

LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY, 15 JUNE 2021 at 2.00 pm

Present: Councillor P Lavelle (Chair)
Councillors R Freeman and P Lees

Officers in attendance: J Livermore (Senior Licensing and Compliance Officer),
C Shanley-Grozavu (Democratic Services Officer) and E Smith (Solicitor)

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 items 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.

LIC3 REVIEW OF PRIVATE OPERATOR'S LICENCE

The Senior Licensing and Compliance Officer gave a summary of their report which requested that members determine a review of the applicant's Private Hire Operator's Licence.

The Chair confirmed that the Panel had been in receipt of the 74-page document bundle, submitted by the operator, but indicated that they were both surprised and disappointed by the late receipt, given much of the information provided is not recent. The solicitor for the operator explained that, due to working from home conditions, they were unable to send it sooner.

The solicitor then addressed the Panel on the operator's behalf. He emphasised that the operator had been licensed by Uttlesford District Council for over 8 years, had never previously been under investigation or sanction and that today's Panel hearing was in respect of an isolated incident.

He then summarised the operator's account of the events which subsequently led up to the Licensing Panel hearing, explaining that a driver had experienced a slight cough and had decided to take a Covid-19 test as a precaution, but was advised by a member of office staff to continue with their school pick-ups as they did not display any specific symptoms of the disease.

When the driver later received a positive Covid-19 test result, the operator contacted families of the passengers and the school by email. The solicitor

explained that the operator had not reported anything to UDC Licensing Officers as they had not been informed of the complaint from the Head Teacher of the Middleton School to the contracting Education Authority, until a meeting with UDC.

The solicitor said that the operator was fully aware of its obligation to inform Uttlesford of any complaints and they presented several examples of where this had been done previously. Furthermore, since the meeting with Licensing Officers, the operator had introduced a range of mitigation measures to ensure that a similar incident does not occur again.

These included employing a senior contract manager to liaise on school contracts, performing spot checks for Covid compliancy and employing a full-time Compliance Officer to deal with complaints. The operator has also changed their processes for identifying possible complaints, and the member of staff who did not recognise the original complaint has now been moved to another department.

In response to members questions, the solicitor clarified the following:

- The contracting Local Authority had provided the operator with a process flow-chart for dealing with Covid-19. Staff had followed this flowchart, and as the driver did not have the 3 symptoms outlined in the document, they advised them that they could continue working.
- The member of staff who advised the driver to continue to work was still an employee of the operator but has been moved to a different department.
- The incoming Compliance Officer will report to a director of the company and will be responsible for dealing with complaints, as well as updating the company's complaints policies. An additional new member of staff will be training staff to understand the operator's policies.
- The operator acknowledged that they had handled the complaint incorrectly and have amended their process for identifying and reviewing potential complaints as a result.

In summary, the solicitor said that they hoped to have addressed the Panel's concerns about the incident. He submitted that a revocation or suspension of license was not an appropriate or proportionate response.

The operator left the meeting at 15:00 and the Panel retired to make its decision.

DECISION NOTICE – A2B CONTRACT CARS LTD

The matter before the Panel today is a review of the PHV Operator's licence granted to A2B Contract Cars Ltd (A2B) by the Council. This is a hybrid hearing, and the Panel, our Legal Advisor, the operator and their solicitor are present. The Case Officer is attending via Zoom..

We consider this matter to be extremely serious since the coming into effect of the new HC/PHV Standards in July 2020 the transportation of children to and from school has become a fully regulated activity under the Safeguarding of Vulnerable Persons Act and the detailed requirements of the "Every Child

Matters” and “Working Together” guidance papers are now applicable. Uttlesford licences a considerable number of school contract operators and we therefore consider it to be of the utmost importance that we adhere to best practice in all respects.

Furthermore, this case involves a knowing and deliberate breach of a number of provisions of delegated legislation made under the authority of the Coronavirus Act 2020 and the public health legislation, which might have – we understand that fortunately it did not impact directly upon the health and economic welfare of a number of very vulnerable children and their families. We have also received information that the breach did cause disruption and concern at the school attended by the passengers affected.

We have had the opportunity of reading a detailed officer’s report in this case, a copy of which has been served on A2B, and we have also seen, as have they, the background documents annexed thereto. These include emails passing between Hertfordshire County Council as the LEA, and the Licensing Department, and a lengthy letter from the Headteacher of Middleton School, Ware, the contents of which speak for themselves. We have also received, late yesterday afternoon, a bundle of documents from A2B, including employment, safeguarding and Covid safety policies, risk assessments, notifications and customer correspondence, and we have read these carefully

We have also taken into account the Council’s policy, the DfT Standards and the DfE documents previously mentioned, and have heard from the Case Officer, Mr Livermore. Messrs Hudson and Flowers attended from A2B and answered the questions we put to them, but they were represented by their solicitor, Mr Thomas, who spoke most eloquently upon their behalf.

