circumstances under which the matter has been referred to us for determination.

We have had sight of a detailed report and have considered the extensive background papers, including:-

Application form.  
Correspondence from Essex Police  
Bundle of letters and emails from the Interested Party.  
Plan of premises  
Location map of premises

Our attention has also been drawn to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018 version) and to Uttlesford District Council's Statement of Licensing Act 2003 Policy 2017-22

Historically, a licence for this premises was first granted on 7 October 2005. The premises was then known as "China China". No representations were made in respect of the application and it was granted as asked. The Council received an application for the review of this licence from Essex Police dated 16 October 2018 on the grounds of the prevention of crime and disorder relating to immigration offences. The premises licence was surrendered a few days prior to the hearing date on 11 November 2018. The restaurant has remained closed since November 2018. Ownership has been changed and we assume that the Police are satisfied that this change is genuine, and internal refurbishments have also been taking place. An application for a new premises licence has now been submitted.

In accordance with the Licensing Act 2003 where an applicant submits an application for a premises licence then an operating schedule must accompany the application. This demonstrates how the licensing objectives will be met and also outlines what licensable activities are sought. These can be read on part M of the application form (appendix 1).

The licensable activities and time being sought on the application can be found in Appendix 1 under sections I and J, and we note the opening hours sought are slightly shorter than those under the previous licence.

Copies of this application have been served on all the statutory bodies for the 28 days period and no statutory consultees other than the police have made any representations relating to this application. Essex Police state that after liaison with the applicant, who has agreed to their requirements, they feel all licensing objectives are adequately covered. Their correspondence is before us..

The application was advertised in the "Walden Local" on 11<sup>th</sup> September 2019 and notices were placed by the applicant on the premises on 10<sup>th</sup> September for 28 days. As a consequence, a representation was received from an interested party raising concerns based on the licensing objectives that relate to the prevention of public nuisance and crime. A lengthy letter has been sent to the Council, which we have read, carefully but have to note the Police do not agree with the writer.

In carrying out its statutory functions, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003:-

The prevention of crime and disorder  
Public safety  
The prevention of public nuisance  
The protection of children from harm

There is no hierarchy of objectives and all have equal weight/importance.  
The decisions available to the Committee in respect of this application are to  
Grant the application  
Modify the application by inserting conditions  
Reject the whole or part of the application

When determining an application we have to give due regard to the Council's Licensing Policy. The relevant parts thereof state, inter alia,

5.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that might arise from their operation. The Licensing Authority wishes to proactively maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

5.2 The Licensing Authority intends to interpret "public nuisance" in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

5.3 Applicants need to be clear that the Licensing Authority may apply stricter conditions, including controls on licensing hours, where licensed premises are in or near residential areas and where relevant representations have been received. Conversely, premises which can demonstrate that they have effective controls and measures in place or proposed to prevent public nuisance, may be suitable for 24-hour opening.

5.6 If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

5.7 When addressing the issue of prevention of public nuisance, the applicant should consider those factors that impact on the likelihood of public nuisance.

These may include:

the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship

the hours during which the licensable activities will be carried out particularly between 23.00 and 07.00

A "wind down period" between the end of the licensable activities and closure of the premises the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises

the design and layout of premises and in particular the presence of noise limiting features

the occupancy capacity of the premises

the availability of public transport

A last admission time

We must also consider the Home Office Guidance issued under S182 Licensing Act 2003. The most recent edition of this is dated April 2018, and the relevant sections of that Guidance state as follows :

2.15 The Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from the premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden on smaller venues.

2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and where their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address and disturbance anticipated as customers enter and leave.

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

If this Committee in its discretion wishes to impose conditions, the only conditions that can be imposed are those that are appropriate and proportionate to promote the licensing objective relative to the representations received, in this case public nuisance. We cannot, however, impose conditions that duplicate the effect of existing legislation and we bear this in mind in considering some of the representations that have been made to us this afternoon.

We have heard today from the applicants through their interpreter, Penny Li. They do not want the provision for late night refreshment included late in the application at the suggestion of the Police and accordingly we grant this application with the provision removed. This has the practical effect of pushing the time forward for last food orders to 10.30PM. The additional conditions to the licence required by the Police, accepted by the applicants and set out at pp 48/9 of our document pack will be added to the licence.

We do, however, intend to add an additional condition to the licence on our own account. This will read as follows:-

Before any person is employed at the premises in any capacity sufficient checks will be made of their bona fides to ensure they are legally entitled to employment in the UK. All documents will be retained for a period of 12 months post termination of employment and will be made available to the Police, Immigration and Licensing officers upon reasonable request, but in any event within 48 hours of the request. Such checks will include:-

Proof of identity (such as a copy of their passport)

Nationality

Current immigration status

Details of their full name and address

Date of birth

Responsibility for the said checks shall rest jointly and severally with the premises licence holder and the designated premises supervisor.

The effect of this is to require that robust checks upon the right of anyone seeking employment at the premises to work in the UK are made. Both the premises licensee and the designated premises supervisor will be under an obligation to see that these checks are carried out and what they have to do is set out in the notes to the application form found at pp 33-7 of our documents.

The Interested Party has not attended before us today. We have read what she has to say and note that the deletion of the provision for late night refreshment should address her concerns.

We therefore grant the application as set out in the preceding paragraphs. Any party aggrieved by this decision has a right of appeal against it to the Magistrates Court. This must be exercised within 21 days of the date of service

of this decision notice. All parties will receive notification from the Legal Department explaining this.

The meeting ended at 11.40.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on WEDNESDAY, 20 NOVEMBER 2019 at  
10.30 am**

Present: Councillor P Lavelle (Chair)  
Councillors C Day, V Isham and M Tayler

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

Also present: The drivers in relation to items 3, 4, 5, 6 and 7, the partner of the driver in relation to Item 6.

**LIC40 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

**LIC41 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION**

*The Chair moved Item 7 forward in the proceedings.*

The Enforcement Officer gave a summary of the report, which noted the applicant had made a false statement on his application form. He therefore did not meet the Council's suitability criteria for new drivers. The applicant had attended an interview where he explained that his failure to answer a question correctly was a genuine mistake and this was because he was in a genuine rush and had his medical to do that day.

Members noted that the answers to questions 10 and 12 on the application form were pre-filled by 24/7 Ltd, and it was incumbent upon applicants to cross 'no' out and answer differently if this statement was incorrect.

The applicant said the application day run by 2/7 had been a rush and he had had to leave to do his medical without properly completing the form.

At 10.55, the Panel retired to make its decision.

At 11.15, the Panel 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 24 x 7 Ltd on the school contract side of the business.

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 an enhanced DBS Certificate dated 19th August 2019 showing three convictions. The two later ones are related and together they amount to a course of conduct giving us cause for serious concerns.

Conviction 1 on 29 April 1981 was for an offence of theft by an employee where the applicant was fined £150 and made to pay compensation of £22 and costs of £7.

Conviction 2 dated 12 November 1999 was for an offence of driving with excess alcohol where he was fined £300, ordered to pay costs of £55 and disqualified from driving for 36 months which was reduced to 27 months after completing an appropriate course. However, conviction 3 on 10 November 2000 was for an offence of driving whilst disqualified. An appeal was dismissed and the applicant was imprisoned for 8 weeks, disqualified from driving for a further year and ordered to pay costs of £500.

However, we note the following responses to questions on the applicant's application form:

Question 10 asks 'have you ever been disqualified from driving or had your licence revoked?' The answer given here was 'no.'

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 answer given was 'no' however, two offences of 'D/D' and 'Traffic lights' were given to this question with no further answers.

In the light of the discrepancy between these answers and the information on his DBS records, the application was invited to attend an Interview under Caution (IUC) on 16 August 2019, which was conducted by two Council Officers. The following things were noted from the IUC:

The answers on the application form were partially typed in and the applicant said this was done by 24x7 Limited. He then explained that his failure to amend the form and answer question 10 correctly was a genuine mistake and this was because he was in a rush and had his medical to do that day.

In relation to the 1981 offence, the applicant said that at the time he was a delivery driver and was delivering some coffee to a customer. Someone at the shop asked him did he want a case of coffee and stupidly he accepted this. He now regrets it.

The applicant also believed that he was disqualified from driving in the early 1990s for a drink driving related offence, but there is no evidence of that.

For the driving whilst disqualified offence in 2000 he explained that he was a passenger that was being driven by one of his employees around Stansted Airport. The vehicle was stopped and inspected by the Police, deemed to be in acceptable condition and he was allowed to leave. A number of weeks later the Police came to his house and accused him of driving: he believed that he had

been stitched up by the Police. He appealed this but lost which led to his imprisonment. It has been explained to him that the fact of the conviction is conclusive and that we cannot go behind this.

At the date of the forms completion, he could not remember the convictions, the dates of them or how far back to go when completing the form. The form is actually quite clear: it requires all convictions, even spent ones, to be disclosed.

We are mindful of the following provisions of the Council's Licensing Policy. These are set out in the report so the applicant has the text of them before him. Section 2.3 deals with '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, false references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.' In this regard, we are aware that making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976, and this carries a fine of up to £1000 per conviction; and Conviction 1 is for an aggravated offence of dishonesty the theft being from an employer.

We have also been referred to clause 2.10 of the suitability criteria which states 'where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.' Convictions 2 and 3 are so related.

Finally, we have taken into account para 1.6 of the 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.'

As a consequence, the matter has been reviewed by the Environmental Health Manager (Commercial) and the Chair of the Licensing and Environmental Health Committee. It was decided to address the criminal aspects of the matter by way of formal caution and this was administered by the Council's Legal Department on 23<sup>rd</sup> October. However, a decision has been made to refer the application to the Committee for their consideration due to the circumstances of the case.

The primary function of this Committee is the protection of the public and these convictions are for serious matters. Theft from your employer is regarded, rightly, as being a breach of trust attracting additional opprobrium and taken together, the two later convictions are considered to be deeply disquieting. Though we understand the applicant still asserts innocence in respect of the third matter, the fact remains he was convicted, his appeal against conviction was dismissed and he served a custodial sentence. We are entitled to take those facts as being conclusive, and this is in its origins an offence very relevant to a professional driver.

We have heard from the applicant. He still asserts that he was wrongfully convicted and that there was collusion between the Police and another public official. However, he was advised when he was cautioned on 23<sup>rd</sup> October last that a conviction, particularly one following a not guilty trial, is final and this has

been repeated today. The penalties he received for these cumulative offences in our view reflect the seriousness with which the Courts regarded them. The lack of insight he has displayed gives us great concern and we cannot believe that anyone would “forget” an aggregate of four years disqualification from driving and a custodial sentence. We accept that a 24 x 7 Ltd mass recruitment day may be chaotic, but we are afraid that this past history is not one that can be overlooked.

Our primary function is the protection of the public and this is always in the forefront of our minds. Unanimously, we cannot consider the applicant to be a safe and suitable person to hold an Uttlesford licence and we therefore refuse this application. We understand that he has other driving work through an agency which, though temporary, is work of a kind for which there is always a demand.

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.

LIC42

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

The Licensing and Compliance Officer gave a summary of the report. The applicant had declared an offence of battery in 2016 for which she received a fine of £200. The applicant understood why her application was being referred and said that she has learnt a lesson following the conviction. The offence was 6 years ago during which her family were going through a rough time and there had not been any repeat offending.

The applicant said there was no excuse for what she had done. She noted while her family had been going through a bad time, things were better for her now.

At 11.30, the Panel retired to make its decision.

At 11.45, the Panel 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, she has an offer of employment from 24 x 7 Ltd on the school contract side of the business.

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 she, the background documents annexed thereto, including an enhanced DBS Certificate dated 27<sup>th</sup> August 2019 showing one conviction dated 2<sup>nd</sup> February 2016 for an offence of battery under S39 Criminal Justice Act 1988. The applicant quite properly declared this conviction upon her application form.

Our attention has been drawn to section 2.14 of the suitability policy which states – “Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed”.

The applicant therefore was asked to give some details about the conviction and she e-mailed the Licensing Department on 13 September. A copy of this is before us. She explained that at the time of the conviction she and her family were going through a hard time; her brother had been assaulted and sustained injuries leaving him with disabilities and the family were being mocked for this; and furthermore, at the same time her mother was also critically ill.

The applicant states that she and her family have moved on and that she has learnt from her mistake. It was explained to her that in view of the fact she had a conviction for an offence of violence her application could not be dealt with administratively and that it would have to be considered by a senior manager. This was done and the matter was considered by the Environmental Health Manager (Commercial) in conjunction with the Chair of this Committee and as a consequence the matter has been referred to ourselves. The reason for this decision was explained to the applicant and she understood why the referral was being made. The primary function of this Committee is the protection of the public and an offence of violence is always regarded as being serious.

We have heard from the applicant this morning and we had the opportunity of observing her body language. She was plainly remorseful and the incident in question followed a number of totally unacceptable comments regarding close family members. We accept this mitigation and do not believe she poses a risk to members of the public.

We therefore grant this application and hope, in the nicest possible way, that we do not see the applicant before us again.

LIC44

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

*The Chair brought Item 5 forward in the proceedings.*

The Licensing and Compliance Officer gave a summary of the report which noted that the applicant had failed to declare a conviction for using threatening, abusive, insulting words or behaviour with intention to cause fear or provocation of violence. He therefore did not meet the Council's suitability policy for new drivers. The applicant had apologised and said it was not his intention to deceive.

In response to a Member question, the applicant said he had no explanation for why he had not recorded his conviction.

At 12.05, the Panel retired to make its decision.

At 12.30, the Panel 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 24 x 7 Ltd on the school contract side of the business.

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 an enhanced DBS Certificate dated 30<sup>th</sup> September 2019 confirming a conviction dated 28<sup>th</sup> September 2009 for using threatening, abusive or insulting words or behaviour with the intent to cause fear of violence under the Public Order Act 1986. He also declared a 2018 motoring offence for which his licence was endorsed with three penalty points.

Whilst this conviction is spent under the Rehabilitation of Offenders Act 1974 this legislation does not apply to proceedings before this Committee and the applicant does not meet the Council's suitability policy for new drivers which states at 2.3 "Any dishonesty by an 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 10 October the applicant was interviewed by officers and was asked why he had failed to declare the conviction. He responded by apologising and saying that it was not his intention to deceive. He also explained that he has had previous DBS checks, has a current one for the job that he does now, and another when he applied for the hackney carriage licence he holds with Forest Heath Council. The fact another licencing authority has seen fit to grant him a licence is in no way binding upon us: each and every authority may make its own decision on the basis of its local policies.

He was then asked to provide some details about his conviction. In a subsequent e-mail dated 4 November (a copy of which, as are the notes of the earlier discussion, is before us) he explained that he had been taking one of his staff home (from the pub where he was the publican) when he saw a child on a bike, and a man running alongside waving his arm and telling him to slow down. The applicant maintains he had already slowed down as he was approaching a bend and had seen a dog running in the road.

Having dropped his staff member off at home he returned along the same road and the man waved him down. There followed an altercation during which the man punched the applicant causing his nose to bleed. The applicant blocked a second punch, there was a verbal exchange and the applicant got back in his car and returned home. He did not report the matter to the Police, but over a week later the other man did so and it went to court. The applicant said he pleaded guilty as the other man had a witness and he could not afford to fight the case.

The applicant had never been in trouble before the conviction in 2009 and has had no further convictions. He deeply regrets the incident and says it was out of character. In 2011 he left the Plough and worked for Asda home delivery until March 2013 when he got a job at RAF Mildenhall working as a coach driver. Part of his duties are driving VIPs on trips, and he has provided us with various commendation letters included in our background papers. He also does part time taxi work for A1 cars in Bury St Edmunds and has worked for them since April 2014.

In line with UDC policy the applicant's application was referred to the Environmental Health Manager (Commercial) to determine in consultation with the Chair of the Licensing and Environmental Committee. The decision was made to request the applicant to present himself to Committee to give a fuller account of the circumstances that resulted in his conviction and to allow Committee to gain a greater insight into the applicant's character. We are mindful of para 1.6 of the 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.'

We have heard from the applicant and should say at the outset that this is not the first time today we have heard of the chaos at 24 x 7 Ltd recruitment days. We also note that he holds a personal alcohol licence and a PHV/hackney carriage licence from Forest Heath District Council and that as a consequence he would be familiar with the enhanced DBS procedure: we therefore do not understand how he could have omitted to declare the 2009 conviction and this does cause us some concern.

However, we observe that he has not sought to offer any excuses and has apologised for his omission; he has also provided us with some glowing references from people, especially the USAF, who would not give such a testimonial lightly: furthermore, we have taken into account his history of the index incident given to the Licensing Department, and have been advised of a) the pressure to plead guilty, and the fact that b) had he had the benefit of legal representation, a successful argument of self defence may have led to an acquittal.

This is a finely balanced decision and on this occasion we have decided to give the applicant the benefit of the doubt. We do not believe that he is a danger to the public and that if he had been able to complete the forms at his leisure this error would not have occurred: we understand that the process question is being formally raised with 24 x 7 Ltd by the Licensing Department and we support this initiative: this level of error by a very large operator is unacceptable.

We therefore grant this application and trust we will not see the applicant before us at any time in the future.

LIC45

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

The Licensing and Compliance Officer gave a summary of the report. The applicant had declared an offence of common assault in 2013 on his application form.

The applicant explained that he had attended a friend's work Christmas party and at the end of the night got a taxi home with his friend and three other men who had also been at the party, but who he did not know. During the journey one of the three men started to taunt him and this led on to a physical attack. Having first tried to cover up his head the applicant eventually fought back to try and defend himself. The case went to Colchester magistrates Court where the applicant was found guilty of common assault due to "acting in self-defence but using excessive force".

The applicant said it was a regrettable incident. He considered himself a family man and would like this additional opportunity to provide for his family. The taxi driver had testified to say that he was defending himself.

In response to a Member question, the applicant said his friend did not testify as he had a conflict of interest because he knew the attacker in the incident.

At 12.45, the Panel retired to make its decision.

At 12.55, the Panel 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 London Stansted Chauffeurs Ltd.

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 an enhanced DBS Certificate dated 7<sup>th</sup> October 2019 confirming a conviction for an offence of violence, declared by the applicant as being one of common assault. In fact the conviction was for an offence of battery under the Criminal Justice Act 1988 dated 9<sup>th</sup> May 2013 in respect of an offence taking place the preceding Christmas and for which the applicant was fined £625.

Whilst this conviction is spent under the Rehabilitation of Offenders Act 1974 this legislation does not apply to proceedings before this Committee and the applicant does not meet the Council's suitability policy for new drivers which states at point 2.14 – "Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed".

The applicant was to provide further information about the conviction and he responded by e-mail on 12 August. A copy is before us. The applicant explained that he had attended a friend's work Christmas party and at the end of the night

got a taxi home with his friend and three other men who had also been at the party, but who he did not know. During the journey one of the three men started to taunt him and this led on to a physical attack. Having first tried to cover up his head the applicant defended himself.

At that point, the taxi driver stopped the vehicle and told the passengers that he could not continue the journey unless they stopped fighting. The journey then continued without any further problems. The applicant got home and went to bed, but was woken up at 4am by the police knocking at the door and arresting him for assault. The case went to Colchester Magistrates Court where the applicant was found guilty of common assault due to "acting in self-defence but using excessive force". He was open about the conviction at his interview on 12 August and declared it on his application form. He states that he was shocked to have been found guilty and would have appealed the decision had he been able to afford it; he had never been in trouble before this conviction and has had no convictions since 2013.

The applicant is a qualified football coach and swimming teacher and has spent a lot of time trying to have a positive impact on young people's lives through sport. He is also a qualified pool lifeguard and first aid trainer. He has no motoring offences.

