

LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY, 28 SEPTEMBER 2021 at 10.00 am

Present: Councillors C Day (Chair), R Freeman and M Tayler

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

LIC14 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC15 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.

LIC16 REVIEW OF PRIVATE HIRE & HACKNEY CARRIAGE DRIVER LICENCE

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

The driver addressed the Panel, explaining that it was their first permanent route as a Home to School Transport (HTST) driver and that they had not been briefed by the operator regarding the child's condition beforehand. They admitted to playing the radio softly on one occasion, but they had not done this with any intention of hurting the child.

The driver said that much of the complaint against them was false, including the suggestion that they had pressured the complainant not to contact the Council. They emphasised that they were a nice person and would never have hurt the child on purpose.

In response to questions from the Panel, the driver clarified the following:

- The Passenger Assistant (PA) in the back seat had said that they could not hear the radio and was willing to back the driver up on this.
- Both the driver and PA had done everything they could to help the child and they believed they had a good relationship with the family.
- The complaint had only been submitted to the Council after the driver had made the decision to request a change of route.
- The complainant had not spoken to the driver in-person before about the child's condition.
- The driver had been driving the child since March; however, they were frequently absent from school, so they had not spent much time with them overall.

- On the day of the incident, the child had told the driver and PA not to speak so she had put the radio on her side of the car very softly and didn't think that it would impact the child. They accepted that they had overwritten a condition not to play music.

The Solicitor drew the Panel's attention to the email from a parent on the driver's current route which was written in support of them retaining their licence.

To conclude, the driver said that they did not believe that they were a risk to public and apologised again for the mistake which they had made. They stated that in future they would always check first before doing anything that they are unsure about.

The meeting adjourned between 10:30 – 11:03 for the Panel to deliberate.

DECISION NOTICE:

The application before the Panel today is for the review of Ms Larking's joint hackney carriage/PHV driver's licence. She is employed by 24 x 7 Ltd on the Home to School Transport (HtST) side of the business and this hearing is being conducted upon a hybrid basis. The Panel, the Case Officer and the Legal Advisor are in the Council Chamber at London Road, Saffron Walden and other participants, including Ms Larking, are attending via Zoom.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on Ms Larking, and we have also seen, as has she, the background documents annexed thereto including the complaint letter. We have also taken into account national and the Council's policy and have heard from the Case Officer and from Ms Larking. We have also read a glowing testimonial from the parents of the children she is now transporting.

The facts are that on 10 June 2021, the Uttlesford District Council Licensing team were notified by 24x7 Hampshire of a complaint made by a member of the public concerning Ms Larking, one of their employed HtST drivers. The complaint is included within our bundle.

The complainant (who is the parent of the child passenger) had previously asked Ms Larking not to play music or speak loudly when the child was in the vehicle as she has a condition called hyperacusis, which is a type of noise sensitivity. The child had advised her parent that Ms Larking had been playing music during the journey which had caused her distress. The disclosed WhatsApp messages between Ms Larking and the parent appear to show awareness of the issue, and this was also acknowledged during interview with Licensing Officers. We have been provided with more information by the officers concerned, and it should be noted in mitigation that Ms Larking told Licensing Officers that she had previously asked her employer to change her route due to the request for minimum noise during the journey.

We were mindful of Condition 7 of the Uttlesford District Council Private Hire/Hackney Carriage Driver licence conditions which states that the driver will

not “Play any radio, tape recorder, CD/DVD player or similar device, during the course of hiring, without the hirer’s permission”.

We have listened carefully to what Ms Larking has told us. We note that it was her first route as an HtST driver and she tells us that she was not briefed by the operator regarding the child’s condition. She further told us that it was one occasion only and that she would not have put the car radio on if she had known and understood the exact position as she would not have dreamed of harming the child. She told us the Passenger Assistant (PA) in the back seat had said she could not hear the radio, and confirmed that little if any information had been provided by either the operator or the child’s family. She and the PA did everything they could to help the child and Ms Larking believed she had had a good relationship with the family.

However, a though WhatsApp message sent by her in the papers before us somewhat negates this she repeated that she did not appreciate that the journey had to be made in total silence and that this in fact only happened on one occasion.

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. However, we have heard from Ms Larking and we note she had some insight into the special needs of this particular child but had received no training: we also note she requested redeployment from this route, this has happened and we note the glowing testimonial from the parent of the children she now drives.

We do, however, note her genuine contrition. She tells us that she loves her work, would be devastated to lose her job and consider the operator, and possibly the education authority, must bear some responsibility for this incident. When her licence comes up for renewal we urge her to pay particular attention to the relevant parts of the mandatory training day she will be required to attend. Accordingly, we are prepared to allow Ms Larking to retain her licence and we would urge her to take advantage of whatever training may be available.