Briefly the facts of the case are that on 25th November 2020 a licensed driver in the employ of A2B, for whom they are therefore vicariously responsible, collected five young people and transported them to Middleton School, Ware. He experienced a slight cough during the journey and decided to take a Covid 19 test as a precaution. Knowing that he was due to collect the same students at the end of the day he therefore contacted his employer and sought guidance. We add, at this point, that well known Government guidance required him to self-isolate immediately and given the vulnerability of the young people he was transporting he should have done this.

Instead, the person to whom he spoke interpreted the guidance somewhat differently and as he was not at that point experiencing certain specific symptoms instructed him to proceed with the home journey since he declared himself to be feeling fit and well, and anticipated a negative result. Unfortunately the result was positive and the driver and the young people involved – and their families and other contacts – were required to quarantine for 10 subsequent days. The Headteachers’ letter sets out, eloquently, the consequences of this for her students.

The Headteacher contacted Hertfordshire County Council (HCC) regarding the matter and as a result A2B’s contract for that particular route was terminated with immediate effect. HCC also contacted UDC as licensing authority on 7th December, but it was not until 14th December, a full week later, that A2B

notified the Council following an inspection visit that morning. Those present were reminded of the notification provisions forming part of the conditions of their licence and it was only then that they admitted what had happened.

We have read all the documents most carefully and we have listened to everything Mr Thomas has said upon behalf of his client. We have also heard, briefly, from Messrs Hudson and Flowers regarding the measures they have put in place to secure increased compliance with the Council's requirements.

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 continue to hold a licence then our duty is clear – we should revoke the licence. In this case the children concerned, and their families are among the most vulnerable members of society. This review is about two things – a deliberate and serious breach of the Government and LEA Covid 19 protocols due to an over legalistic interpretation thereof, and though A2B did not lose all their Hertfordshire contracts as it was a first offence, we repeat, once more that they took a deliberate risk.

The second issue is compliance with Condition 7 of the Council's Private Hire Operators Conditions of Licence, which states:

*“The operator shall notify the UDC Licensing Team of any complaints made against the operator or any driver used by the **operator within two working days of receipt of the complaint**. This includes complaints received from third parties and relates to any journey whether a hiring by the public or from contract work. Any response to a complaint should be forwarded to Licensing when made” (Emphasis added)*

This is a case where officers found out. The operator did not self-report and when their attention was drawn to their own complaints policy, which defines a complaint as “any expression of dissatisfaction” A2B had to accept that the immediate termination of their contract in respect of Middleton School could not be construed as anything but that. We understand they have now made changes in how they record matters of concern and are now employing both a Contracts Officer and a Compliance Officer, and the two functions will therefore not be conflated in the future. This failure to report to the Licensing Authority is considered a very serious breach of the operator licence. In addition, the failure to respect their own policy raises concern about the management control within the company.

We have been taken at length through the documents before us and note Messrs Hudson and Flowers contrition. We have thought long and hard about our decision and have debated it most anxiously. The reporting requirement is within two working days and it took a pointed inquiry in the course of a routine inspection before A2B admitted what had happened. We repeat, UDC had to find out and enquire of A2B; we were not told. This incident could have had serious public health consequences and we had to discover it from the LEA.

In arriving at our decision, we have taken into account the number of people who will be affected by it. Vulnerable children and their families. School communities.

Hertfordshire County Council. Last, but not least we consider the innocent employees of this company. We regard the driver involved to have been punished enough by quarantine and have listened to what Messrs Hudson and Flowers have had to say regarding the future.

Very many people depend upon what we decide today, and we also know that A2B has every possible incentive to keep the promises made to us today. Even the suspension of an operators' licence during the school holidays could very easily have a domino effect as the education authorities with whom A2B have contracts learn what has happened. It is in their interests to improve and we believe that they know this and will make good on their promises. It is for this reason that we do not propose to revoke the operators' licence for A2B Contract Cars Ltd. However, the breach was so serious and so severe that it cannot go unsanctioned and so the directors will receive a formal letter of reprimand from the Chair of this Committee. This will be separate and distinct from the decision notice, which will be sent to Mr Thomas as agreed with our Legal Adviser, and will be sent directly to A2B.

On balance we believe that the appearance before us today and the knowledge that an LEA is aware they have been found wanting is punishment enough. We trust that the steps taken to ensure there will not be a repeat incident are firmly embedded in the culture of the company. The matter is therefore closed but we do not expect to see A2B before us ever again.