In line with UDC policy the applicant's application was referred to the Environmental Health Manager (Commercial) to determine in consultation with the Chair of the Licensing and Environmental Committee. The decision was made to request the applicant to present himself to Committee to give a fuller account of the circumstances that resulted in his conviction and to allow Committee to gain a greater insight into the applicant's character. We are mindful of para 1.6 of the 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.'

We have heard from the applicant and though we all agree the facts of this case are somewhat unusual we note his contrition and that he has not been in trouble since. We also note that he declared the conviction in his application, that he is very active among the young people in his local community and that he is otherwise of good character. We are therefore prepared to grant this application and trust that he will never appear before us again.

LIC46

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

The Enforcement Officer gave a summary of the report. The applicant had failed to disclose a conviction for assault on his application form, and as such did not meet the criteria of the Council's policy on suitability of new drivers. The applicant had thought that the conviction for theft was a suspended sentence and did not realise it was a conviction. The applicant had explained that he had an abscess on his brain approximately 2 years ago which has led to memory losses. He had also thought that he would only need to disclose convictions over 5 years ago.

In response to a Member question, the applicant said he thought the conviction was a warning that he would be prosecuted if a similar offence occurred. He had pleaded not guilty and the owners of the stolen camera were surprised the case had made it as far as court.

At 13.15, the Panel retired to make its decision.

At 13.35, the Panel 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 24 x 7 Ltd on the school contract side of the business.

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 an enhanced DBS Certificate dated 21st August 2019 showing a conviction for an offence of dishonesty, namely an offence of theft from a dwelling on 4<sup>th</sup> March 2013, for which the applicant was convicted on 25<sup>th</sup> November of that year. He received a 12 month conditional discharge, and was ordered to pay compensation of £25, costs of £350 and a victim surcharge.

However, 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'.

In the light of the discrepancy between this and the information on his DBS records, the applicant was interviewed under caution (IUC) on 18<sup>th</sup> September 2019 by two Council Officers. The following things were noted from the IUC: The answers on the application form were partially typed in and the applicant said this was done by 24x7 Limited. The applicant explained that he did not realise the nature of his conviction, believing it was a type of warning, and thought that only an immediate custodial sentence was a conviction. He then explained that he had an abscess on his brain approximately 2 years ago which has led to memory losses: he also did not realise that he also needed to disclose convictions over 5 years ago.

In relation to the offence he said that he had been renting a single room in a house. When the owners of the house went on holiday he went to stay with his girlfriend and returned once to get a change of clothes. A camera was stolen during the owner's holiday and their son was still at the house during this time: however, the applicant got blamed and then went to Court. He is now a part-time steward and is hoping to get his SIA licence.

The applicant said that his long term memory was affected after the illness but it is returning.

We are mindful of the following provisions of the Council's Licensing Policy. These are set out in the report so the applicant has the text of them before him. Section 2.3 deals with '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, false references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.' In this regard, we are aware that making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976, and this carries a fine of up to £1000 per conviction.

We have also been referred to clause 2.10 of the suitability criteria which states 'where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.' Convictions 2 and 3 are so related.

Finally, we have taken into account para 1.6 of the 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.'

As a consequence, the matter has been reviewed by the Environmental Health Manager (Commercial) and the Chair of the Licensing and Environmental Health Committee. It was decided to address the criminal aspects of the matter by way of formal caution, and this was administered this morning. However, a decision has been made to refer the application to the Committee for their consideration due to the circumstances of the case.

The primary function of this Committee is the protection of the public and this conviction is for a serious matter. The allegation is that he stole from the people in whose house he was living.

We have heard from the applicant and have to say that this is the third case before us today in which the administrative failures of 24 x 7 Ltd have played a part. This is not acceptable.

We have listened to what he has to say and have seen his Group 2 medical certificate. We note that he is fully recovered from his abscess and has been passed as being fit and well. We also note that his SIA licence application has been successful.

The applicant does exhibit a certain naivety and although the payments that he was ordered to make by the Courts were substantial, we can nevertheless understand why he believed that he had not been convicted. The nature of a conditional discharge is not altogether easy to understand. We are therefore prepared to give him the benefit of the doubt and therefore grant this application. We do not, however, expect to see him before us ever again.

**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 31<sup>st</sup> 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 11<sup>th</sup> 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 16<sup>th</sup> 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.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on MONDAY, 24 FEBRUARY 2020 at 10.30 am**

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

Officers in attendance: C Gibson (Democratic Services Officer), S Mahoney (Senior Licensing and Compliance Officer, E Smith (Solicitor), A Turner (Licensing Team Leader) and R Way (Licensing and Compliance Manager)

Also present: G Burke and R Savill (Essex Police), S Ahmed (Applicant), Mr Islam (Applicant's associate), R Sutherland (Applicant's legal representative) and D Logue (Interested party).

**LIC51 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

The Acting Chair declared that he was the Chair of the Community Safety Partnership and a former Police officer. Councillor Gerard declared that he had previously sat on this Committee in 2017 and 2018 and had eaten at the restaurant but did not know any of the named interested parties. Councillor Pepper declared that she had sat on the panel at the Licensing and Environmental Health Committee October 2019 meeting.

**LIC52 APPLICATION FOR A PREMISES LICENCE - 20 WATLING STREET  
THAXTED**

The application was withdrawn on the advice of the applicant's legal representative.

The meeting ended at 12.50pm.

**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 30<sup>th</sup> June 2022 and the driver was first licenced by this authority on 15<sup>th</sup> 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 21<sup>st</sup> October 2019 as part of the Council's due diligence revealed the following matters:-

- CU30 (Defective Tyre) Offence Date 13<sup>th</sup> December 2018, Conviction Date 7<sup>th</sup> June 2019.
- SP30 (Speeding) Offence Date 27<sup>th</sup> August 2016, Conviction Date 16<sup>th</sup> March 2017.
- SP50 (Speeding on a Motorway) Offence Date 7<sup>th</sup> December 2017, Conviction Date 7<sup>th</sup> 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 27<sup>th</sup> 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 13<sup>th</sup> 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 20<sup>th</sup> January 2020 which stated that the date of the award of the points was 8<sup>th</sup> 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 4<sup>th</sup> 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.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at ZOOM -  
HTTPS://ZOOM.US/, on TUESDAY, 12 MAY 2020 at 1.00 pm**

Present: Councillor P Lavelle (Chair)  
Councillors C Day and P Lees

Officers in attendance: A Bochel (Democratic Services Officer), B Ferguson (Democratic Services Manager), C Gibson (Democratic Services Officer), S Mahoney (Senior Licensing and Compliance Officer) and E Smith (Solicitor)

Also present: Cllr V Isham, F Choudury (Applicant), D Dadds (Solicitor for the Applicant), W Moody (Essex Police)

**LIC59 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Councillor Day declared a personal non-pecuniary interest in that he was in receipt of a Metropolitan Police pension.

**LIC60 QUEEN VICTORIA PREMISES LICENCE MAJOR VARIATION**

The Senior Licensing Officer gave a summary of the report which set out an application for the grant of a major variation of the licence for the Queen Victoria also known as the Jalsa Ghar Restaurant. The application had been made by Fazlul Bari Choudhury, the premises licence holder.

Condition 5, Annex 3 of the premises licence stated 'Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business and from the premises themselves'.

The variation being sought on the application was to amend this to read: Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business, Mr Omar Shorif will be excluded from the premises

Representations had been made by Essex Police in response to this application so therefore the matter had been referred to the Committee for adjudication.

The solicitor for the applicant said Mr Ziaul Islam Choudhury was a family member of the licence holder and due to the issues of staffing caused by the coronavirus pandemic, was needed to help out at the premises during evenings and weekends. In order for the application to be successful it was important to satisfy the licencing objectives. There was not sufficient evidence that these had been undermined since the licence was granted in June 2019, and no evidence that it would be undermined if the condition was to be amended. Mr Ziaul Islam Choudhury would not be part of the management structure of the business. The applicant would accept the new condition being time limited.

In response to a member question, the solicitor for the applicant noted that the CCTV cameras at the Queen Victoria had been upgraded shortly after the police had last visited the premises. Mr Ziaul Islam Choudury would have had no access to the CCTV at the premises.

The representative of Essex Police said the company had been one of the worst offenders for employing illegal immigrants in Essex. The applicant was the director of this company. The Police had received intelligence that Mr Ziaul Islam Choudury had attended the Queen Victoria premises on multiple occasions despite the condition that he not do so. Intelligence also suggested that Mr Ziaul Islam Choudury had been heard to laugh about preventing the Police from accessing CCTV footage.

In response to a member question, the representative from the Police said he did not know what kind of intelligence had been received. Further to this intelligence being passed to the Police, this was reported to Uttlesford District Council.

*At 3.05, the Panel retired to make its decision, and invoked the right to reserve judgement for up to 5 days.*

*The meeting ended at 16.00.*

## **DECISION NOTICE – QUEEN VICTORIA/JALSA GHAR, 79 STORTFORD ROAD, DUNMOW.**

### **(Via Zoom)**

The application before the Panel today is for a major variation to the premises licence for the above address. The application is dated 20<sup>th</sup> March 2020 and is for the removal of a condition barring a previous licensee, Ziaul Choudhury from the premises, imposed by this Committee in June 2019. An application is not made in respect of his exclusion from management of the premises made upon the same date and we stress from the outset that that condition remains in place.

Due to the current COVID 19 pandemic this application is being made remotely. Participants have attended via Zoom or have dialled in and I thank them all for their assistance in making this hearing possible. For the same reason we are reserving our decision under Regulation 26(2) of the 2005 Licensing Act (2003) Hearings Regulations and the parties will receive this decision notice by email before close of play on Friday, ie 15<sup>th</sup> May 2020.

Objections to the application have been made by Essex Police under the crime and disorder objective, based upon a lengthy history of immigration crime. The objections are based upon the fact that Mr Z Choudhury has been involved with a number of premises over the years and in every case illegal workers have been found upon those premises. Indeed his licence for these particular premises was revoked upon that basis and though an application has not been made to set aside the condition prohibiting him from management participation it

is clear the Police anticipate he will once more become de facto manager. Accordingly the matter has been referred to us for determination.

We have had sight of a detailed report and have considered the extensive background papers, including:-

Application form.  
Premises plan  
Police representations  
Location map of premises  
Guidance under S182 Licensing Act 2003  
Uttlesford District Council's Licensing Policy 2017-22.

The detailed histories of these premises and of Mr Choudhury's career as a licensee are set out in the Police documentation a copy of which is before us. We have read this carefully and it makes discouraging reading; the Police have kindly prepared a detailed history of the ownership and management of these premises, a copy of which has been served on the applicants, and the current licence was only granted last summer on the clear understanding that Mr Choudhury's connection with the premises was permanently severed. We may only take into account matters that have occurred since the date of grant of that licence but we do pause to note that one of the applicants before us today, Mr F Choudhury, has save for a very brief period in late 2018 been involved with Aldbrook Ltd, the company operating these premises as a director, shareholder or both for a very long time and therefore under company law has had, particularly while holding the role of director, some responsibility for the legality of the company's operations.

In accordance with the Licensing Act 2003, where an application is made for a variation to the premises licence, a description of the proposed variation must accompany the application. This can be read on page 2 part 3 "Variation" appended to the application form (appendix A).

The variation being sought on the application is to amend the condition below: Condition 5 annex 3 of the premises licence states:

*Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business and from the premises themselves*

to –

*Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business, Mr Omar Shorif will be excluded from the premises*

Copies of this application have been served on all of the statutory bodies and this has attracted a representation from Essex Police based on the crime and disorder objective. Details of this representation along with exhibits can be seen in Appendix C, and these include copies of the various decisions of this Committee relating to these premises. We note that the options available to us today are to grant the application as asked, to modify it by inserting alternative conditions, or to reject the application.

In carrying out its statutory functions, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003:-

The prevention of crime and disorder  
Public safety

The prevention of public nuisance  
The protection of children from harm

There is no hierarchy of objectives and all have equal weight/importance.

When determining an application due regard should be given to the Council's licensing policy and the Secretary of State's Guidance issued in accordance of the

Act. The most recent version is dated April 2018 and we are mindful of the contents

thereof. It includes new guidance in respect of immigration issues; it is immigration

crime only that concerns the Police and no other matters have ever been brought to

our attention in respect of these premises. We note the provisions of paragraphs 2.6,

11.26 and 11.27 as set out in the officer's report and record that no complaints or action in respect of such matters have taken place during the currency of the present licence.

The application before us today is for a variation in the terms of a condition, and the Secretary of State's Guidance provides us with the following assistance at paragraphs 10.8 and 10.10:-

10.8 *"The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises"*.

10.10 *"The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions"*.

We observe that the condition that the applicants now wish us to discharge was voluntarily offered by them in June 2019. We also note that if this Committee wishes to impose alternative conditions, the only conditions that can be imposed are those that are appropriate and proportionate to promote the licensing objective relevant to the representations received. Equally, we cannot impose conditions that duplicate the effect of existing legislation.

We now turn to the Council's Policy. The relevant sections state as follows:

3.3 The prevention of crime includes the prevention of immigration crime, and the Licensing Authority will work with Home Office Immigration Enforcement in respect of these matters.

The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events [our emphasis].**

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

Underage drinking

Drunkenness on premises

Public drunkenness

Drugs

Violent behaviour

Anti-social behaviour

**Illegal working**

Control Measures

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:

Effective and responsible management of premises

Training and supervision of staff

Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA (British Beer and Pubs Association) Security in Design published by BBPA and Drugs and Pubs, published by BBPA)

Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs or adoption of industry best practice (e.g. Challenge 25 policy)

Provision of effective CCTV and mirrors in and around premises

Employment of Security Industry Authority licensed door staff

Provision of toughened or plastic drinking vessels

Provision of secure, deposit boxes for confiscated items ('sin bins')

Provision of litterbins and other security measures, such as lighting, outside premises

(j) Membership of local 'Pubwatch' schemes or similar organisations

**Right to work checks on staff and retention of documents**

We have heard from Mr Dadds, an advocate on behalf of the applicants and from Mr William Moody on behalf of Essex Police. We wish Mr Moody to be aware that we understand he only picked up this matter upon approximately an hours' notice, that he has no personal knowledge of these premises and that the

criticisms contained within this decision notice are in no way directed at him personally. He did the best he could in very difficult circumstances, frankly acknowledged the deficiencies in the Police case and we thank him for the assistance he was able to provide.

The case led by the Police was that Mr Z Choudhury had, in effect, never left the premises. Intelligence sources led them to believe he was still acting as manager and the inability of staff to access the CCTV system in the presence of the Police reinforced these concerns. It was their view that nothing had changed at the Queen Victoria and that the application before us today had been made because the applicants did not consider the premises were viable for them without his presence. Unfortunately, the burden of proving their assertions rested upon the Police and they failed to meet that burden. We have been referred to a number of obiter observations of ICC Judge Barber sitting as a judge of the Chancery Division in the case of *Stewart and Others v Watkin [2019] EWHC 1311* and as Mr Moody very fairly accepted, we had to note a failure to either produce S9 statements from officers involved in the case or redacted documents or records relating to other sources of intelligence. Like Judge Barber, we cannot stress too strongly the importance of basing allegations upon documentary or other primary evidence whenever possible. The Police have failed to discharge the evidential burden resting with them..

However, I repeat the provisions of the April 2018 edition of the Home Office Guidance. For the first time, it **specifically** includes immigration offences in the list of matters Licensing Committees are required to take into consideration, and says:-

“There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises for.....

Employing a person who is disqualified from that work by reason of their immigration status in the UK.

Mr Z Choudhury is a serial offender in this regard and the familial relationship between him and the applicants is such that if he is to be readmitted to the premises as a worker then it must be under close supervision and in a subordinate role.

As indicated earlier we have three options available to us today. We can grant the application as asked, grant it subject to conditions other than the one requested or refuse the application. Since the Police have failed to meet the evidential burden upon them we have opted for the second option in the light of a number of concessions made by Mr Dadds today.

The first is that the period during which Mr Z Choudhury is admitted to the premises as a worker will be time limited. Since Mr Dadds has told us that the reason for the application is to enable the business to survive during the current emergency and that Mr Z Choudhury has another job from which he has been temporarily laid off, we will lift the restriction upon him working at the premises for a period of twelve months or the cessation of the operation of the Government's furlough scheme for employees, whichever comes earlier. Currently the expected end date is October 2020 with some provisions for earlier part time return. The prohibition upon Mr Z Choudhury having management

participation in the business remains and the applicants must be very clear that this application is granted on the basis that when the furlough scheme is closed, social distancing is likely to have been ameliorated so the other employees of the business will once more be able to travel to work and his services will no longer be required.

Accordingly this application for a variation in condition 5 of the licence in the terms requested is refused, but the following variation is granted and henceforth clause 5 of the licence will read as follows:-

*“Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business. Mr Omar Shorif will be excluded from the premises but the employment of Mr Ziaul Islam Choudhury in a subordinate role within the business under the personal supervision of the Designated Premises Supervisor will be permitted for a period of twelve months from the date hereof or until the cessation of the Coronavirus Job Retention Scheme whichever is sooner”*

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

**12<sup>th</sup> May 2020 – Cllrs Lavelle (Chair), Day and Lees.**

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at ZOOM on TUESDAY, 14 JULY 2020 at 2.00 pm**

Present: Councillor P Lavelle (Chair)  
Councillors C Day and P Lees

Officers in attendance: S Bartram (Licensing Support Officer), C Gibson (Democratic Services Officer), S Mahoney (Senior Licensing and Compliance Officer), E Smith (Interim Legal Services Manager) and R Way (Licensing and Compliance Manager)

Also present: The applicant in relation to item LIC3

**LIC1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

**LIC2 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 part1 of Schedule 12A of the Act.

**LIC3 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Licensing Support Officer gave a summary of the report. The applicant had applied to the Council for a Private Hire/Hackney Carriage Driver's licence to work for 24 x 7 Ltd. On his application form the applicant had declared four spent convictions. His enhanced Disclosure and Barring Service certificate showed three convictions, all of which were spent under the Rehabilitation of Offenders Act. 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 said that the three spent convictions on the Disclosure and Barring Service certificate had been many years ago when he was a young man.

In response to Members' questions he explained that he had been living in North London at the time and had been badly influenced by older men and he was now ashamed of what he had done at that time. He said that he no longer associated with the wrong type of people. He had since been on courses, moved to Essex and had been working as a tyre/exhaust fitter. He said that if the licence was approved he would work full-time for 24 x 7 Ltd.

The Chair explained that the Panel would retire to consider the case and would notify the applicant of their decision within appropriate timescales.

*The applicant left the meeting at 2.15 and the Committee retired to make its decision.*

## DECISION NOTICE –

The application before the Panel today is for the grant of a new joint hackney carriage/PHV driver's licence. We are hearing this case remotely. If his application is successful he has an offer of employment from 24 x 7 Ltd on the school contract side of their business.

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 application form and the DBS documentation supporting the application. We have also taken into account the Council's policy and have heard from the Case Officer and from the applicant.