LIC17 **REVIEW OF PRIVATE HIRE & HACKNEY CARRIAGE DRIVER LICENCE**

The Senior Licensing and Compliance Officer gave a summary of his report which requested that members determine a review of the applicant’s Private Hire and Hackney Carriage Driver Licence.

The driver addressed the Panel and confirmed that they had visited Council Depot for a vehicle compliance test, however denied making any of the alleged comments during and after the inspection.

In response to questions for the Panel, the driver said that it was the first time that they had visited the depot and they had never met the technician before so was unaware of any reason why the technician would have made the allegations against him.

The driver explained that the technician had not informed him of any of the faults and advisories on his vehicle, saying that he would pass the information onto his manager instead, who would then pass it on to the Council. Following the visit, the driver said that he contacted the Licensing department at Uttlesford District Council to say that he did not know if he had passed or failed the inspection and when he received an email from Senior Licensing and Compliance Officer to inform him that the vehicle had failed, he took it straight for repair. He confirmed that he had used T and R Auto Repairs as his garage of choice since he was granted his license in 2012.

The Solicitor clarified that the witness statement was made under Section 9 of the Criminal Justice Act 1967, whereby it is a legal document and contains a statement of truth. Should the technician have given false evidence, it would be punishable as perjury.

The meeting adjourned between 11:20 – 11:46 for the Panel to deliberate.

DECISION NOTICE:

The matter before the Panel today is an application for the review of Mr Khan's joint hackney carriage/PHV driver's licence reference PH/HC0565. Since Mr Khan is an owner/driver, we may also need to consider vehicle licence reference number HCV014 dependent on our decision today.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on Mr Khan, and we have also seen, as has he, the background documents annexed thereto including the list of vehicle defects and the written statements of Mr Cutter, the vehicle technician involved. In reaching our decision we have also taken into account national and the Council's policy and have heard from the Case Officer and from Mr Khan. We also understand that the Police are, or have been, involved in this matter since it involves, inter alia, allegations of dishonesty.

The facts of the case are straightforward. On 17 June 2021, Hackney Carriage Vehicle HCV014 underwent a vehicle compliance test at the Uttlesford District Council Depot in Saffron Walden, following a request made by Licensing Officers for a repeat test due to concerns over the numbers of advisories listed on the prior test which was taken at an independent testing station on 11 June 2021. The Hackney Carriage vehicle, owned by Mr Khan failed its test with outright 7 failures and 9 advisory matters. These are set out in a list forming part of the bundle and they make concerning reading – this vehicle is clearly not safe for the carriage of members of the public and as a professional driver of some years standing Mr Khan should appreciate this.

The test was carried out by one of the Council's Workshop Technicians, Darren Cutter. Mr Cutter was concerned enough to notify the Licensing Team of comments made by Mr Khan during and after the inspection, and as a result he was asked to complete a witness statement under S9 Criminal Justice Act; both this and further correspondence from him are in our bundle. Once he made it known to Mr Khan that his vehicle would not pass its test, Mr Khan told him "I can't lose my (licence) plate, is there anything you can do for me and I will look

after you”, and that he would “get his mechanic to sort the faults if [Mr Cutter] didn’t say anything [to the Licensing Team]”. Licensing Officers held a telephone conference call with Mr Khan on 29 July 2021 and in that interview Mr Khan denied making any of the comments referred to previously. The note of that interview are before us and have been served upon Mr Khan, and we are satisfied they are a true record of that conversation.

We have heard today from the Licensing Officer and from Mr Khan and the latter has had the opportunity to ask questions. However, we did not find him to be a convincing witness and we have concerns regarding the reputation of Mr Khan’s garage of choice. We consider that there can be only one possible interpretation of the words “I will look after you”, while Mr Cutter’s statement is made under S9 Criminal Justice Act 1967 and would therefore serve as his evidence in chief in Court. It contains a statement of truth. Mr Cutter has no reason to lie and we prefer his evidence to that of Mr Khan.

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 revoke the licence. In this case we do so, and with immediate effect in the interests of public safety. Mr Khan has attempted to dishonestly induce a Council official acting in a statutory role as a vehicle tester to certify an unsafe vehicle as being safe to carry members of the public for reward and we take the most serious possible view of this.

These allegations are ones of dishonesty, and further evince a cavalier attitude towards the safety of the travelling public. This is totally unacceptable. We therefore revoke Mr Khan’s drivers licence, with immediate effect, and since only a licenced driver may drive a licenced vehicle, we also revoke the vehicle licence, again with immediate effect, so it can be driven, assuming the defects in it have been rectified, for private purposes. Mr Khan does have a right of appeal against this decision to the Magistrates Court, which must be exercised within 21 days and he will receive a letter from the Legal Department explaining this. Since the licences have been revoked with immediate effect he may not drive for reward pending the determination of any such appeal.

The meeting ended at 11:57