Question 12 of the 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 declared the following spent convictions and they are here set out in tabular form:

<b>Offence</b>	<b>Court</b>	<b>Date</b>	<b>Detail of any court sanction imposed including any fine</b>	<b>No of Penalty Points (Motoring offences)</b>
Possessing Article	Thame(s) Magistrates	03/07/06	Fine - £250	
Common Ass(a)ult	Highbury Magistrates	17/10/06	Unpaid work (80 hours) Fine £100	
Theft	Blackfriars Crown	11/03/2007	Think First Curfew 3 months Supervision 12 months	
CD10	Hertford	2011	Fine £300	3 Points

The application process requires applicants to produce an enhanced Disclosure and Barring Service certificate and the applicant's certificate dated 07 May 2020 showed three convictions as follows:

Conviction 1 – Date of Conviction - 03 July 2006 – Offence - Possessing article with blade or point in public place on 26 April 2006 Criminal Justice

Act 1988 S.139(1) – Court – Thames Magistrates - Disposal – Fine  
£200.00 Forfeiture/confiscation Costs £50.00

Conviction 2 – Date of Conviction – 17 October 2006 – Offence –  
Common Assault on 05 July 2006 Criminal Justice Act 1988 S.39 – Court:  
Highbury Corner Magistrates – Disposal – Community Order, unpaid work  
requirement 80 hrs within 12 months – Costs - £50.00 - Compensation  
£50.00

Conviction 3 – Date of Conviction – 22 May 2008 – Offence – Theft of  
Vehicle on 11 March 2007 Theft Act 1968 S.1 – Court: Blackfriars Crown -  
Disposal – Suspended Imprisonment 9 mths wholly suspended 2 years –  
T20070667-1 Supervision requirement 12 mths - Programme requirement  
for 22 sessions – Think First - Curfew requirement 3 months.

We understand that there was also a discrepancy regarding the spelling of his name, but this is in the process of being resolved administratively and there is no doubt in our minds that the person whose application we must consider today is the person to whom this certificate relates and the applicant has confirmed this.

The convictions are all spent under the Rehabilitation of Offenders Act.

However, the applicant does not meet the requirements of the Council's Suitability Policy on two points.

Firstly point 2.5 states:

*'Generally when 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.'*

Secondly, Point 2.10 states:

*'As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.'*

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. However, we have heard from the applicant, and he tells us that at the time of the offences he was living in London and unfortunately mixing with the wrong people. He was 16/17 years of age at the time and hence was upon the cusp between the juvenile and adult justice systems: he was one of the youngest of the group and was a follower rather than a leader. Since then, he has moved away, been on various courses and has held down a job and started a family. He is no longer even in touch with his former friends.

He expressed deep remorse for what had happened and told us that he wanted to give something back to the community. He has not been in trouble since and we believe him to be a reformed character.

Accordingly, we are prepared to grant this application and the applicant will receive his paperwork from the Licensing Department in due course.

The meeting ended at 2.40pm.

# Agenda Item 3

**Committee:** Licensing and Environmental Health Committee

**Title:** Gov Statutory Taxi and PHV Standards Guidance

**Report Author:** Russell Way, Licensing and Compliance Manager  
rway@uttlesford.gov.uk

**Date:**  
Tuesday, 29  
September 2020

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## Summary

1. Report to ensure the Licensing Committee are fully aware of the Government's new Statutory Taxi and Private Hire Standards.

## Recommendation

2. The recommendation is that the Licensing Committee adopt the Standards in full

Please note Section 1.3 thereof:-

**The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.**

## Financial Implications

3. Implementation will have a financial impact. As a result fees and charges will need to be amended accordingly to ensure they are accurate, reflect the service and cost neutral to the taxi trade.

## Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
  - Copy of the Statutory Taxi and Private Hire standards

## Impact

- 5.

Communication/Consultation	There is no need for consultation on implementing this document in Uttlesford as it is a statutory requirement . However the Licensing Committee will need to justify their rationale if they do not implement it.
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Community Safety	The document will enhance the licensing authorities standards (and therefore the risk associated with drivers) for not only our community but also those where our drivers operate around the UK
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	This is a proportionate requirement to ensure Licensing Authorities including Uttlesford carry out their obligations in the performance of this function.
Sustainability	N/A
Ward-specific impacts	N/A
Workforce/Workplace	N/A

## Situation

Uttlesford is among the top 10 Licensing Authorities by numbers in the UK according to the Government Taxi Statistics published in 2019. The numbers of drivers and vehicles licensed are comparable to those of major cities but they are working across the UK. They are not within our communities but nevertheless we manage the risk posed by them for those communities.

<https://www.gov.uk/government/statistical-data-sets/taxi01-taxi-private-hire-vehilces-and-their-drivers>

- 12<sup>th</sup> highest number of drivers in the UK
- 7<sup>th</sup> Highest number of licensed vehicles
- 10<sup>th</sup> highest number of operators
- We have 28 PHV per 1000 people – most are 1-2 PHV per 1000
- 

The Guidance has raised 106 action points for Uttlesford. The standards prescribe a risk based approach and the Licensing Team-are working through the document to ensure Uttlesford meets the Standards-

- 1 Mandatory DBS update service ( better than 6 monthly checks)
- 2 Vehicle signs – safeguarding
- 3 Embedding NR3 info sharing policy
- 4 Safeguarding/Police/Council/Operator/Council liaison to develop relationships around the UK
- 5 Operators review of conditions and policy and enforcement plan

**Risk Analysis**

6.

Risk	Likelihood	Impact	Mitigating actions
3 = Significant risk or impact – action required	2 = Some risk or impact – action may be necessary.	3 = Significant risk or impact – action required	3 = Significant risk or impact – action required

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.



Department  
for Transport

# Statutory Taxi & Private Hire Vehicle Standards

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# 1. Introduction

- 1.1 There is evidence to support the view that taxis and private hire vehicles are a high-risk environment. In terms of risks to passengers, this can be seen in abuse and exploitation of children and vulnerable adults facilitated and in some cases perpetrated by the trade and the number of sexual crimes reported which involve taxi and private hire vehicle drivers. Links between the trade and child sexual abuse and exploitation have been established in many areas and other investigations continue. Data on reported sexual assaults by taxi and private hire vehicle drivers evidence the risk to passengers; data from [Greater Manchester](#) and [Merseyside](#) suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83 percent in the [Crime Survey for England and Wales](#).
- 1.2 The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday; and the term “vulnerable individual” has the same meaning as the definition of a ‘vulnerable adult’ for the purpose of section 42 of the [Care Act 2014](#), which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):
- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
  - (b) is experiencing, or is at risk of, abuse or neglect, and
  - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
- 1.3 Whilst the focus of the Statutory Taxi and Private Hire Vehicle Standards is on protecting children and vulnerable adults, all passengers will benefit from the recommendations contained in it. There is consensus that common core minimum standards are required to regulate better the taxi and private hire vehicle sector, and the recommendations in this document are the result of detailed discussion with the trade, regulators and safety campaign groups. **The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.**
- 1.4 It should be noted that as policing and criminal justice is not a devolved matter, the Statutory Taxi and Private Hire Vehicle Standards issued under the Policing and Crime Act 2017 will continue to have effect in Wales although responsibility for taxi and private hire vehicle policy was devolved to the Welsh Assembly in April 2018. Should the Welsh Government introduce legislation to regulate on these issues, the standards in this document would, cease to apply.

- 1.5 All local authorities and district councils that provide children's and other types of services, including licensing authorities, have a statutory duty to make arrangements to ensure that their functions and any services that they contract out to others are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the [Working Together to Safeguard Children](#) statutory guidance.
- 1.6 The Statutory Taxi and Private Hire Vehicle Standards reflect the significant changes in the industry and lessons learned from experiences in local areas since the 2010 version of the Department's Best Practice Guidance. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 1.7 The standards in this document replace relevant sections of the Best Practice Guidance issued by the Department in 2010, where there is a conflict between the Statutory Taxi and Private Hire Vehicle Standards and the Best Practice Guidance the Department issue on taxi and private hire vehicle licensing, the standards in this document take precedence.

## Terminology

Taxis are referred to in legislation, regulation and common language as 'hackney carriages', 'black cabs' and 'cabs'. The term '**taxi**' is used throughout this document and refers to all such vehicles. Taxis can be hired immediately by hailing on the street or at a rank.

Private hire vehicles include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All private hire vehicle journeys must be pre-booked via a licensed private hire vehicle operator and are subject to a 'triple licensing lock' i.e. the operator fulfilling the booking must use vehicles and drivers licensed by the same authority as that which granted its licence. The term 'private hire vehicle' is used throughout this document to refer to all such vehicles.

## 2. Consideration of the Statutory Taxi and Private Hire Vehicle Standards

- 2.1 The past failings of licensing regimes must never be repeated. The Department has carefully considered the measures contained in the Statutory Taxi and Private Hire Vehicle Standards and recommend that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of setting standards is to protect children and vulnerable adults, and by extension the wider public, when using taxis and private hire vehicles.
- 2.2 The Government set out in the [Modern Crime Prevention Strategy](#) the evidence that where Government, law enforcement, businesses and the public work together on prevention, this can deliver significant and sustained cuts in certain crimes. That is good news for victims and communities and it makes clear economic sense too. Educating the public on the risks of using unlicensed drivers and vehicles, how to identify the licensed trade and appropriate measure to take when using these services will protect help all passengers, more information is annexed to this document (Annex - Staying safe: guidance for passengers).
- 2.3 The Strategy committed to protect children and young people from the risk of child sexual abuse and exploitation (CSAE), by working with local authorities to introduce rigorous taxi and private hire vehicle licensing regimes. Both the [Jay](#) and [Casey](#) reports on CSAE highlighted examples of taxi/private hire vehicle drivers being directly linked to children that were abused, including instances when children were picked up from schools, children's homes or from family homes and abused, or sexually exploited.
- 2.4 The Casey Report made clear that weak and ineffective arrangements for taxi and private hire vehicle licensing had left the children and public at risk. The Department for Transport has worked with the Home Office, Local Government Association (LGA), personal safety charities, trade unions and trade bodies,

holding workshops, forums, and sharing evidence and good practice with local authorities to assist in the setting of the standards.

- 2.5 This document is published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).
- 2.6 The document sets out a framework of policies that, under section 177(4), licensing authorities “**must have regard**” to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.
- 2.7 “Having regard” to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. **Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated.** It is not a question of box ticking; the standards must be considered rigorously and with an open mind.
- 2.8 Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the Statutory Taxi and Private Hire Vehicle Standards might be drawn upon in any legal challenge to an authority’s practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority’s defence. **In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in Statutory Taxi and Private Hire Vehicle Standards, and the policies and delivery plans that stem from these.** The Department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).
- 2.9 The Statutory Taxi and Private Hire Vehicle Standards does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

### 3. Administering the Licensing Regime

#### Licensing policies

- 3.1 The Department recommends all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards.
- 3.2 When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated. This was highlighted in the [report by Dame Louise Casey CB](#) of February 2015 on safeguarding failings.

*“It will be evident from this report that in many cases the activities of perpetrators take place in spheres which are regulated by the Council – taxis have been the focus of particular concern. Persistent and rigorous enforcement of the regulatory functions available to the council, including the placing of conditions on private hire taxi operator licences where appropriate, would send a strong signal that the trade is being monitored and would curtail the activities of opportunistic perpetrators whereby taxi drivers have solicited children to provide sex in return for cigarettes, alcohol or a fare free ride.”*

- 3.3 The long-term devastation caused by CSAE was summarised in the same report:

*“Victims suffer from suicidal feelings and often self-harm. Many become pregnant. Some have to manage the emotional consequences of miscarriages and abortions while others have children that they are unable to parent appropriately. The abuse and violence continues to affect victims into adulthood. Many enter violent and abusive relationships. Many suffer poor mental health and addiction.”*

- 3.4 Rotherham Metropolitan Borough Council ('Rotherham Council') provides an example of how the systematic review of policies and procedures and the implementation of a plan to drive improvements in practice can result in a well-functioning taxi and private hire vehicle sector that is rebuilding local confidence in the industry. The history of past failings here and elsewhere is well known, but it is the transparency and resolution that Rotherham Council has demonstrated and the high standards they now require that are rebuilding public confidence.
- 3.5 One of the key lessons learned is that it is vital to review policies and reflect changes in the industry both locally and nationally. **Licensing authorities should review their licensing policies every five years, but should also consider interim reviews should there be significant issues arising in their area, and their performance annually.**

## Duration of licences

- 3.6 A previous argument against issuing licences for more than a year was that a criminal offence might be committed, and not notified, during this period; this can of course also be the case during the duration of a shorter licence. This risk can be mitigated for drivers by authorities to undertaking regular interim checks. To help authorities monitor licensees' suitability, licensing authorities should engage with their police force to ensure that when the police believe a licensee presents a risk to the travelling public they use their Common Law Police Disclosure powers (see paragraphs 4.9 - 4.11) to advise them.
- 3.7 The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and private hire vehicle drivers and five years for private hire vehicle operators. Any shorter duration licence should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case, if a licensee has requested one or where required (e.g. when the licence holder's leave to remain in the UK is time-limited) or when the licence is only required to meet a short-term demand; they should not be issued on a 'probationary' basis.

## Whistleblowing

- 3.8 It is in the application of licensing authority's policies (and the training and raising of awareness among those applying them) that protection will be provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. **Licensing authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.**

A report into the licensing of drivers by South Ribble Borough Council highlights the implications of not applying the agreed policies. In early August 2015, concerns were raised regarding decisions to renew the licences of drivers where there were potential incidents of child sexual exploitation. An internal review concluded that there had been failings in local investigatory procedures which might have affected the ability of the General Licensing Committee to make proper decisions, and information sharing with the police and data recording was not satisfactory.

- 3.9 The external investigation in South Ribble concluded “that there had been a lack of awareness and priority given to safeguarding and the safety of taxi [and private hire vehicle] passengers in the manner in which licensing issues were addressed”. We are pleased to note that the [report](#) concludes, “The Council have been active at every stage in responding to issues and concerns identified. It has taken steps to address operational issues in the licensing function and has engaged fully with other agencies in so doing. In the light of the above, it is not necessary to make any further recommendations.”
- 3.10 It is hoped that all licensing authorities will have learnt from these mistakes but to prevent a repeat, **local authorities should ensure they have an effective ‘whistleblowing’ policy and that all staff are aware of it.** If a worker is aware of, and has access to, effective internal procedures for raising concerns then ‘whistleblowing’ is unlikely to be needed.
- 3.11 The Public Interest Disclosure Act 1998 (PIDA), commonly referred to as whistleblowing legislation, provides protection for those that have a reasonable belief of serious wrongdoing, including failure to comply with professional standards, council policies or codes of practice/conduct. The PIDA is part of employment law. In the normal course of events, if a worker reveals information that his employer does not want revealed it may be a disciplinary offence. If someone leaked their employer’s confidential information to the press, they might expect to be dismissed for that. The PIDA enables workers who ‘blow the whistle’ about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected. More information is available online for [employees](#) and [employers](#):

### Consultation at the local level

- 3.12 Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades’ customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (e.g. the Campaign for Better Transport and other transport providers), women’s groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy’s activities.
- 3.13 Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and private hire vehicle sector in neighbouring areas; and **licensing authorities should engage with these areas to identify any concerns and issues that might arise from a proposed change.** Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings; this should be adopted by all authorities.

### Changing licensing policy and requirements

- 3.14 **Any changes in licensing requirements should be followed by a review of the licences already issued.** If the need to change licensing requirements has been identified, this same need is applicable to those already in possession of a licence. That is not however to suggest that licences should be automatically revoked overnight, for example if a vehicle specification is changed it is proportionate to allow those that would not meet the criteria to have the opportunity to adapt or change their vehicle. The same pragmatic approach should be taken to driver licence changes - if requirements are changed to include a training course or qualification, a reasonable time should be allowed for this to be undertaken or gained. The implementation schedule of any changes that affect current licence holders must be transparent and communicated promptly and clearly.
- 3.15 Where a more subjective change has been introduced, for example an amended policy on previous convictions, a licensing authority must consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from a policy, licensing authorities should consider doing so. Licensing authorities should record the reasons for any deviation from the policies in place.

## 4. Gathering and Sharing Information

- 4.1 Licensing authorities must consider as full a range of information available to them when making a decision whether to grant a licence and to meet their ongoing obligation to ensure a licensee remains suitable to hold a licence.

### The Disclosure and Barring Service

- 4.2 The Disclosure and Barring Service (DBS) provides access to criminal record information through its disclosure service for England and Wales. The DBS also maintains the lists of individuals barred from working in regulated activity with children or adults. The DBS makes independent barring decisions about people who have harmed, or where they are considered to pose a risk of harm to a child or vulnerable person within the workplace. The DBS enables organisations in the public, private and voluntary sectors to make safer employment decisions by identifying candidates who may be unsuitable for certain work, especially that which involves vulnerable groups including children.
- 4.3 Enhanced certificates with a check of the barred lists include details of spent and unspent convictions recorded on the Police National Computer (PNC), any additional information which a chief officer of police believes to be relevant and ought to be disclosed, as well as indicating whether the individual is barred from working in regulated activity with children or adults. Spent convictions and cautions are disclosed on standard and enhanced certificates according to rules set out in legislation. Convictions which resulted in a custodial sentence, and convictions or cautions for a specified serious offence such as those involving child sexual abuse will always be disclosed on a standard or enhanced certificate. Full details of the disclosure rules, and those offences which will always be disclosed, are available from the [DBS](#). As well as convictions and cautions, an enhanced certificate may include additional information which a chief police officer reasonably believes is relevant and ought to be disclosed. Chief police officers must have regard to the [statutory guidance](#) issued by the Home Office when considering disclosure. A summary of the information provided at each level of DBS checks is annexed to this document (Annex – Disclosure and Barring Service information).
- 4.4 It should be noted that licensing authorities must not circumvent the DBS process and seek to obtain details of previous criminal convictions and other information that may not otherwise be disclosed on a DBS certificate. Whilst data protection legislation (not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)) gives individuals (or data subjects) a 'right of access' to the personal data that an organisation holds about them, it is a criminal offence to require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This could potentially lead to the authority receiving information to which it is not entitled. The appropriate way of accessing an individual's criminal records is through an enhanced DBS and barred lists check.

## The Disclosure and Barring Service Update Service

- 4.5 Subscription to the DBS Update Service allows those with standard and enhanced certificates to keep these up to date online and, with the individual's consent, allows nominees to check the status of a certificate online at any time. Subscription to the service removes the need for new certificates to be requested, reduces the administrative burden and mitigates potential delays in relicensing.
- 4.6 The DBS will search regularly to see if any relevant new information has been received since the certificate was issued. The frequency varies depending on the type of information; for criminal conviction and barring information, the DBS will search for updates on a weekly basis. For non-conviction information, the DBS will search for updates every nine months.
- 4.7 Licensing authorities are able to request large numbers of status checks on a daily basis. The DBS has developed a Multiple Status Check Facility (MSCF) that can be accessed via a web service. The MSCF enables organisations to make an almost unlimited number of Status Checks simultaneously. Further information on the MSCF is available from the [DBS](#).
- 4.8 Should the MSCF advise that new information is available the DBS certificate should no longer be relied upon and a new DBS certificate requested.

### Common Law Police Disclosure

- 4.9 The DBS is not the only source of information that should be considered as part of a fit and proper assessment for the licensing of taxi and private hire vehicle drivers. Common Law Police Disclosure ensures that where there is a public protection risk, the police will pass information to the employer or regulatory body to allow them to act swiftly to mitigate any danger.
- 4.10 Common Law Police Disclosure replaced the Notifiable Occupations Scheme (NOS) in March 2015 and focuses on providing timely and relevant information which might indicate a public protection risk. Information is passed on at arrest or charge, rather than on conviction which may be some time after, allowing any measures to mitigate risk to be put in place immediately.
- 4.11 This procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies. **Licensing authorities should maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.**

### Licensee self-reporting

- 4.12 Licence holders should be required to notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of the offences within this scope should result in a review by the issuing authority as to whether the licence holder is fit to continue to do so. This must not

however be seen as a direction that a licence should be withdrawn; it is for the licensing authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities. Should an authority place an obligation on licensees to notify under these circumstances, authorities should also ensure appropriate procedures are in place to enable them to act in a suitable timeframe if and when needed.

- 4.13 Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

### Referrals to the Disclosure and Barring Service and the Police

- 4.14 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS. **A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS.** The power for the licensing authority to make a referral in this context arises from the undertaking of a safeguarding role. Further guidance has been provided by the [DBS](#).

- 4.15 The Department recommends that licensing authorities should make a referral to the DBS when it is thought that:

- an individual has harmed or poses a risk of harm to a child or vulnerable adult;
- an individual has satisfied the '[harm test](#)'; or
- received a caution or conviction for a relevant offence and;
- the person they are referring is, has or might in future be working in regulated activity;

if the above conditions are satisfied, the DBS may consider it appropriate for the person to be added to a barred list.

- 4.16 These referrals may result in the person being added to a barred list and enable other licensing authorities to consider this should further applications to other authorities be made. Further information on referrals to DBS is [available](#).

## Working with the Police

- 4.17 The police are an invaluable source of intelligence when assessing whether a licensing applicant is a 'fit and proper' person. It is vital that licensing authorities have a partnership with the police service to ensure that appropriate information is shared as quickly as possible. As part of building an effective working relationship between the licensing authority and the police, **action taken by the licensing authority as a result of information received should be fed-back to the police.** Increasing the awareness among police forces of the value licensing authorities place on the information received, particularly on non-conviction intelligence, will assist furthering these relationships and reinforce the benefits of greater sharing of information.
- 4.18 This relationship can be mutually beneficial, assisting the police to prevent crime. The police can gain valuable intelligence from drivers and operators, for example, the identification of establishments that are selling alcohol to minors or drunks, or the frequent transportation of substance abusers to premises.
- 4.19 To aid further the quality of the information available to all parties that have a safeguarding duty, a revocation or refusal on public safety grounds should also be advised to the police.

## Sharing licensing information with other licensing authorities

- 4.20 As has been stated elsewhere in this document, obtaining the fullest information minimises the doubt as to whether an applicant or licensee is 'fit and proper'. An obvious source of relevant information is any previous licensing history. **Applicants and licensees should be required to disclose if they hold or have previously held a licence with another authority. An applicant should also be required to disclose if they have had an application for a licence refused, or a licence revoked or suspended by any other licensing authority.** Licensing authorities should explicitly advise on their application forms that making a false statement or omitting to provide the information requested may be a criminal offence.
- 4.21 The LGA's Councillors' [Handbook on taxi and private hire vehicle licensing](#) advises that those responsible for licensing should "*communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared and that there is a consistency and robustness in decision-making. By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities.*". While this approach may aid consistency and robustness in decision-making within regions, it has obvious inherent limitations as it is unlikely such protocols could be established between all licensing authorities. The LGA commissioned the National Anti-Fraud Network to develop a national register of taxi and private hire vehicle driver licence refusals and revocations (the register is known as 'NR3'). **Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.**

- 4.22 For these processes to be beneficial, all licensing authorities must keep a complete and accurate record as to the reasons for refusal, suspension or revocation of a licence in order that this might be shared if requested and appropriate to do so.
- 4.23 Data protection legislation provides exemption from the rights of data subjects for the processing of personal data in connection with regulatory activities. This includes taxi and private hire vehicle licensing. The exemption applies only to information processed for the core regulatory activities of appropriate organisations; it may not be used in a blanket manner. The exemption applies only to the extent that the application of the rights of data subjects to the information in question would be likely to prejudice the proper discharge of the regulatory functions. The Information Commissioner's Office has published [guidance](#) to assist organisations to fully understand their obligations and suggest good practice.
- 4.24 If notification under paragraph 4.20 or 4.21 of a refused or revoked licence is disclosed, the relevant licensing authority should be contacted to establish when the licence was refused, suspended or revoked and the reasons why. In those circumstances, the relevant licensing authority must consider whether it should disclose any information in relation to the previous decision, consistent with its obligations under data protection legislation. If information is disclosed, it can then be taken into account in determining the applicant's fitness to be licensed. The relevance of the reason for refusing/revoking a licence must be considered. For example, if any individual was refused a licence for failing a local knowledge test, it does not have any safeguarding implications. Conversely, a revocation or refusal connected to indecency would. Licensing authorities should not simply replicate a previous decision, authorities must consider each application on its own merits and with regard to its own policies.
- 4.25 Should a licensing authority receive information that a licence holder did not disclose the information referred to in paragraph 4.20, for example by checking the NR3 register, the authority should consider whether the non-disclosure represents dishonesty and should review whether the licence holder remains 'fit and proper'.

### **Multi-agency Safeguarding Hub (MASH)**

- 4.26 Multi-Agency Safeguarding Hubs are a way to improve the safeguarding response for children and vulnerable adults through better information sharing and high quality and timely safeguarding responses. MASHs (or similar models) should operate on three common principles: information sharing, joint decision making and coordinated intervention.
- 4.27 The Home Office report on [Multi Agency Working and Information Sharing](#) recommended that effective multi-agency working still needs to become more widespread. The Children's Commissioner's 2013 [Inquiry into Child Sexual Exploitation in Gangs and Groups](#) found that both police and local authorities still identified the inability to share information as a key barrier to safeguarding children from sexual abuse and exploitation.

4.28 All licensing authorities should operate or establish a means to facilitate the objectives of a MASH (i.e. the sharing of necessary and relevant information between stakeholders). As has been emphasised throughout this document, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and private hire vehicles is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.

### Complaints against licensees

4.29 Complaints about drivers and operators provide a source of intelligence when considering the renewal of a licence or to identify problems during the period of the licence. Patterns of behaviour such as complaints against drivers, even when they do not result in further action in response to an individual complaint, may be indicative of characteristics that raise doubts over the suitability to hold a licence. **All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees.** Such a system will help authorities to build a fuller picture of the potential risks an individual may pose and may tip the 'balance of probabilities' assessment that licensing authorities must take.

4.30 Licensees with a high number of complaints made against them should be contacted by the licensing authority and concerns raised with the driver and operator (if appropriate). Further action in terms of the licence holder must be determined by the licensing authority, which could include no further action, the offer of training, a formal review of the licence, or formal enforcement action.

4.31 To ensure that passengers know who to complain to, licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that should be available on their website. Ways to make complaint to the authority should be displayed in all licensed vehicles. This is likely to result in additional work for the licensing authority but has the advantage of ensuring consistency in the handling of complaints. Currently, it is more likely that a complaint against a taxi driver would be made directly to the licensing authority whereas a complaint against a private hire vehicle driver is more likely to be made to the operator. An effective partnership in which operators can share concerns regarding drivers is also encouraged.

4.32 Importantly, this approach will assist in the directing of complaints and information regarding the behaviour of drivers who may be carrying a passenger outside of the area in which the driver is licensed to the authority that issued the licence. In order for this to be effective licensing authorities must ensure that drivers are aware of a requirement to display information on how to complain and take appropriate sanctions against those that do not comply with this requirement.

4.33 In terms of investigating complaints CCTV footage of an incident can provide an invaluable insight, providing an 'independent witness' to an event. This can assist in the decision whether to suspend or revoke a licence. The potential benefits of mandating CCTV in vehicles is discussed in paragraphs 7.7 - 7.12.

### Overseas convictions

- 4.34 The DBS cannot access criminal records held overseas, only foreign convictions that are held on the Police National Computer may, subject to the disclosure rules, be disclosed. Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas; the same applies when an applicant has previously spent an extended period (three or more continuous months) outside the UK. It should however be noted that some countries will not provide an 'Certificate of Good Character' unless the individual has been resident for six months or more
- 4.35 Licensing authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process (. It is the character of the applicant as an adult that is of particular interest, therefore an extended period outside the UK before the age of 18 may be less relevant. As with all licensing decisions, each case must be considered on its own merits. For information on applying for overseas criminal record information or 'Certificates of Good Character' please see the Home Office [guidance](#).
- 4.36 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in the annex to this document (Annex – Assessment of previous convictions), licensing authorities should advise the applicant to seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

## 5. Decision Making

### Administration of the licensing framework

- 5.1 A policy is only effective if it is administered properly. The taxi and private hire vehicle licensing functions of local councils are non-executive functions i.e. they are functions of the council rather than the executive (such as the Cabinet). The functions include the determination of licence applications, reviews and renewals, along with the attachment of conditions when considered appropriate. The function may be delegated to a committee, a sub-committee or an officer – which should be set out within a clear scheme of delegation. In London the taxi and private hire vehicle licensing function is undertaken by Transport for London.
- 5.2 Licensing authorities should ensure that all individuals that determine whether a licence is issued or refused are adequately resourced to allow them to discharge the function effectively and correctly.

### Training decision makers

- 5.3 **All individuals that determine whether a licence is issued should be required to undertake sufficient training.** As a minimum, training for a member of a licensing committee should include: licensing procedures, natural justice, understanding the risks of CSAE, disability and equality awareness and the making of difficult and potentially controversial decisions. Training should not simply relate to procedures, but should include the use of case study material to provide context and real scenarios. All training should be formally recorded by the licensing authority and require a signature from the person that has received the training. Training is available from a number of organisations including the Institute of Licensing and Lawyers in Local Government; the LGA may also be able to assist in the development of training packages.
- 5.4 Public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:
- policies should be used as internal guidance, and should be supported by a member/officer code of conduct.
  - any implications of the Human Rights Act should be considered.
  - the rules of natural justice should be observed.
  - decisions must be reasonable and proportionate.
  - where a hearing is required it should be fairly conducted and allow for appropriate consideration of all relevant factors.
  - decision makers must avoid bias (or even the appearance of bias) and predetermination.
  - data protection legislation.

5.5 When a decision maker has a prejudicial interest in a case, whether it be financial or a personal relationship with those involved they should declare their interest at the earliest opportunity; this must be prior to any discussions or votes and, once declared, they must leave the room for the duration of the discussion or vote.

### The regulatory structure

5.6 It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board. This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation.

5.7 It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the functions in accordance with the general principles referred to in 5.4. In particular, the Committee/Board model allows for:

- Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them. Oversight and scrutiny can be provided in relation to the licensing service generally, which can provide independent and impartial oversight of the way that the functions are being discharged within the authority.
- Clear separation between investigator and the decision maker – this demonstrates independence, and ensures that senior officers can attempt to resolve disputes in relation to service actions without the perception that this involvement will affect their judgement in relation to decisions made at a later date.

5.8 Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.

5.9 Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.

5.10 Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close

connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.

- 5.11 Whether the structure proposed is introduced or an alternative model is more appropriate in local circumstances, the objective should remain the same - to separate the investigation of licensing concerns and the management of the licence process. Regardless of which approach is adopted, **all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence.** It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

### Fit and proper test

- 5.12 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

**Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?**

- 5.13 If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.
- 5.14 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

### Criminal convictions and rehabilitation

- 5.15 In considering an individual's criminal record, licensing authorities must consider each case on its merits, but they should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being licenced regardless of the period elapsed in all but truly exceptional circumstances. In the case of lesser offences, a policy should consider the number of years the authority will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.

- 5.16 Annexed to this document are the Department's recommendations on the assessment of previous convictions (Annex – Assessment of previous convictions). This draws on the work of the Institute of Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and private hire vehicle licensees.
- 5.17 These periods should be taken as a starting point in considering whether a licence should be granted or renewed in all cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain a licence. Authorities are however reminded that applicants are entitled to a fair and impartial consideration of their application.

## 6. Driver Licensing

### Criminality checks for drivers

- 6.1 Licensing authorities are entitled to request an enhanced criminal record certificate with check of the barred lists from the DBS for all driver licence holders or applicants. The DfT's 2019 [survey of taxi and private hire vehicle licensing authorities](#) shows that all licensing authorities in England and Wales have a requirement that an enhanced DBS check is undertaken at first application or renewal.
- 6.2 All individuals applying for or renewing a taxi or private hire vehicle drivers licence licensing authorities should carry out a check of the children and adult Barred Lists in addition to being subject to an enhanced DBS check (in section x61 of the DBS application 'Other Workforce' should be entered in line 1 and 'Taxi Licensing' should be entered at line 2). All licensed drivers should also be required to evidence continuous registration with the DBS update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe up to the Update Service should still be subject to a check every six months.
- 6.3 Driving a taxi or private hire vehicle is not, in itself, a regulated activity for the purposes of the barred list. This means that an individual subject to barring would not be legally prevented from being a taxi or private hire vehicle driver but the licensing authority should take an individual's barred status into account alongside other information available. **In the interests of public safety, licensing authorities should not, as part of their policies, issue a licence to any individual that appears on either barred list.** Should a licensing authority consider there to be exceptional circumstances which means that, based on the balance of probabilities they consider an individual named on a barred list to be 'fit and proper', the reasons for reaching this conclusion should be recorded.
- 6.4 Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the [Safeguarding Vulnerable Groups Act 2006](#). It is an offence to knowingly allow a barred individual to work in regulated activity. The [guidance on home-to-school travel and transport](#) issued by the Department for Education should be considered alongside this document. Please see [guidance](#) on driver DBS eligibility and how to apply.

### Safeguarding awareness

- 6.5 Licensing authorities should consider the role that those in the taxi and private hire vehicle industry can play in spotting and reporting the abuse, exploitation or neglect of children and vulnerable adults. As with any group of people, it is overwhelmingly the case that those within the industry can be an asset in the detection and prevention of abuse or neglect of children and vulnerable adults. However, this is only the case if they are aware of and alert to the signs of potential abuse and know where to turn to if they suspect that a child or vulnerable adult is at risk of harm or is in immediate danger.

6.6 All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training. This is often produced in conjunction with the police and other agencies. These programmes have been developed to help drivers and operators:

- provide a safe and suitable service to vulnerable passengers of all ages;
- recognise what makes a person vulnerable; and
- understand how to respond, including how to report safeguarding concerns and where to get advice.

6.7 Since 2015, the Department for Education (DfE) has run a nationwide campaign – *‘Together, we can tackle child abuse’* which aims to increase public understanding of how to recognise the signs to spot and encourage them to report child abuse and neglect. The DfE continues to promote and raise awareness of the campaign materials through its [online toolkit](#), for local authorities, charities and organisations for use on their social media channels.

### ‘County lines’ exploitation

6.8 County lines is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs (primarily crack cocaine and heroin) into one or more importing areas [within the UK], using dedicated mobile phone lines or other form of “deal line”.

6.9 Exploitation is an integral part of the county lines offending model with children and vulnerable adults exploited to transport (and store) drugs and money between locations. Children aged between 15-17 make up the majority of the vulnerable people involved in county lines, but they may also be much younger. We know that both girls and boys are groomed and exploited and offenders will often use coercion, intimidation, violence (including sexual violence) and weapons to ensure compliance of victims. Children exploited by county lines gangs may have vulnerabilities besides their age, such as broader mental health issues, disrupted or chaotic homes, substance misuse issues, being excluded from school or frequently going missing.

6.10 The National Crime Agency’s 2018 county lines threat assessment set out that the national road network is key to the transportation of county lines victims, drugs and cash; with hire vehicles being one of the methods used for transportation between locations.

6.11 Safeguarding awareness training should include the ways in which drivers can help to identify county lines exploitation. Firstly, they should be aware of the following warning signs:

- Children and young people travelling in taxis or private hire vehicles alone;

- travelling at unusual hours (during school time, early in the morning or late at night);
- travelling long distances;
- unfamiliar with the local area or do not have a local accent;
- paying for journeys in cash or prepaid.

6.12 The Home Office is working with partners to raise awareness of county lines and has provided [material](#) to help taxi and private vehicle hire staff to identify victims and report concerns to protect those exploited through this criminal activity.

6.13 Drivers (or any person) should be aware of what to do if they believe a child or vulnerable person is at risk of harm. If the risk is immediate they should contact the police otherwise they should:

- use the local safeguarding process, the first step of which is usually to contact the safeguarding lead within the local authority;
- call Crime Stoppers on 0800 555 111.

### Language proficiency

6.14 A lack of language proficiency could impact on a driver's ability to understand written documents, such as policies and guidance, relating to the protection of children and vulnerable adults and applying this to identify and act on signs of exploitation. Oral proficiency will be of relevance in the identification of potential exploitation through communicating with passengers and their interaction with others.

6.15 A licensing authority's test of a driver's proficiency should cover both oral and written English language skills to achieve the objectives stated above.

## 7. Vehicle Licensing

7.1 As with driver licensing, the objective of vehicle licensing is to protect the public, who trust that the vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those granted a vehicle licence also pose no threat to the public and have no links to serious criminal activity. Although vehicle proprietors may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the licensing regime.

### Criminality checks for vehicle proprietors

7.2 Enhanced DBS and barred list checks are not available for vehicle licensing. **Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the ‘fit and proper’ threshold.

7.3 However, it is important that authorities acknowledge that in many cases individuals that license a vehicle may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking to licence a vehicle to provide a basic DBS check as part of the application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately.

7.4 A refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a vehicle or private hire vehicle operator licence; these decisions must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant’s full consent has been given.

7.5 Private hire vehicle operator and vehicle licences may be applied for by a company or partnership; licensing authorities should apply the ‘fit and proper’ test to each of the directors or partners in that company or partnership. For this to be effective private hire vehicle operators and those to whom a vehicle licence should be required to advise the licensing authority of any change in directors or partners.

7.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas so other checks must be considered where and applicant has lived or worked overseas (see paragraph 4.34 - 4.36).

### **In-vehicle visual and audio recording – CCTV**

7.7 Government has acknowledged the potential risk to public safety when passengers travel in taxis and private hire vehicles. It is unfortunately the case that no matter how complete the information available to licensing authorities is when assessing whether to issue any taxi or private hire vehicle licence, nor how robust the policies in place are and the rigor with which they are applied, it will never completely remove the possibility of harm to passengers by drivers.

7.8 The Department's view is that CCTV can provide additional deterrence to prevent this and investigative value when it does. The use of CCTV can provide a safer environment for the benefit of taxi/private hire vehicle passengers and drivers by:

- deterring and preventing the occurrence of crime;
- reducing the fear of crime;
- assisting the police in investigating incidents of crime;
- assisting insurance companies in investigating motor vehicle accidents.

7.9 All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.

7.10 While only a small minority of licensing authorities have so far mandated all vehicles to be fitted with CCTV systems, the experience of those authorities that have has been positive for both passengers and drivers. In addition, the evidential benefits of CCTV may increase the level of reporting of sexual offences. According to the [Crime Survey for England and Wales](#) only 17 percent of victims report their experiences to the police, 28 percent of rape or sexual assault victims indicated that a fear they would not be believed as a factor in them not reporting the crime. The evidential benefits CCTV could provide are therefore an important factor when considering CCTV in vehicles.

7.11 The mandating of CCTV in vehicles may deter people from seeking a taxi or private hire vehicle licence with the intent of causing harm. Those that gain a licence and consider perpetrating an opportunistic attack against a vulnerable unaccompanied passenger may be deterred from doing so. It is however unfortunately the case that offences may still occur even with CCTV operating.

7.12 CCTV systems that are able to record audio as well as visual data may also help the early identification of drivers that exhibit inappropriate behaviour toward passengers. Audio recording should be both overt (i.e. all parties should be aware when recordings are being made) and targeted (i.e. only when passengers (or

drivers) consider it necessary). The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button.

- 7.13 Imposition of a blanket requirement to attach CCTV as a condition to a licence is likely to give rise to concerns about the proportionality of such an approach and will therefore require an appropriately strong justification and must be kept under regular review. More information and guidance on assessing the impacts of CCTV and on an authority mandating CCTV is annexed to this document (Annex – CCTV guidance).

### Stretched Limousines

- 7.14 Licensing authorities are sometimes asked to license small (those constructed or adapted to carry fewer than nine passengers) limousines as private hire vehicles, these vehicles may be used for transport to 'school proms' as well as for adult bookings. It is suggested that licensing authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats - have a legitimate role to play in the private hire trade, meeting a public demand. It is the Department's view that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle thereby excluding these services from the scope of the private hire vehicle regime and the safety benefits this provides. A blanket policy of excluding limousines may create an unacceptable risk to the travelling public, as it may lead to higher levels of unsupervised operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators.
- 7.15 Stretched large limousines which clearly seat more than eight passengers should not be licensed as private hire vehicles because they are outside the licensing regime for private hire vehicles. However, in some circumstances a vehicle with space for more than eight passengers can be licensed as a private hire vehicle where the precise number of passenger seats is hard to determine. In these circumstances, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than eight passengers, bearing in mind that refusal may encourage illegal private hire operation.

## 8. Private Hire Vehicle Operator Licensing

8.1 As with driver licensing, the objective in licensing private hire vehicle operators is to protect the public, who may be using operators' premises and trusting that the drivers and vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those that are granted a private hire vehicle operator also pose no threat to the public and have no links to serious criminal activity. Although private hire vehicle operators may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the driver licensing regime.

### Criminality checks for private hire vehicle operators

8.2 Enhanced DBS and barred list checks are not available for private hire vehicle operator licensing. **Licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the 'fit and proper' threshold.

8.3 However, it is important that authorities acknowledge that in many cases individuals that license as a private hire vehicle operator may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking a private hire vehicle operator licence to provide a basic DBS check as part of the application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately

8.4 Refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a private hire vehicle operator licence; this decision must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

8.5 A private hire vehicle operator licence may be applied for by a company or partnership; licensing authorities should apply the 'fit and proper' test to each of the directors or partners in that company or partnership. For this to be effective

private hire vehicle operators should be required to advise the licensing authority of any change in directors or partners.

- 8.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas. Further information on assessing the suitability of those that have spent extended periods in overseas is provided in paragraphs 4.34 - 4.36.

### Booking and dispatch staff

- 8.7 Private hire vehicle drivers are not the only direct contact that private hire vehicle users have with private hire vehicle operators' staff, for example a person taking bookings (be it by phone or in person). A vehicle dispatcher decides which driver to send to a user, a position that could be exploited by those seeking to exploit children and vulnerable adults. It is therefore appropriate that all staff that have contact with private hire vehicle users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.
- 8.8 Licensing authorities should be satisfied that private hire vehicle operators can demonstrate that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. **Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept.**
- 8.9 Operators should be required to evidence that they have had sight of a Basic DBS check on all individuals listed on their register of booking and dispatch staff and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders. DBS certificates provided by the individual should be recently issued when viewed, alternatively the operator could use a ['responsible organisation'](#) to request the check on their behalf. When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment contract, to advise the operator of any convictions while they are employed in this role.
- 8.10 The register should be a 'living document' that maintains records of all those in these roles for the same duration as booking records are required to be kept, this will enable cross-referencing between the two records. A record that the operator has had sight of a basic DBS check certificate (although the certificate itself should not be retained) should be retained for the duration that the individual remains on the register. Should an employee cease to be on the register and later re-entered, a new basic DBS certificate should be requested and sight of this recorded.
- 8.11 Operators may outsource booking and dispatch functions but they cannot pass on the obligation to protect children and vulnerable adults. Operators should be required to evidence that comparable protections are applied by the company to which they outsource these functions.

8.12 Licensing authorities should also require operators or applicants for a licence to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a private hire vehicle operators' licence, those with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, may not be suitable to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.

## Record keeping

8.13 Section 56 of the [Local Government \(Miscellaneous Provisions\) Act 1976](#) requires private hire vehicle operators to keep records of the particulars of every booking invited or accepted, whether it is from the passenger or at the request of another operator. **Licensing authorities should as a minimum require private hire vehicle operators to record the following information for each booking:**

- the name of the passenger;
- the time of the request;
- the pick-up point;
- the destination;
- the name of the driver;
- the driver's licence number;
- the vehicle registration number of the vehicle;
- the name of any individual that responded to the booking request;
- the name of any individual that dispatched the vehicle.

8.14 This information will enable the passenger to be traced if this becomes necessary and should improve driver security and facilitate enforcement. It is suggested that booking records should be retained for a minimum of six months.

8.15 Private hire vehicle operators have a duty under data protection legislation to protect the information they record. The Information Commissioner's Office provides comprehensive on-line guidance on registering as a data controller and how to meet their obligations.

## Use of passenger carrying vehicles (PCV) licensed drivers

8.16 PCV licensed drivers are subject to different checks from taxi and private hire vehicle licensed drivers as the work normally undertaken, i.e. driving a bus, does not present the same risk to passengers. Members of the public are entitled to expect when making a booking with a private hire vehicle operator that they will receive a private hire vehicle licensed vehicle and driver. **The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such**

**as a minibus to undertake a private hire vehicle booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.**

- 8.17 Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than eight passenger seats required or to accommodate luggage, the booker should be informed that a PSV is necessary, and that a PCV licenced driver will be used who is subject to different checks and not required to have an enhanced DBS check.

## 9. Enforcing the Licensing Regime

9.1 Implementing an effective framework for licensing authorities to ensure that as full a range of information made available to suitably trained decision makers that are supported by well-resourced officials is essential to a well-functioning taxi and private hire vehicle sector. These steps will help prevent the licensing of those that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected.

### Joint authorisation of enforcement officers

9.2 Licensing authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area. An agreement between licensing authorities to jointly authorise officers enables the use of enforcement powers regardless of which authority within the agreement the officer is employed by and which issued the licence. This will mitigate the opportunities for drivers to evade regulation. Such an agreement will enable those authorities to take action against vehicles and drivers that are licensed by the other authority when they cross over boundaries. A model for agreeing joint authorisation is contained in the [LGA Councillors' handbook](#).

### Setting expectations and monitoring

9.3 Licensing authorities should ensure that drivers are aware of the policies that they must adhere and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points-based system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.

9.4 The provision of a clear, simple and well-publicised process for the public to make complaints about drivers and operators will enable authorities to target compliance and enforcement activity (see paragraphs 4.29 - 4.33). This will provide a further source of intelligence when considering the renewal of licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.

### Suspension and revocation of driver licences

9.5 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides a licensing authority with the ability to suspend or revoke a driver's licence on the following grounds: -

(a) that he has since the grant of the licence—

- (i) been convicted of an offence involving dishonesty, indecency or violence; or
- (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;
- (aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or
- (b) any other reasonable cause

9.6 Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. Where the licence holder has been served an immigration penalty or convicted of an immigration offence the licence should be revoked immediately. [Guidance for licensing authorities](#) to prevent illegal working in the taxi and private hire vehicle sector has been issued by the Home Office. As with the initial decision to license a driver, this determination must be reached based on the balance of probabilities, not on the burden of beyond reasonable doubt.

9.7 Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.

9.8 A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.

9.9 New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.

9.10 A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.

## Annex – Assessment of Previous Convictions

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is 'fit and proper' to hold a taxi or private hire vehicle licence. The following recommendations to licensing authorities on previous convictions reflect this.

**Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial consideration of their application.** Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

### Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

### Exploitation

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

### Offences involving violence against the person

Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

### Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

### Sexual offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted.

In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

### Dishonesty

Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

## Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

## Discrimination

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

## Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

## Drink driving/driving under the influence of drugs

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

## Using a hand-held device whilst driving

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

## Annex – Disclosure and Barring Service information

Table 1: Information included in criminal record checks

Information included	Type of check			
	Basic check	Standard DBS check	Enhanced DBS check	Enhanced DBS (including barred list) check
<b>Unspent convictions</b>	Yes	Yes	Yes	Yes
<b>Unspent cautions</b> <sup>1</sup>	Yes	Yes	Yes	Yes
<b>Spent convictions</b> <sup>2</sup>	No	Yes	Yes	Yes
<b>Spent cautions</b> <sup>1 &amp; 2</sup>	No	Yes	Yes	Yes
<b>Additional police Information</b> <sup>3</sup>	No	No	Yes	Yes
<b>Barred list(s) Information</b> <sup>4</sup>	No	No	No	Yes

1. Does not include fixed penalty notices, penalty notices for disorder or any other police or other out-of-court disposals.
2. Spent convictions and cautions that have become protected under the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, as amended, are not automatically disclosed on any level of certificate. Further guidance is available [the DBS filtering guide](#).
3. This is any additional information held by the police which a chief police officer reasonably believes to be relevant and considers ought to be disclosed.
4. This is information as to whether the individual concerned is included in the children's or adults' barred lists maintained by the Disclosure and Barring Service (DBS).

## Annex – CCTV Guidance

It is important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and private hire vehicles will be responsible for the data – the data controller. It is important that data controllers fully consider concerns regarding privacy and licensing authorities should consider how systems are configured, should they mandate CCTV (with or without audio recording). For example, vehicles may not be exclusively used for business, also serving as a car for personal use - it should therefore be possible to manually switch the system off (both audio and visual recording) when not being used for hire. Authorities should consider the Information Commissioner's view on this matter that, in most cases, a requirement for continuous operation is unlikely to be fair and lawful processing of personal data.

The Home Office '[Surveillance Camera Code of Practice](#)' advises that government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is:

- in pursuit of a legitimate aim;
- necessary to meet a pressing need;
- proportionate;
- effective, and;
- compliant with any relevant legal obligations

The Code also sets out 12 guiding principles which, as a 'relevant authority' under section 33(5) of the [Protection of Freedoms Act 2012](#), licensing authorities must have regard to. It must be noted that, where a licence is granted subject to CCTV system conditions, the licensing authority assumes the role and responsibility of 'System Operator'. The role requires consideration of all guiding principles in this code. The failure to comply with these principles may be detrimental to the use of CCTV evidence in court as this may be raised within disclosure to the Crown Prosecution Service and may be taken into account.

The Surveillance Camera Commissioner (SCC) has provided guidance on the Surveillance Camera Code of Practice in its '[Passport to Compliance](#)' which provides guidance on the necessary stages when planning, implementing and operating a surveillance camera system to ensure it complies with the code. The Information Commissioner's Office (ICO) has also published a [code of practice](#) which, in this context, focuses on the data governance requirement associated with the use of CCTV such as data retention and disposal, which it is important to follow in order to comply with the data protection principles. The SCC provides a [self-assessment tool](#) to assist operators to ensure compliance with the principles set out in the Surveillance Camera Code of Practice. The SCC also operate a [certification scheme](#); authorities that obtain this accreditation are able to clearly demonstrate that their systems conform to the SCC's best practice and are fully compliant with the Code and increase public confidence that any risks to their privacy have been fully considered and mitigated.

The [Data Protection Act 2018](#) regulates the use of personal data. Part 2 of the Data Protection Act applies to the general processing of personal data, and references and supplements the General Data Protection Regulation. Licensing authorities, as data controllers, must comply with all relevant aspects of data protection law. Particular attention should be paid to the rights of individuals which include the right to be informed, of access

and to erasure. The ICO has provided detailed [guidance](#) on how data controllers can ensure compliance with these.

It is a further requirement of data protection law that before implementing a proposal that is likely to result in a high risk to the rights and freedoms of people, an impact assessment on the protection of personal data shall be carried out. The ICO recommends in [guidance](#) that if there is any doubt as to whether a Data Protection Impact Assessment (DPIA) is required one should be conducted to ensure compliance and encourage best practice. A DPIA will also help to assess properly the anticipated benefits of installing CCTV (to passengers and drivers) and the associated privacy risks; these risks might be mitigated by having appropriate privacy information and signage, secure storage and access controls, retention policies, training for staff how to use the system, etc.

It is essential to ensure that all recordings made are secure and can only be accessed by those with legitimate grounds to do so. This would normally be the police if investigating an alleged crime or the licensing authority if investigating a complaint or data access request. Encryption of the recording to which the licensing authority, acting as the data controller, holds the key, mitigates this issue and protects against theft of the vehicle or device. It is one of the guiding principles of data protection legislation, that personal data (including in this context, CCTV recordings and other potentially sensitive passenger information) is handled securely in a way that 'ensures appropriate security', including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

All passengers must be made fully aware if CCTV is operating in a vehicle. Given that audio recording is considered to be more privacy intrusive, it is even more important that individuals are fully aware and limited only to occasions when passengers (or drivers) consider it necessary. The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button. As well as clear signage in vehicles, information on booking systems should be introduced. This might be text on a website, scripts or automated messages on telephone systems; the Information Commissioner's Office (ICO) has issued guidance on privacy information and the right to be informed on its website.

## Annex - Staying Safe: Guidance for Passengers

Licensing authorities should provide guidance to assist passengers in identifying licensed vehicles and the increased risks of using unlicensed vehicles. The guidance might include advice on:

- how to tell if a taxi or private hire vehicle is licensed.

Educate the public in the differences between taxis and private hire vehicles e.g.:

- a taxi can be flagged down or pre-booked.
- a private hire vehicle that has not been pre-booked should not be used as it will not be insured and may not be licensed.
- what a private hire vehicle should look like e.g. colour, signage, licence plates etc.
- the benefit of pre-booking a return vehicle before going out.
- arrange to be picked up from a safe meeting point.
- requesting at the time of booking what the fare is likely to be.

When using a private hire vehicle, passengers should always:

- book with a licensed operator.
- confirm their booking with the driver when s/he arrives.
- note the licence number.
- sit in the back, behind the driver.
- let a third party know details of their journey.

When using a taxi, passengers should where possible:

- use a taxi rank and choose one staffed by taxi marshals if available.

**Committee:** Licensing and Environmental Health Committee

**Date:**

Tuesday, 29  
September 2020

**Title:** Inclusion of NR3 Policy

**Report Author:** Russell Way, Licensing and Compliance Manager

rway@uttlesford.gov.uk

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## Summary

1. Report to ensure the Licensing Committee are fully aware of the Information sharing policy that will need to be agreed so that officers can utilise the full capability of the NR3 database.

## Recommendation

2. The recommendation is that the Licensing Committee fully support the NR3 information sharing policy. It can therefore be added to the Licensing Policy relating to Hackney Carriage and Private Hire Trade.

## Financial Implications

3. Implementation will have a financial impact. It will add another layer in the process officers have to conduct to ensure drivers are 'fit and proper'

As a result fees and charges will be amended accordingly to ensure they are accurate now with the inclusion of the NR3 procedure. This will ensure they reflect the service and cost neutral to the taxi trade.

## Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

A - Copy of the NR3 information sharing policy

## Impact

- 5.

Communication/Consultation	There is no need for consultation on implementing this policy in Uttlesford. It has been supported by the senior managers when it was implemented in late June.  NR3 was also included in the Statutory
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	Minimum Standards as set out by the DfT
Community Safety	The document will enhance licensing authorities standards as met nationally ( and therefore the risk associated with drivers) for not only our community but those where our drivers operate around the UK
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	This is a proportionate document to ensure licensing authorities including Uttlesford carry out their due diligence. This ensures Uttlesford drivers have not been revoked or refused a license by another licensing authority.
Sustainability	N/A
Ward-specific impacts	N/A
Workforce/Workplace	N/A

## Situation

The policy will be required to be accepted by the Licensing committee and thereafter added to our website and policy documents

## Risk Analysis

6.

Risk	Likelihood	Impact	Mitigating actions
3 = Significant risk or impact – action required	2 = Some risk or impact – action may be necessary.	3 = Significant risk or impact – action required	3 = Significant risk or impact – action required

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

## **Policy for Uttlesford Council in respect of requests for information, disclosure of information, and use of information as a result of an entry on NR3**

In this policy, the 'first authority' refers to a licensing authority which made a specific entry onto the National Register of Refusals and Revocations; the 'second authority' refers to a licensing authority which is seeking more detailed information about the entry.

### **Overarching principles**

This policy covers the use that Uttlesford Council will make of the ability to access and use information contained on the National Register of Taxi Licence Revocations and Refusals (NR3). The NR3 contains information relating to any refusal to grant, or revocation of, a taxi drivers' licences<sup>8</sup>. This information is important in the context of a subsequent application to another authority for a drivers' licence by a person who has had their licence refused or revoked in the past.

Uttlesford Council has signed up to the NR3. This means that when an application for a taxi drivers' licence is refused, or when an existing taxi drivers' licence is revoked, that information will be placed upon the register.

<sup>8</sup> Throughout this policy reference is made to 'taxi drivers licence.' This generic term covers a hackney carriage drivers licence, a private hire drivers licence and a combined/dual licence.

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When an application for a new drivers' licence, or renewal of an existing drivers' licence is received, Uttlesford Council will make a search of the NR3. The search will only be made by an officer who has been trained in the use of the NR3 and who is acting in accordance with this policy. If details are found that appear to relate to the applicant, a request will be made to the authority that entered that information for further details. Any information that is received from any other authority in relation to an application will only be used in relation to that application, and the determination of it, and will not be used for any other purpose. Any data that is received will only be kept for as long as is necessary in relation to the determination of that application. This will include the period of processing that application, making a decision, notifying the applicant of the outcome of that decision, and the appeal processes.

For the avoidance of doubt, any such data will be kept for a period of no more than 35 days from the date of the service of the written notification of the determination of the application<sup>9</sup>. Where an appeal to the magistrates' court is made, the data will be retained until that appeal is determined or abandoned. Where the appeal is determined by the magistrates' court, there is a further right of appeal to the Crown Court. In these circumstances, the data will be retained for a period of no more than 35 days from the date of the decision of the magistrates' court. If an appeal is made to the Crown Court, the data will be retained until that appeal is determined or abandoned. Where the appeal is determined by the magistrates' court or the Crown Court, it is possible to appeal the decision by way of case stated<sup>10</sup>. Accordingly, the data will be retained for a period of no more than 35 days from the date of the decision of the Crown Court (if the decision was made by the magistrates' court, the retention period has already been addressed). If an appeal by way of case stated is made, the data will be retained until all court proceedings relating to that appeal by way of

case stated (which will include potential appeals to the Court of Appeal and Supreme Court) have been determined<sup>11</sup>.

The data will be held securely in accordance with Uttlesford's general policy on the secure retention of personal data. At the end of the retention period, the data will be erased and/or destroyed in accordance with Uttlesford's Councils general policy on the erasure and destruction of personal data.

<sup>9</sup> The appeal period is 21 days from the date on which the written notification of the decision was received by the applicant/licensee. An appeal must be lodged within that time period, and no extension of that period is permissible (see *Stockton-on-Tees Borough Council v Latif* [2009] LLR 374). However, to ensure that the information is available if an appeal is lodged and there is a dispute over time periods, a period of 35 days is specified.

<sup>10</sup> Any appeal by way of case stated must be lodged within 21 days of the decision of either the magistrates court all the Crown Court (see The Criminal Procedure Rules R35.2). To ensure that the information is available if an appeal is lodged by way of case stated and there is a dispute over time periods, a period of 35 days is specified.

<sup>11</sup> Decisions of the local authority, magistrates' Court and Crown Court are also susceptible to judicial review. Generally any right of appeal should be exercised in preference to judicial review, but there are occasions when leave has been granted for judicial review in the circumstances. Any application for judicial review must be made "promptly; and in any event not later than 3 months after the grounds to make the claim 1st arose" (see The Civil Procedure Rules R54.5). If an application for judicial review is made after any relevant data has been destroyed, this authority will request the information again and then retain that information until all court proceedings relating to that judicial review (which will include potential appeals to the Court of Appeal and Supreme Court) have been determined.

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## **II. Making a request for further information regarding an entry on NR3<sup>12</sup>**

When an application is made to this Uttlesford Council for the grant of a new, or renewal of, a taxi driver's licence, officers will check the NR3.

Officers will make and then retain a clear written record<sup>13</sup> of every search that is made of the register.

This will detail:

- the date of the search;
- the name or names searched;
- the reason for the search (new application or renewal);
- the results of the search; and
- the use made of the results of the search (this information will be entered to the register at a later date).

This record will not be combined with any other records (i.e. combined with a register of licences granted) and will be retained for the retention period of 25 years.

If officers discovers any match (i.e. there is an entry in the register for the same name and identifying details) a request will be made to the authority that entered those details for further information about that entry. That request will also include details of this Uttlesfords data protection policy in relation to the use of any data that is obtained as a result of this process.

This request will be made in writing in accordance with the form at appendix 1 of this policy. It will be posted or emailed to the contact address of the authority that entered those details (the first authority) which will be detailed in the register.

## **III. Responding to a request made for further information regarding an entry on**

## NR314

When Uttlesford Council receives a request for further information from another authority a clear written record will be made of the request having been received. This record will not be combined with any other records (i.e. combined with a register of licences granted) and will be retained for the retention period of 25 years<sup>15</sup>.

Uttlesford officers will then determine how to respond to the request. It is not lawful to simply provide information as a blanket response to every request.

Uttlesford Council will conduct a Data Protection Impact Assessment. This will consider how the other authority (the second authority) will use the data, how it will store that data to prevent unauthorised disclosure, the retention period for that data, and the mechanism for erasure or destruction of the data at the end of that period. It is expected that

<sup>12</sup> This section of the template policy relates to the submission of a request by the second authority.

<sup>13</sup> This can be electronic, rather than "pen and paper" hard copy.

<sup>14</sup> This section of the template policy relates to the handling by the first authority of a request for information by the second authority.

<sup>15</sup> This record can be combined with the written record of the action taken as a result of the request.

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if the second authority has adopted a policy similar to this, that should be a reasonably straightforward process.

If Uttlesford Council is satisfied that the other authority's (the 2<sup>nd</sup> authority) data protection procedures are satisfactory, consideration will then be given as to what information will be disclosed<sup>16</sup>. This will be determined by an officer who has been trained to discharge this function.

Any disclosure must be considered and proportionate, taking into account the data subjects' rights and the position and responsibilities of a taxi driver. Data is held on the NR3 register for a period of 25 years, but Uttlesford Council will not disclose information relating to every entry. Each application will be considered on its own merits.

Uttlesford Council will disclose information relating to a revocation or refusal to grant a drivers' licence in accordance with the timescales contained within our policy on deciding the suitability of applicants and licensees in the Hackney and Private Hire Trades (Where the reason for refusal to grant or revocation relates to a conviction guidance) which is within the timescales determined in those guidelines, the information will be disclosed. Where the reason for refusal to grant or revocation relates to a conviction (or similar as defined in the guidance) which is outside the timescales determined in those guidelines, the information will not be disclosed. However, in every case, consideration will be given to the full circumstances of the decision and there may be occasions where information is provided other than in accordance with this policy.

Any information about convictions will be shared in accordance with this policy under part 2 of scheduled 1 to the Data Protection Act (DPA) 2018; that is, the processing is necessary for reasons of substantial public interest in connection with the exercise of a function conferred on the authority by an enactment or rule of law.

The officer will record what action was taken and why. Uttlesford Council will make and then retain a clear written record<sup>18</sup> of every decision that is made as a result of a request from another authority. This will detail:

- the date the request was received
- how the data protection impact assessment was conducted and its conclusions
- the name or names searched
- whether any information was provided

- if information was provided, why it was provided (and details of any further advice obtained before the decision was made)
- if information was not provided, why it was not provided (and details of any further advice obtained before the decision was made) and
- how and when the decision (and any information) was communicated to the requesting authority.

<sup>16</sup> If Uttlesford Council is not satisfied that the 2nd authority's data protection policy is satisfactory, no disclosure can be made. In such circumstances it is essential that discussion takes place as a matter of urgency between the data protection officers of Uttlesford Council and the 2nd authority.

<sup>18</sup> This can be electronic, rather than "pen and paper" hard copy.

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This record will not be combined with any other records (i.e. combined with a register of licences granted) and will be retained for the retention period of 25 years.

#### **IV. Using any information obtained as a result of a request to another authority**

When Uttlesford Council receives information as a result of a request that has been made to another authority, it will take that information into account when determining the application for the grant or renewal of a taxi drivers' licence. This will be in accordance with the usual process for determining applications.

This council will make and then retain a clear written record of the use that is made of the results of the search (this information will be added to the register detailed above).

Information that is received may warrant significant weight being attached to it, but it will not be the sole basis for any decision that this council will make in relation to the application.

## Appendix 1 - information disclosure form

This form is submitted following a search of the National Register of Refusals and Revocations (NR3).

*(For completion by requestor authority)*

Name of licensing authority requesting information: .....

Requestor authority reference number: .....

Name of licensing authority from which information is sought: .....

Name of individual in respect of whom the request is made: .....

Decision in respect of which the request is made: Refusal / revocation

Other details for this record: .....

Address: .....

Driving licence #: .....

NI #: .....

Reference number: .....

Declaration by requesting authority:

*The authority hereby confirms that this information is being sought in connection with the exercising of its statutory function to ensure that holders of taxi / PHV licences are fit and 28 proper persons, and that the processing of this data is therefore necessary in the performance of a task carried out in the public interest.*

*The information provided below will only be processed, used and saved by the authority in connection with this particular application and in accordance with all relevant data and privacy requirements, as previously advised by the authority to applicants for and existing holders of taxi and PHV licences, and will be retained in accordance with the Authority's retention policy relating to the provision of such information.*

*To enable the authority to conduct a data protection impact assessment, details of this*

authority's policy in relation to the use of information obtained as a result of this request is attached to this document/can be accessed at ??.

Signed:

Name: .....

Position: .....

Date.....

*(For completion by providing authority)*

Further information to support the decision recorded on NR3 in respect of the above named individual

Declaration by providing authority

*The authority hereby confirms that it has conducted a data protection impact assessment. It also confirms that the information above is accurate, and has been provided after thorough consideration by the authority as to the proportionality and lawfulness of making this disclosure. The information reflects the basis on which the decision recorded in the National Register of Refusals and Revocations was made. In the event that the authority becomes aware that this information is no longer accurate, we will advise the above named authority accordingly.*

*The authority also confirms that, as part of the basis for securing, retaining or applying for a taxi / PHV licence, the above named individual has been made aware of to the fact that this information will be shared, in accordance with all relevant data and privacy requirements*

Signed:

Name: .....

Position: .....

Date: .....

<b>Committee:</b>	Licensing and Environmental Health Committee	<b>Date:</b>	Tuesday, 29 September 2020
<b>Title:</b>	Introduction of New Uttlesford Door and Dashboard Signs		
<b>Report Author:</b>	Russell Way, Licensing and Compliance Manager rway@uttlesford.gov.uk		

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## Summary

- 1 Report to ensure the Licensing Committee are fully aware of officers proposal to introduce new door and dashboard signs for Private Hire and Taxi vehicles in Uttlesford.
  - 1.1. Members will be aware that the Council is responsible for licensing and regulating two types of vehicles. These are hackney carriage and private hire vehicles. There is no reference in the Town Police Clauses Act 1847 (TPCA) (Hackney Carriage Legislation) or the Local Government (Miscellaneous Provisions) Act 1976 (Private Hire Legislation) to a 'Taxi'. The dictionary definition of 'Taxi' is 'a public passenger vehicle, especially an automobile, usually fitted with a taximeter'. The Transport Act 1980, s64, does refer to a Taxi as being any vehicle licensed under s37 of the TPCA. This is the section used to license hackney carriage vehicles.
  - 1.2. Under section 48(2) of the Local Government (Miscellaneous Provisions) Act 1976, a District Council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary including, without prejudice to the generality of the foregoing provisions of this subsection, conditions requiring or prohibiting the display of signs on or from the vehicle to which the licence relates under Section 48(7) of the above Act. Any person aggrieved by the refusal of a District Council to grant a vehicle licence under this Section, or by any conditions specified in such a licence, may appeal to a Magistrates' Court.
  - 1.3. For the purpose of the above, the Council has established Conditions attached to the grant of a hackney carriage and private hire vehicle licence.
  - 1.4. The standard licence conditions read: 'Display at all times the vehicle plate provided by the Council in a prominent position at the rear and on the exterior of the vehicle, this is in pursuant to s48(6) of the Local Government (Miscellaneous Provisions) Act 1976. One shall be securely fixed to the rear of the vehicle in a conspicuous position and in such a manner as to be easily removable by an authorised officer of the Council or a constable.

- 1.5. The Local Government (Miscellaneous Provisions) Act 1976, s481 (1)(a)(ii), prescribes that a vehicle cannot be licensed as a private hire vehicle unless the licensing authority is satisfied that the vehicle is “not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage”.
- 1.6. The Transport Act 1980, s64, prohibits the word ‘taxi’ to be displayed on or above the roof of a private hire vehicle, although there is no legislation prohibiting the word ‘taxi’ being displayed anywhere else on the vehicle, the addition of door and or dash board signs with pre booked only would give distinction between a taxi and private hire vehicle.
- 1.7. The addition of door signs with the Uttlesford crest, vehicle number and pre booked only wording for private hire would (a) give a clear distinction between our taxis and private hire trade as the vast majority of the general public would not know a private hire vehicle has to be pre booked and invalidates the vehicles insurance if it’s not. (b) With the Department for Transport looking at regulations to stop taxi drivers from operating in geographical areas that are miles away from where they were issued their licence, it would make cross border enforcement easier in identifying our fleet.
- 1.8. Individual drivers have to display a visible badge providing details to the passenger in identifying that they are appropriately licensed in accordance with legal legislation. It is clearly important that people are able to identify a licensed driver and whilst small badges on drivers are often difficult to see by the public, especially from the rear of the vehicle a “Big Face” driver ID badge / vehicle information combination allows this information to be prominently displayed inside the vehicle on the dash board or in the window and in full view of the public, without the need for them to be struggling to see the ID worn by the driver. The forward facing aspect of the badge displaying the vehicle details allows the vehicle to be identified as an Uttlesford licensed vehicle as it approaches you rather than the need to look behind the vehicle once it has passed by.
- 1.9. I would like to make Members aware that some other local and national authorities require the display of door signs on the hackney carriage and private hire vehicles. Big Foot vehicle plates can also be recycled meaning that Uttlesford is helping offset our responsibilities to the planet

2.0 The proposal also supports Section 4.31 of the New Government Standards:

*To ensure that passengers know who to complain to, licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that should be available on their website. **Ways to make complaint to the authority should be displayed in all licensed vehicles.***

2.1 Annex- Staying Safe: Guidance for passenger

Educate the public in the differences between taxis and private hire vehicles e.g.:

- A taxi can be flagged down or pre-booked.
- **A private hire vehicle that has not been pre-booked should not be used as it will not be insured and may not be licensed.**
- **What a private hire vehicle should look like e.g. colour, signage, licence plates etc.**
- The benefit of pre-booking a return vehicle before going out.
- Arrange to be picked up from a safe meeting point.
- Requesting at the time of booking what the fare is likely to be.

## Recommendation

1. The recommendation is that the Licensing Committee fully support the implementation of new Uttlesford Signs (door and dashboard) which aim to improve the safety of the public.

## Financial Implications

2. Implementation will have a financial impact. The cost of the current plate will increase from our current plate provider by approximately £15. It will increase as follows

Drivers will also need to purchase an additional badge every 3 years.

As a result fees and charges will need to be amended accordingly for drivers (re 2 x badges)

Vehicle license (dash badge and door badge) additional cost every year

Amending the cost of the license will ensure they are accurate and reflect the cost of inclusion of the new signs. This will ensure they reflect the service and cost neutral to the taxi trade.

## Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Appendix A - Copy of Uttlesford Door sign

Appendix B – Copy of Uttlesford Dash sign

## Impact

- 4.

Communication/Consultation	Legal advice was sought and no consultation was needed due to the
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	introduction of the Statutory Standards.  Driver's additional badge will take 3 years to address.  Vehicle additional signs will take one year to roll out to vehicles.
Community Safety	The document will enhance licensing authorities standards are met nationally (and therefore the risk associated for the public) It will also aim to reduce Uttlesford PHV drivers illegally touting the public in areas outside of our council region.
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	This is a proportionate approach to ensure licensing authorities including Uttlesford carry out their due diligence.
Sustainability	N/A
Ward-specific impacts	N/A
Workforce/Workplace	N/A

### Situation

The policy will be required to be accepted by the Licensing committee and thereafter placed upon our website and added to our policy booklet.

### Risk Analysis

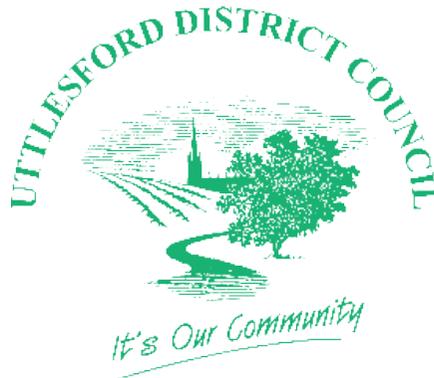
5.

Risk	Likelihood	Impact	Mitigating actions
3 = Significant risk or impact – action required	2 = Some risk or impact – action may be necessary.	3 = Significant risk or impact – action required	3 = Significant risk or impact – action required

1 = Little or no risk or impact

- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

# PRIVATE HIRE



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## ADVANCE BOOKINGS ONLY

MOGO

# PRIVATE HIRE



# 4444

## ADVANCE BOOKINGS ONLY

MOGO



THESE ARE VISUALS ONLY - NOT TO SCALE AND NOT TO SIZE:

Some sample shapes of our most popular Vinyl Door Signs - Size and Shape as required:

As you can see some councils prefer just the licence number displayed others have a variable information box which can display licence number or all variable info such as Registration Number, Expiry etc. A further option is just the Council Crest to display corporate identity.

All variable information door signs require the variable information to be printed on a MOLABEL and affixed to the doorsign and then a clear protective cover is applied over the label.

The Crest only style Door Sign is provided ready to affix to the vehicle.

# SAMPLE OF DASHBOARD BADGE

**Inward Facing**



**Outward Facing**



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## PRIVATE HIRE

LICENCE  
NUMBER:

**4444**

EXPIRY  
DATE:

**21/07/20**

Hologram  
Here



**COMPLAINTS TEL: 01799 510510**



The licensee must display this badge whilst working as private hire driver.

Should you have any comments about this Vehicle or driver please contact:  
Utlesford District Council, Council Offices,  
London Road, Saffron Walden,  
Essex  
CB11 4ER  
Email: [licensing@uttlesford.gov.uk](mailto:licensing@uttlesford.gov.uk)

**4444**

# Agenda Item 6

<b>Committee:</b>	Licensing and Environmental Health Committee	<b>Date:</b>	Tuesday, 29 September 2020
<b>Title:</b>	Uttlesford to mandate that all drivers register with the DBS Update service		
<b>Report Author:</b>	Russell Way, Licensing and Compliance Manager rway@uttlesford.gov.uk		

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## Summary

1. Licensing Committee Mandate that all drivers register with register DBS update service

## Recommendations

That new Government Statutory Guidance was introduced in July 2020. This gives Licensing Authorities two options to manage the process options whereby to enhanced DBS checks are undertaken sufficiently frequently to ensure risk is managed.

1 – Drivers are required to register with the online DBS Update Service so that Licensing Authorities can do carry out regular status checks using a Home Office function entitled ‘Multiple Status Checks’.

2 – An Enhanced DBS is manually carried out on each driver every 6 months

Officers recommend that option 1 is agreed by members

## Financial Implications

2. There are no financial implications in regard to mandating that drivers register to the update service. This is a cost that drivers will have to fund and a cheaper option for drivers over 3 years saving them £1. Further this will Council staff time and expenditure as after 3 years a driver will not need to manually apply for a new Enhanced DBS. Thereby saving staff time and effort

## Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
  - Consultation document
  - Letter stating consultation 13/7/20 to 23/8/20

## Impact

4.

Communication/Consultation	Consultation ran from July 13 <sup>th</sup> to August 23 <sup>rd</sup> . This has been supported by the trade.
Community Safety	Mandating all drivers to register with the update service is one of the two options given by the DfT in the Statutory Guidance published on the 21/7/20. This process is to reduce risk and ensure the public is safe.
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	This is a proportionate approach to managing risk and delivering as far as possible public safety. It will however take 3 years to ensure all drivers are registered with the update service as the requirement will apply on renewal.
Sustainability	N/A
Ward-specific impacts	N/A
Workforce/Workplace	N/A

## Situation

A consultation on Mandating that all Uttlesford Licensed Drivers register with the enhanced DBS was started on the 13<sup>th</sup> July. Correspondence was sent to all Councillors Town and Parish), all drivers and representative from ULODA (Uttlesford Licensed Operators and Drivers Association. An advert was also placed in the local papers.

However on the 21<sup>st</sup> of July Dept of Transport published Government Statutory Guidance for Licensing Authorities. This gave two options to Licensing Authorities in regard to managing the risk that drivers pose.

1 – Authorities are to mandate that all drivers register with the DBS update service. This enables Licensing Authorities to do Multiple Status Checks in bulk every six months on their drivers.

2 – An Enhanced DBS is manually carried out on all drivers every 6 months

The consultation concluded on 23<sup>rd</sup> August. There was only positive feedback from drivers and the following operators/representatives.

Barry Drinkwater – ULODA

Andy Mahoney – 24/7

It is the Licensing Team's belief that requiring all drivers to register with the update service is the best option to manage the risk posed by them given that in excess of 2500 drivers are licensed by Uttlesford.

## Risk Analysis

5.

Risk	Likelihood	Impact	Mitigating actions
3 = Significant risk or impact – action required	2 = Some risk or impact – action may be necessary.	2 = Some risk or impact – action may be necessary.	1 = Little or no risk or impact

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

To:

13<sup>th</sup> July 2020

**All PHV and TAXI Drivers**  
**Councillors**  
**Town & Parish Councils**  
**Chair ULODA**

email: [licensing@uttlesford.gov.uk](mailto:licensing@uttlesford.gov.uk)

Dear Sir/Madam,

Please note the following Licensing consultation will be commencing from Monday 13<sup>th</sup> July until Sunday 23<sup>rd</sup> August. This will also be advertised in the local press.

## **UTTLESFORD DISTRICT COUNCIL**

### **FEES FOR HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES**

NOTICE IS HEREBY GIVEN, pursuant to Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, that Uttlesford District Council proposes to review its policy in regard to all licensed HC/PHV drivers.

The proposed change is that each individual driver should be required to register with the Enhanced DBS update service in order to streamline and maximise the Council's ability to carry out its safeguarding responsibilities for the benefit of the local community

The documentation can be found on our website at

[www.uttlesford.gov.uk/taxi-fees-consultation](http://www.uttlesford.gov.uk/taxi-fees-consultation)

Commencing on Monday 13<sup>th</sup> July 2020.

The consultation will end on Sunday 23<sup>rd</sup> August 2020

Objections to the proposed variation, specifying the grounds upon which they are made, must be sent to me at the Council at the Council Offices, London Road, Saffron Walden, Essex CB11 4ER or to email [licensing@uttlesford.gov.uk](mailto:licensing@uttlesford.gov.uk) no later than Sunday 23<sup>rd</sup> August 2020.

Kind regards  
Russell Way  
Licensing Manager





Disclosure &  
Barring Service

## **DBS Update Service**

### **Multiple Status Check Facility**

November 2018

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# 1.0 Background

For a small annual subscription of just £13, applicants can join the Update Service and keep their DBS certificate up-to-date. They can take it with them from role to role, within the same workforce, where the same type and level of check is required. The service is free to volunteers.

The Update Service is only currently available for standard and enhanced DBS checks.

If an applicant has subscribed to the Update Service, with their permission, you can use their current DBS certificate and carry out a free, instant online Status Check to see if any new information has come to light since its issue.

## Have you given the applicant their application form reference number?

To help applicants join the Update Service at the earliest opportunity, where possible, give them the application form reference number so they can join immediately.

If they wait to subscribe with their DBS Certificate number they must use it within 30 days.

## 1.1 How to carry out Status Checks

After viewing the original DBS certificate, if you are entitled to carry out a Status Check you can do this online at [www.gov.uk/dbs-update-service](http://www.gov.uk/dbs-update-service). Refer to the [DBS Update Service Employer Guide](#) for further information on entitlement to carry out a 'Status Check'.

You will need to enter the name of your organisation, your forename and surname and then the following details of the DBS certificate being checked:

- DBS certificate number
- current surname of the DBS certificate holder, as specified on their DBS certificate
- date of birth of the DBS certificate holder, as recorded on the DBS certificate

## 1.2 What is Multiple Status Checking?

Some organisations submit large numbers of DBS applications and need to be able to carry out large numbers of Status Checks every day. Other organisations may not submit large numbers of applications but may still want to use a quick and efficient Multiple Status Checking facility which will allow them to carry out Status Checks simultaneously rather than separately.

The DBS has developed a Multiple Status Check facility which can be accessed via a web service. The Multiple Status Check facility will enable organisations to make an almost unlimited number of Status Checks simultaneously.

If you would like to carry out multiple, or large numbers of Status Checks quickly, you will benefit from using the Multiple Status Check facility.

## 1.3 Benefits to you, as an employer

- Quick online checks of DBS certificates
- Ability to carry out large numbers of checks at the same time
- No more time-consuming DBS application forms to fill in
- You may never need to apply for another DBS check for an employee again
- Saves you time and money
- Enhances your safeguarding processes and may help reduce risks
- Easy to incorporate into your existing suitability decision-making processes
- Less bureaucracy

## 1.4 Benefits to your employee

- Saves them time and money
- One DBS certificate is all they may ever need
- Their DBS certificate can be taken from role to role, within the same workforce
- They have greater control of their DBS certificate
- They can get ahead of the rest and apply for jobs DBS pre-checked

## 1.5 How to access the Multiple Status Check facility

Your organisation or IT department will need to develop a system which will enable you to:

- input the required information to carry out Status Checks on numerous individuals simultaneously
- send the individual information to the DBS system
- access information relating to the Status Checks you submitted
- return the results to you

Your system will connect to the DBS system using a web service. We have provided technical information and guidance in the next part of this guide.

Once the system is built and you want to use it, you will need to submit the following information for each individual, for which you have permission to carry out a Status Check:

- the DBS certificate number of the certificate being checked
- the surname of the applicant, as it appears on the certificate being checked
- the date of birth of the applicant, as it appears on the certificate being checked
- the name of your organisation

You will also need to agree with the declaration below and enter 'True' with the information to be submitted for each Status Check.

*'I confirm I have the authority of the individual to which this DBS Certificate number relates to receive up-to-date information (within the meaning of section 116A of the Police Act 1997) in relation to their criminal record DBS Certificate for the purposes of asking an exempted question within the meaning of section 113A of the Police Act 1997; or in relation to their enhanced criminal record DBS Certificate for the purposes of asking an exempted question for a prescribed purpose within the meaning of section 113B of the Police Act 1997.'*

## 1.6 What Status Check results will I see and what do they mean?

If the details entered can be matched to a valid DBS certificate linked to an individual subscribed to the Update Service, the latest Status of that DBS certificate will be returned.

The Status Check result only relates to the individual named on both the DBS certificate and on the Status Check result screen.

The Update Service will only check for updates based on the individual for whom the check was carried out – not the home address where the work is being undertaken or any other individuals employed or living at that address.

No checks have been made against any third parties associated to the individual. This could have implications for individuals who are employed in home-based occupations, in which third parties may be considered.

The outcome of a valid Status Check will be one of the following:

Returned result	Status Checking response	Meaning
'BLANK_NO_NEW_INFO'	<i>'This DBS certificate did not reveal any information and remains current as no further information has been identified since its issue'.</i>	The individual's DBS certificate contains no criminal record information and no new information has come to light since its issue.
'NON_BLANK_NO_NEW_INFO'	<i>'This DBS certificate remains current as no further information has been identified since its issue'.</i>	The individual's DBS certificate contains criminal record information, but no new information has come to light since its issue.
'NEW_INFO'	<i>'This DBS Certificate is no longer current. Please apply for a new DBS check to get the most up-to-date information'.</i>	The individual's DBS certificate should not be relied upon as new information is now available. You should request a new DBS certificate.

## 1.7 What are the next steps?

- Discuss the Multiple Status Check facility and its benefits with your organisation
- Pass this guide and technical information to your IT department or an IT developer

Your system can be as simple or as complex as you need - this will affect the time it takes to set it up.

If you need any further information contact your designated account manager if you have one, or DBS customer services at [customerservices@dbs.gov.uk](mailto:customerservices@dbs.gov.uk).

Once your system is ready you can start using the free Multiple Status Check facility immediately.

## 2.0 Technical information

The following technical information assumes a certain level of technical knowledge. It has been developed to inform organisations and IT departments of the necessary components required to develop a front-end programming interface needed to access the DBS Multiple Status Check facility.

**Note:** The DBS do not supply a sample front-end system, nor do we support systems developed by other organisations. It is the responsibility of organisations wanting to use the Multiple Status Check facility to construct and maintain their own front-end system.

### 2.1 What is a web service?

The functionality of the Update Service Multiple Check facility is exposed to organisations via a web service. Web services are typically Application Programming Interfaces (API) or Web APIs that are accessed via Hypertext Transfer Protocol (HTTP). The web service used by the DBS is called 'Restful Web'.

A web service:

- is a standard mechanism for organisations to expose business functionality to their partners
- allows IT applications to communicate with each other in a platform and programming language, independent manner
- is a software interface that can be accessed over the network through standardised XML messaging
- output is typically XML which is easily interpreted and processed by software applications

### 2.2 How do I use the Web Service?

The Web Service provides an API for organisations to access the Update Service Multiple Status Check facility. This is achieved by calling a URL.

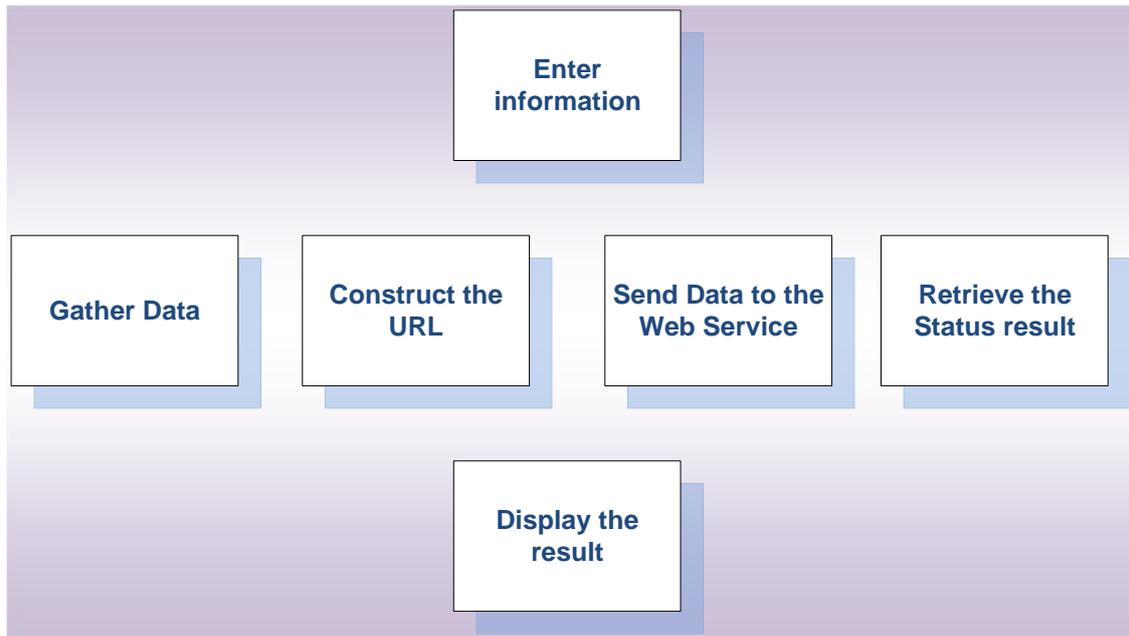
Organisations wanting to use the web service will need to build their own front-end system. This is the front-end programming interface needed to access the DBS web service. The purpose of the front-end system is to send individual information via the API and retrieve the Status result.

A front-end system can be a complex automated product capable of interacting with bespoke inhouse business systems, or it can be achieved using a straightforward software application such as Microsoft Excel.

Your front-end system will need to:

- gather the mandatory input data required to carry out a Status Check (this is the data relating to the individual's DBS Certificate requiring the Status Check)
- send that data to the web service (via a URL)
- retrieve the Status result from the web service and associate it with the relevant individual's DBS certificate

### Typical Multiple Status check front-end system functions



## 2.3 What are the inputs required to make a Multiple Status Check?

The information required to make a valid Multiple Status Check is the same as the information required to make a Single Status Check.

The data inputs are:

- the DBS certificate reference number of the DBS certificate being checked (Integer)
- the surname of the applicant, as it appears on the DBS certificate being checked (Text)
- the date of birth of the applicant, as it appears on the DBS certificate being checked (Date)
- the name of your organisation (Text)
- the name of the employee making the Status Check (Text)
- an indication that you have the Individual's consent to make the Status Check (True/False)

A front-end system must provide all the above inputs (within the URL) or the Status Check will be rejected. If the data cannot be matched to the DBS certificate of an actual Update Service individual, the Status Check will be rejected.

## 2.4 What is the URL needed to call the web service?

The URL used to call the Web Service is:

<https://secure.crbonline.gov.uk/crsc/api/status/<disclosureref>?dateOfBirth=<DD/MM/YYYY>&surname=<text>&hasAgreedTermsAndConditions=true&organisationName=<text>&employeeSurname=<text>&employeeForename=<text>>

**Note:** The text variables within the URL (shown as <text> or DD/MM/YYYY) will need to be replaced with the input values (individual's name, date of birth, DBS Certificate number, employee surname and forename) entered into your front-end system.

A Multiple Status Check is many Single Status Checks happening in quick succession, therefore each instance of a Status Check must call the URL independently. This can be done quickly by constructing a loop within your front-end system's coding. Your organisation's developers may also find it useful to replace the <text> components within the URL with predefined variables set to have a value of the required data inputs.

The '&hasAgreedTermsAndConditions' component within the URL must have a value of 'True'. This value represents whether the employer has the individual's consent to carry out the Status Check or not. A value of 'True' is the default position within the URL, however your organisation's developers may handle this element in different ways, for example, setting the variable to 'True' only if there is a 'Y' in a 'consent received' column within your front-end system.

## 2.5 What might a front-end system look like?

There is no definitive model for a front-end system. Its look and feel will depend entirely on your organisation's business needs and design preference.

The example below shows what a simple front-end system could look like. In this example the front-end system uses Microsoft Excel as the host application.

**Example System**

Certificate Ref	Applicant Surname	Date of Birth	Status Result
1123564855	Smith1	01/01/1985	'BLANK_NO_NEW_INFO'
1123564856	Smith2	02/01/1985	'BLANK_NO_NEW_INFO'
1123564857	Smith3	03/01/1985	'BLANK_NO_NEW_INFO'
1123564858	Smith4	04/01/1985	'BLANK_NO_NEW_INFO'
1123564859	Smith5	05/01/1985	'BLANK_NO_NEW_INFO'
1123564860	Smith6	06/01/1985	'BLANK_NO_NEW_INFO'
1123564861	Smith7	07/01/1985	'BLANK_NO_NEW_INFO'
1123564862	Smith8	08/01/1985	'BLANK_NO_NEW_INFO'
1123564863	Smith9	09/01/1985	'BLANK_NO_NEW_INFO'
1123564864	Smith10	10/01/1985	'BLANK_NO_NEW_INFO'
1123564865	Smith11	11/01/1985	'NEW_INFO'
1123564866	Smith12	12/01/1985	'BLANK_NO_NEW_INFO'
1123564867	Smith13	13/01/1985	'BLANK_NO_NEW_INFO'
1123564868	Smith14	14/01/1985	'BLANK_NO_NEW_INFO'
1123564869	Smith15	15/01/1985	'NEW_INFO'
1123564870	Smith16	16/01/1985	'BLANK_NO_NEW_INFO'
1123564871	Smith17	17/01/1985	'BLANK_NO_NEW_INFO'
1123564872	Smith18	18/01/1985	'BLANK_NO_NEW_INFO'
1123564873	Smith19	19/01/1985	'BLANK_NO_NEW_INFO'
1123564874	Smith20	20/01/1985	'BLANK_NO_NEW_INFO'
1123564875	Smith21	21/01/1985	'BLANK_NO_NEW_INFO'

Buttons: Make Status Check, Clear Results, Show New info only, Show All Rows

Organisation Name: ACME Corporation      Employer Name: Lucas Webley

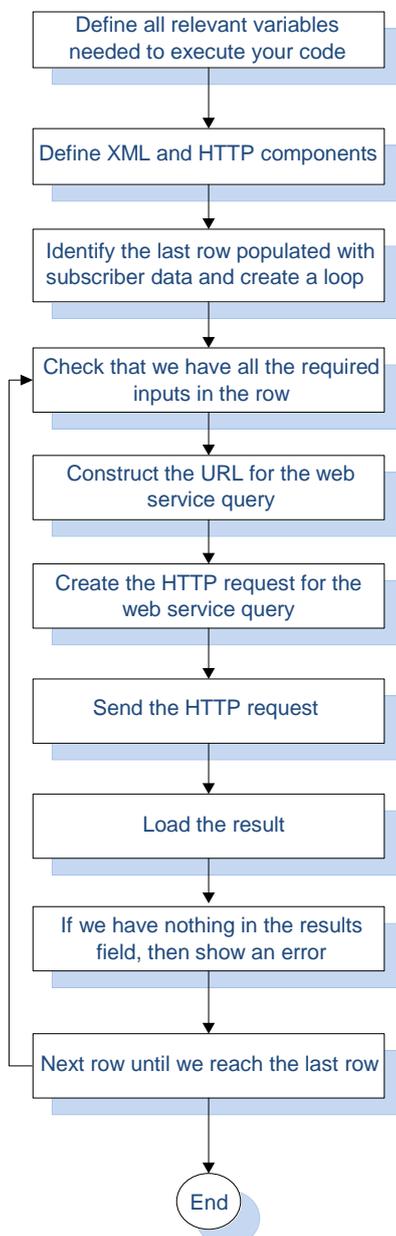
The input data used to construct the URL (mandatory information relating to the individual's DBS certificate) is captured in the first three columns of the table.

The required employer information (input data) is entered in the two fields situated below the main table. The indication of individual's consent is handled within the URL by default.

The process for calling the URL is executed via a 'Make Status Check' button situated on the right of the main table. The 'Make Status Check' button, when selected, runs a Visual Basic for Applications (VBA) code routine. The code gathers the required inputs, constructs the URL, retrieves the Status result and populates the Status result field in column four.

## 2.6 How do you call the URL?

This can be done in a variety of ways. In our example the URL is called via a simple coded routine invoked by an on-screen button. When the button is selected, the coded routine follows the process below:



## 2.7 What will XML result returned from the web service result look like?

The XML for the Multiple Status check result is as below:

```
- <statusCheckResult>
  <statusCheckResultType />
  <status />
  <forename />
  <surname />
  <printDate class="sql-date" />
</statusCheckResult>
```

An example Multiple Status check result would look like:

```
- <statusCheckResult>
  <statusCheckResultType>SUCCESS</statusCheckResultType>
  <status>BLANK_NO_NEW_INFO</status>
  <forename>BILLY</forename>
  <surname>JONES</surname>
  <printDate class="sql-date">2013-06-10</printDate>
</statusCheckResult>
```

## 2.8 Things to remember

Things to remember when building your front-end system:

- Your organisation must develop and maintain its own front-end system
- A front-end system can be as complex or as simple as your organisation wants it to be
- The Update Service Multiple Status Check facility is accessed via a web service
- The web service is the mechanism which exposes the back-end functionality of the Update Service to organisations
- The web service is called via a URL
- The URL is constructed using six mandatory inputs
- The mandatory inputs represent the information relating to an individual's DBS certificate, your organisation and confirmation of consent to carry out the Status Check
- All required inputs must be included within the URL to make a valid Status Check
- The DBS certificate inputs must match against an individual with a valid subscription to the Update Service or it will be rejected
- A Multiple Status Check is lots of single Status Checks happening in quick succession, and your front-end system must provide for this

## 3.0 Glossary of Terms

Abbreviation / Term	Description / Definition
API	Application Programming Interface
Application form reference	The number printed on the top right of the application form under the DBS logo, or the e-reference that may be supplied by the organisation who submitted an online DBS application.
Code/coding	Programming language
DBS	Disclosure and Barring Service
DBS certificate	The certificate produced by the DBS that is sometimes referred to as a DBS check or criminal record check.
DBS certificate reference number	The unique reference number printed on a DBS certificate.
Front-end system	The front-end programming interface (your organisation's system) set up to provide access to another system (DBS system).
HTTP	Hypertext Transfer Protocol. HTTP is the data transfer protocol used on the 'World Wide Web'.
Individual	The individual who has subscribed to the Update Service.
Inputs	The variables relating to individual and organisational information needed to construct the URL required to carry out a Status Check.
Integer	A whole number.
Multiple Status Check	Multiple Status Check requests which are submitted at the same time by an individual or organisation using the Multiple Status Check web service.
Status Check	An activity whereby an organisation or an individual makes an online check to see if the information on a DBS certificate is up to date.
Status result	The outcome of the Status Check of a DBS certificate.
Restful Web	The web service used by the DBS to facilitate the Multiple Status Check.
URL	An acronym for Uniform Resource Locator. A URL relates to a reference (an address) to a resource or web page on the internet.
Update Service Multiple Status Check facility	The service provided by the DBS to enable organisations to carry out Multiple Status Checks at the same time.
VBA	Visual Basic for Applications - a programming language used with Microsoft Applications.
Valid subscription	A subscription to the Update Service that is live at the time a Status Check is made.
Volunteer	A person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative.
Web service	An application programming interface (API) or Web API that is accessed via Hypertext Transfer Protocol (HTTP).

CONSIDERATION OF MANDATING SUBSCRIPTION TO THE DBS UPDATE SERVICE FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS

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**Purpose/Summary of Report**

- Uttlesford District Council uses a combination of Enhanced DBS (Disclosure and Barring Service) and Driver and Vehicle Licensing Authority (DVLA) checks to ensure all drivers are and remain “fit and proper” persons to hold such licences.
- Since June 2013 the DBS Update Service has been available for individual accessing and this authority has therefore encouraged licensed drivers to “sign up” to it on a voluntary basis as it has benefits for both licence holders and the authority.
- It is proposed that subscription to the DBS Update Service becomes mandatory for all licensed drivers.

1.0 Background

- 1.1 Uttlesford District Council is an authority that grants licenses for Hackney Carriage and Private Hire drivers, vehicle proprietors and operators.
- 1.2 The legislation places an obligation on this authority to only licence persons who are considered “fit and proper”. There is no definition of this term within the legislation and neither is there a fixed legislative mechanism for determining this. Cases are determined upon their individual merits.
- 1.3 Uttlesford District Council considers a range of documentary evidence, practical criteria and testing mechanisms in order that it may be satisfied of an individual’s fitness and propriety. Part of this evidence is a criminal record check.
- 1.4 Since 2001 all driver applicants to the licensed trade have undertaken CRB (Criminal Records Bureau) or (as is known now) DBS (Disclosure and Barring Service) checks. Prior to that, the responsibility for disclosure rested with the Police and all drivers prior to 2001 were subject to a Police check.
- 1.5 Applicants are required to have an Enhanced DBS check before a 3 year drivers licence is granted to them. When the drivers licence is renewed a new Enhanced DBS check is carried out and the three year cycle starts again.
- 1.6 The Enhanced DBS Disclosure Certificate includes details of spent convictions, Police cautions and other relevant information for an individual undertaking the role of a licensed driver. A basic criminal record check only shows unspent convictions.

1.7 This authority is able to obtain both the Enhanced DBS check and basic criminal record checks online through an umbrella company. The current costs of these checks to the applicant/licence holder are:

- Enhanced DBS – £50.07

1.8 A DBS check is undertaken, face to face, at an appointment with an Officer of the Council. Following an application being made, the DBS certificate is issued directly to the applicant. It is then the applicant's responsibility upon receipt of the certificate to present it, if necessary to the Council as part of their renewal application, before their licence application can be fully processed.

1.9 Upon receipt of a disclosure certificate from the DBS, via the applicant, the information (if there is any) will be risk assessed by an Officer who will consider whether the information disclosed is capable of having real relevance as to whether or not the individual is a fit and proper person to hold a licence in line with the Hackney Carriage and Private Hire Licensing Policy and the official guidance.

## 2.0 Report

2.1 To date the Council has been strongly encouraging all licensed drivers to subscribe to the DBS Update Service. The Update Service allows individuals to keep their DBS Certificate up to date online, subject to an annual fee which is currently set at £13. This represents a modest reduction in the cost year on year associated with the undertaking of the Enhanced DBS Check at renewal. The total saving to the licence holder would be £1.00 over the life of a licence, but an additional advantage would be that that cost was spread over the three year licensing cycle rather than payable in a single lump sum..

2.2 Some licensed drivers are subscribed to the Update Service and their feedback to the Council is that this works well for them; while for the Council, officer time is no longer spent upon undertaking relevant checks and in processing their licence application.

2.3 In addition to the benefits set out in para 2.2 above, the DBS Update Service also allows Officers to periodically carry out a online status check to see if an individual's certificate remains up to date . It enables the Council to identify if any relevant information about the individual has changed since their DBS Certificate was issued and take action as appropriate.

2.4 Further benefits are detailed in the table below:

<i>Benefits for Licence Holders</i>	<i>Benefits for the Authority</i>
Saves time	Saves Time
Saves Money	Reduces risk

No more appointments to complete applications	Strengthens application and renewal processes
DBS Certificate can be taken from role to role within the same workforce	Supports safeguarding and the protection of the public
Individual in control of their DBS certificate	Allows an instant update of any information

- 2.5 The outcome of a check being undertaken via the DBS Update Service could be one of four:
- i. *This DBS certificate did not reveal any information and remains current as no further information has been identified since its issue* - This means that the initial certificate was blank and there is no new information.
  - ii. *This DBS certificate remains current as no further information has been identified since its issue* - This means that the initial certificate revealed information but there is no new information.
  - iii. *This DBS certificate is no longer current. Please apply for a new DBS check to get the most up-to-date information* – New information has come to light since the initial certificate was issued and a new DBS will need to be applied for.
  - iv. *The details entered do not match those held on our system. Please check and try again* – The individual has not subscribed to the Update Service or the DBS certificate has been removed from the Update Service.

- 2.6 If the change to mandatory subscription to the DBS Update Service is made then Taxi Licensing Policies will be amended to reflect this. The details of which are set out below:

<i>Current policy</i>	<i>Proposed Policy</i>
All applicants for a driver's licence will be required to have an enhanced Disclosure and Barring Service ("DBS") check at the time of the first application for a licence and thereafter at 3 yearly intervals	<p>An enhanced DBS shall be undertaken upon application (either new or renewal) and all licensed drivers will at that point be required to subscribe to the DBS Update Service within the specified timescale of receiving their DBS Certificate.</p> <p>Periodically, officers of the Council will undertake an online check of the DBS Update Service in order to check the applicant's current status.</p> <p>Depending on what is revealed from the online status check, the Council may require an additional DBS check to be undertaken.</p>

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All licensed drivers will be required to renew their subscription to the DBS Update Service on an annual basis, before their current subscription ends, should they wish to continue to hold an Uttlesford Council issued driver's licence.

Where an individual fails to maintain and/ or renew their subscription before it ends; they will be required to apply for a new Enhanced DBS Check and register for the Update Service again.

Licensed drivers will need to retain their DBS Certificate once they have subscribed as this will need to be provided to the officer undertaking the online check.

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- 2.7 In conclusion, it is considered that the proposals are necessary in order to contribute to the Council's Safeguarding responsibilities, along with the statutory licensing obligations. The time frame for moving all existing licensed drivers to the DBS Update Service is a three year cycle, due to the logistical set up of licence renewals. Members are recommended to consider the information within this report and approve the consultation document

The consultation is open to the licensed trade, partner agencies and the public from the X and the closing date for submitting consultation responses is X.

All feedback is encouraged and the results of the consultation exercise will be Presented to Members at Licensing Committee X and will form part of a revised Hackney Carriage and Private Hire Licensing Policy.

Any comments that you forward to the Licensing Authority should clearly state your name and any organisation or persons you may represent.

Send your response:

By email to [licensing@uttlesford.gov.uk](mailto:licensing@uttlesford.gov.uk) please include the words 'DBS Update Service Consultation' in the subject field;

Contact Member: Councillor Patrick Lavelle – Chair of Licensing Committee

Report Author: Russell Way – Manager, Licensing & Enforcement Tel Ext No 01799 510488

# Agenda Item 7

**Committee:** Licensing & Environmental Health

**Date:**

**Title:** Review of Licensed Vehicle Emissions Policy

29 September 2020

**Report Author:** Jamie Livermore, Senior Licensing & Compliance Officer, 01799 510326

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## Summary

- 1.1. Members will be aware that the Committee adopted the current Licensed Vehicle Emissions Policy - **attached as Background Paper A** - on 20 March 2020, which subsequently came into effect on 1 April 2020.
- 1.2. In brief, the Policy requires vehicles licensed by Uttlesford District Council to meet or exceed a prescribed European Emission standard. The prescribed standard differs depending on the type of fuel and whether the vehicle is currently licensed by the Council or is being applied for as new.
- 1.3. The Policy states that "each application will be considered on its own merits".

## Recommendations

- 2.1. Members are recommended to consider the following proposals made by Licensing Officers.
- 2.2. Vehicles that were granted exemptions under the Licensed Vehicle Emissions Policy but that are not wheelchair accessible, should either have their licences revoked after a period of 6 months following the date of an official announcement by the UK Government that social distancing guidance has been completely relaxed, or will have any application made to renew their licences refused after 1 April 2025, whichever sooner.
- 2.3. Wheelchair Accessible Vehicles to be given a later date for the implementation of a prescribed minimum European Emission Standard. Licensing Officers recommend a minimum European Emission 6 for both new licences and renewed licences after 1 April 2025. This would in practice mean that all Wheelchair Accessible Vehicles by 1 April 2026 will be no more than 12 years old. Using the figures in 6.10, only 7 of those vehicles would meet the minimum Standard by this date.
- 2.4. All licensed vehicles would continue to be required to undergo 2 mechanical inspections per year at a Council approved testing station, alongside the mandatory MOT, therefore alleviating any potential concern over the roadworthiness of an older vehicle.

- 2.5. All other parts of the existing Policy to remain in force. This includes the discretion to deviate from the Policy as referenced in 1.3, however a strong business case would be required in writing for the Licensing Manger to approve.

**Financial Implications**

- 3.1. The recommendations made would indirectly allow vehicle proprietors to purchase and licence vehicles for a lesser cost than would otherwise be the case.

**Background Papers**

- 4.1. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

- A. Licensed Vehicle Emissions Policy
- B. Emissions Exemption Form

**Impact**

- 5.1.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

**Situation**

- 6.1. The Coronavirus (Covid-19) pandemic has had a significant detrimental effect on the taxi trade. Lack of work from locations such as Stansted Airport have resulted in a financial burden, and compliance with social distancing guidelines has naturally been difficult within vehicles, particularly for saloons and hatchbacks.
- 6.2. The Licensing Team made provision for assisting the trade at this unprecedented time, as referenced at 6.1 above.

- 6.3. The Licensing Manager agreed in consultation with the Licensing Chair that as of May 2020 and until 31 August 2020, vehicle proprietors could apply to the Council to licence a new 8 seat Multi-Purpose Vehicle (MPV) which may not meet the prescribed European Emission standard as referenced at 1.2, providing said vehicles were applied for in the spirit of the decision, which was to allow for more affordable and social distancing compliant vehicles to be purchased and licensed.
- 6.4. In order to be granted the exemption in 6.3, vehicle proprietors were requested to apply to the Council in advance using a prescribed form – **attached as Background Paper B** - whereby they would provide details of the vehicle and justification of why they were applying.
- 6.5. The Council has licensed 17 vehicles using the exemption during this period.
- 6.6. The vehicles that were granted the exemption were required to be licensed for a maximum of 5 passengers only, in order to facilitate social distancing. This number will not change for the duration of the vehicle's service.
- 6.7. Upon the date that social distancing guidelines are completely relaxed by Government, the vehicles will no longer be required for the purpose that they were granted the exemption for. It is therefore necessary to decide on a suitable timescale for the vehicles to cease being used as licensed hackney carriages or private hires.
- 6.8. Exemptions were also granted to Wheelchair Accessible Vehicles (WAVs) using the same reasoning and process as referenced in 6.3 and 6.4.
- 6.9. WAVs are considerably more expensive to purchase than 'Non-WAV' counterparts due to the modifications and safety requirements necessary to be legally compliant. Such modifications can cost anywhere in the region of £5,000-£10,000 and above.
- 6.10. As of 30 March 2020 the Council has 281 hackney carriage and private hire vehicle licences issued to Wheelchair Accessible Vehicles. Under the current Policy 176 of those 281 vehicles are unlikely to meet the required Standard upon renewal of the licence between the period of 1 April 2021 and 1 April 2022.

## Risk Analysis

7.1.

Risk	Likelihood	Impact	Mitigating actions
[Click here - see	[Click here]	[Click here]	[Click here]

below]			
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

## Licensed Vehicle Emissions Policy

The purpose of this policy is to ensure taxis are as safe, reliable and comfortable as possible while at the same time minimising emissions. The policy aims to have a positive impact on emissions as it is recognised that the age of vehicles and the exhaust emission specification are critical to the level of pollutants emitted. Consequently, to improve air quality and reduce emissions from the taxi fleet, standards relating to the exhaust emissions have been introduced in addition to the requirements regarding the age of vehicles.

### Emissions Standards

#### At first application –

- Diesel vehicles must meet or exceed Euro 6 emissions standards from 01/04/2020
- Other vehicles must meet or exceed Euro 5 emissions standards from 01/04/2020
- Other vehicles must meet or exceed Euro 6 emissions standards from 01/04/2021

#### At renewal –

- From 01/04/2021 vehicle licences will not be renewed in respect of any licensed vehicle that does not meet or exceed Euro 5 emissions standards.
- From 01/04/2023 vehicle licences will not be renewed in respect of any licensed vehicle that does not meet or exceed Euro 6 emissions standards.

Where vehicles do not meet the relevant emissions criteria the proprietor may:

- have the vehicle adapted / modified to meet the standard and provide evidence of this
- change the fuel that is used to a cleaner alternative, such as bio diesel or
- replace the vehicle with one that meets the emission standard.

Notwithstanding that each application will be considered on its own merits.

### When will the different criteria be applied?

If the licence of a currently licensed Hackney Carriage or Private Hire Vehicle is allowed to **EXPIRE** by its proprietor then any subsequent application will **NOT** be considered as a renewal. This means that where an existing vehicles licence expires, a subsequent application for a licence for that vehicle will be treated as a first time application and the standards and criteria relating to first time applications will be applied.

For the avoidance of doubt when a new vehicle has an existing plate transferred onto it the vehicle will be considered under the criteria for a vehicle being licensed for the first time.

### Low emission and electric vehicles

The Council encourages the uptake of low emission and electric vehicles in the District. The authority will seek to examine the feasibility of introducing schemes which help improve the charging network and aid drivers in testing and purchasing electric vehicles.

Vehicle Emission Exemption Request Form

Vehicle Registration	
Vehicle Type	
Make and Model	
Have modifications have been made to the vehicle?	
Euro Emission Rating	
What is the primary reason why you need this vehicle licensed?	
Name and Email of contact for contractor (e.g. County Council) (if applicable)	
Why is it necessary to ask for this exemption under the emission policy?	
Your Name Email Mobile number	
Testing Station Details  Name Date Time of appointment	
Any other comments	

# Agenda Item 8

**Committee:** Licensing & Environmental Health

**Date:**

**Title:** Fees for Drivers, Hackney Carriage and Private Hire Vehicles and Private Hire Operators

29 September 2020

**Report Author:** Russell Way, Licensing Manager  
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## Summary

The purpose of this report is for Members of the Licensing and Environmental Health Committee to review and approve the licence fees in respect of Hackney Carriage, Private Hire and Operator Licences with effect from 1 April 2021.

Increases in respect of Hackney Carriage and Private Hire Vehicle Licences and Private Hire Operators Licences must be advertised for a period of 28 days and if any objections are received, they will be reported back to this Committee for consideration.

## Financial Implications

There are cost implications to the Council in undertaking this legal duty and this is recognised in the legislation which gives provision for the Council to recover the costs of administering the scheme and to ensure compliance.

## Background Papers

The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

## Impact

Communication/Consultation	Operators and Hackney Carriage proprietors and Trade Association will be emailed and advised of proposed fee structure and it will be advertised in 2 local newspapers circulating the District of Uttlesford and also on our Uttlesford website.
Community Safety	None
Equalities	None

Health and Safety	None
Human Rights/Legal Implications	As set out in the body of this report
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

- 1 It is a statutory requirement for this Committee to review and approve the licence fees.
- 2 The Council are legally entitled to charge such a fee for licences and they consider reasonable with a view to recover the costs of the issue and administration of the licence.
- 3 Under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 the cost of a licence must be related to the cost of the licensing scheme itself. It is therefore appropriate for a local authority to recover their administrative and other associated costs.
- 4 The fees for Hackney Carriage, Private Hire and Operator Licences are reviewed by the Council on an annual basis to determine whether the income received from the previous year has been in line with the cost of delivering the service. The basis of the costing review for licences fees consists of an analysis of the time taken and/or cost for each element of the licensing process. This review has been undertaken and it has been identified that the total timings and costs associated with the licensing process is inline with the current fees charged. The proposed fee increase is therefore quite minimal. However, in order to meet more stringent checks and procedures it is planned to recruit an additional officer whose time will be spent mostly undertaking compliance relating to vehicle but with a small amount of compliance relating to operators being undertaken as well. As a result, this necessitates the fees for vehicles rising more materially to recover the extra costs.
- 5 The increase in licence fees required in order to fully recover the underlying costs associated with the issue and recoverable administration costs of each licence type is shown in Appendix B. Appendix A shows the forecast deficit/surplus for 2020/21 to 2022/23 on the assumption that the fees are increased as proposed in Appendix B. The forecast deficits and surpluses in these years relate to the fact that there is a timing mismatch between when the income for driver and operator licences are received and when the costs are incurred for these licences. It is because of this 'timing mismatch' that the licensing reserve was established in order to hold some of the income received from driver and operator fees until the

costs relating to this income have been incurred and the two can be offset against each other.

- 6 A table showing fees and charges from Essex and neighbouring Authorities is attached for information as Appendix C. This shows Uttlesford as still having the lowest vehicle licence fees and among the lowest driver and operator fees.
- 7 Members are asked to approve the fee structure proposed in Appendix B to come into effect on 1 April 2021 and that the fees in respect of Hackney Carriage and Private Hire Vehicle Licences and Private Hire Operators Licences be advertised for a period of 28 days in at least one local newspaper circulating in the district. If any objections are received then Members will need to meet to consider the same and must then set a further date (not being later than two months after the first) on which the variation to fees will come into force with or without modification. They will be reported back to this Committee for consideration.

### Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Fees are set as a level in excess of that required to cover the cost of the Licensing Authority	1 – in preparing the proposed fees officers have kept costs to an absolute minimum	2 – a surplus would be generated which could be countered by a reduction in future years	Fees are kept under constant review and adjusted as necessary.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

**Appendix A : Forecast expenditure and income for Taxi licensing (Note a) and movement on the licensing reserve.**

	Actual 2019/20 £	Forecast 2020/21 £	Forecast 2021/22 £	Forecast 2022/23 £
Expenditure (b)	576,317	464,325	634,321	646,474
Income (c)	565,769	419,546	647,742	647,742
Deficit/Surplus (-ve is deficit)	-10,548	-44,779	13,421	1,268
Reserve balance b/f	90,273	79,725	34,946	48,367
Reserve balance c/f	79,725	34,946	48,367	49,635

Notes

- (a) The expenditure relates to the costs incurred in year processing and issue of applications and also includes checks to ensure standards are adhered to.
- (b) i) Assumption of 2% annual inflation on supplies and services, 2% pay awards and contractual salary increments.  
 ii) Staffing costs are based on surveyed number of hours spent on processing licence applications and checks to ensure standards are adhered to.  
 iii) Expenditure includes overhead costs for the licensing department allocated on fair and proportionate bases i.e. office accommodation costs are based on square footage occupied and ICT costs are allocated on basis of software/hardware used etc.  
 iv) In computing the expenditure a churn rate of 10% has been used i.e. an assumption that 10% of driver licences are given up in the following year.
- (c) Income forecast assume the following estimated number of licences.

**Estimated number of licences**

	Forecast 2020/21	Forecast 2021/22	Forecast 2022/23
New vehicle licences	1270	1700	1700
Renewal licences	968	970	970
New driver licences	420	600	600
Renewal driver licences	205	530	530
New Operator licences	7	7	7
Renewal Operator licences	99	7	7

## Appendix B :Proposed new licence fees from 1<sup>st</sup> April 2021

	CURRENT	PROPOSED	INCREASE	INCREASE
			Note 1	PER WEEK
	£	£	£	£
Driver new licence - 3 years	216	218	2.00	0.01
Driver renewal licence - 3 years	215	218	3.00	0.02
Driver new licence - 2 years	199	202	3.00	0.03
Driver renewal licence - 2 years	198	202	4.00	0.04
Driver new licence - 1 year	182	186	4.00	0.08
Driver renewal licence - 1 year	181	186	5.00	0.10
Vehicle new licence - 1 year	108	145	37.00	0.71
Vehicle renewal licence - 1 year	96	145	49.00	0.94
Vehicle transfer licence	100	105	5.00	0.10
Operator new licence – 5 years	478	493	15.00	0.06
Operator renewal licence – 5 years	476	493	17.00	0.07

Note 1: The reasons for the change in the licence fees are as follows :

- i) A detailed review of time spent on tasks involved in administering each taxi licence has been undertaken.
- ii) The cost of staff involved in administering the taxi licensing process has been updated.
- iii) It is planned to increase the checks made on operators and vehicles from 1<sup>st</sup> April 2021. This will be done by recruiting an additional full time officer

## Appendix C :Taxi licence fees in other Essex Authorities

	Duration	Type	Basildon £	Braintree £	Colchester £	Harlow £	Maldon £	Tendring £	Thurrock £
Driver - HC and PHV combined	3 years	New	290	269	190	405	216	274	445
Driver - HC and PHV combined	3 years	Renewal	190	269	170	295	216	150	405
Vehicle - Hackney carriage	1 year	New	390	330	400	298	235	334	217
Vehicle - Hackney carriage	1 year	Renewal	375	330	400	298	235	334	217
Vehicle - Private hire	1 year	New	340	278	350	298	235	334	313
Vehicle - Private hire	1 year	Renewal	325	278	350	298	235	334	313
Operator - 11 of more vehicles	5 years	New	1,250	444	400	710	216	1,897 *	3,690

\* £367 for 1 vehicle + £153 for each additional vehicle