

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, CB11 4ER, on WEDNESDAY, 26 JANUARY 2022 at 10.00 am**

Present: Councillor P Lavelle (Chair)
Councillors S Barker and A Dean

Officers in attendance: A Chapman (Licensing and Compliance Officer), D Cole (Licensing and Compliance Officer), C Edwards (Democratic Services Officer), A Lindsell (Democratic Services Officer) J Livermore (Senior Licensing and Compliance Officer) and S Mahoney (Senior Licensing and Compliance Officer)

Also present: The driver in relation to agenda item LIC22
The applicant in relation to agenda item LIC23

LIC20 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC21 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 paragraph 1 part 1 of Schedule 12A of the Act.

LIC22 REVIEW OF PRIVATE HIRE & HACKNEY CARRIAGE DRIVER LICENCE

The Chair asked the driver if he was content to continue despite the late issue of his documents. The driver confirmed that he was content to proceed.

The Panel and Officers present introduced themselves to the driver.

The Licensing and Compliance Officer gave a summary of his report which requested that members determined a review of the driver`s Private Hire/ Hackney Carriage Driver Licence.

In response to questions from Members the Licensing and Compliance Officer confirmed;

- That the damage to the tyres could have been caused by a balancing issue.
- The damage to the tyres was not ordinarily visible while the wheel was in the usual position.
- The photographs provided within the agenda pack were the documents referred to as B1, B2 and B3 within the report.

The driver confirmed that he had nothing further to add.

In response to questions from Members the driver confirmed;

- No further action had been taken by The Police or other parties following the incident.
- No points were added to the driver`s license as a result of the incident.
- The driver returned to work as a taxi driver two months after the incident following treatment for Post Traumatic Stress Disorder.
- The driver had volunteered to become a school driver post covid as a result of lack of work from his usual source, Stansted Airport. He had worked as a taxi driver sporadically for four years, currently three of four days a week.
- His employer confirmed that the vehicle was his responsibility once he collected it but was the employer`s property.
- The driver checked the vehicle visually when he collected it on Monday morning and admitted that he did not check it every day. The driver reported issues to his employer that arose from his weekly inspections and took action to rectify issues such as a flat tyre.
- The driver lived in Epping and collected the specific taxi in question from Stansted Airport daily to do the school run, returned the taxi to the Airport, and collected it again later in the day to complete the after school run. The taxi was under the control of the employer most of the time.
- The employer undertook vehicle checks at the end of each term, which was evidenced by the driver noticing changes within the vehicle when he returned after a break.
- The driver did not know the mileage of the vehicle.
- The driver apologised that the incident occurred and noted his remorse that his passengers were put at risk.

The driver left the meeting at 10:19am and the meeting was adjourned; the Panel retired to make its decision.

The driver rejoined the meeting at 10:50am and the meeting reconvened.

The Chair read the driver the decision notice.

The driver left the meeting at 10:52am.

DECISION NOTICE

The matter before the Panel today is an application for the review of the driver`s joint hackney carriage/PHV driver`s licence reference PH/HC4808. The driver is employed as a Home to School Transport (HtST) driver. This is a hybrid hearing with the Panel, our Legal Advisor and the driver in the Council Chamber at London Road and the other parties attending remotely. Due to a clerical error he

did not receive the paperwork timeously but has agreed to deal with the matter on short notice today.

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 the photographs of the tyres in question. We have had the opportunity of hearing from him, and in reaching our decision we have also taken into account national and the Council's policy.

The facts of this matter are simple. On 6 July 2021, the Uttlesford District Council Licensing Team were notified by PC Lee Johnston of the Essex Constabulary Roads Policing Unit of an accident involving the driver. PC Johnston's report is included in the papers before us, and in brief, he attended the scene of a Road Traffic Accident on the A120 near to Stansted Airport, involving a vehicle driven by the driver, a Ford Tourneo minibus, index YR19HEZ, and another vehicle. Upon examination, the officer noticed that both the front tyres on the vehicle driven by the driver were worn to an extent that the ply/cords were visible on the inside. The photographs taken by PC Johnston during his vehicle examination are also before us.

The driver stated that, prior to the collision, he had been the only driver of the vehicle in question for some time. It had, therefore, been incumbent on him to ensure that the vehicle was in a roadworthy condition. Tyre wearing of the nature discovered by the constable's examination would ordinarily occur over a prolonged period of time, suggesting that daily checks of the vehicle had not been carried out by the driver before using it to transport his passengers. Given that he is employed as an HtST driver we cannot but regard this as being a very serious matter indeed. We have heard from the driver and the Case Officer, and the former explained to us the manner in which he carried out his duties. When not on the road the vehicle was in the operator's compound at Stansted and they carried out many of the routine checks and maintenance rather than him. We also note that the wear upon the tyres would not have been visible to a casual inspection, that the police have taken no action against him and that he was extremely sorry for what had happened.

However, the primary function of this Committee is the protection of the travelling public. The legislation makes this clear as does the case law and all authority in the area. We are not entitled to take into account issues such as hardship to the driver in the exercise of our statutory function. Our role is to determine whether or not he remains a fit and proper person to hold a HC/PHV licence and if we consider that he is not, then our duty is clear – we should revoke the licence.

In this case the driver was employed as an HtST driver and was therefore transporting children. He was involved in an accident in a vehicle the routine day to day maintenance of which was nominally his sole responsibility. However, he told us that for most of the time the vehicle was in the physical custody of the operator between, say 10.00AM and 2.30PM, overnight, and at weekends and during the school holidays and therefore he – and this Panel – cannot be certain as to what usage the vehicle had in those periods. We recognise that the driver has primary responsibility for a vehicle that supposedly only he drives, but we also acknowledge that he has no knowledge of the use to which it is put when he is not driving it. Further, we note that the defects in the tyres were not readily visible to the naked eye – the steering wheel has to be turned in order to expose the inner surface of a tyre.

This accident took place in early July on a main road and conditions would have been reasonably good. Mercifully he was not carrying passengers and on this occasion nobody was seriously injured. This could have been much, much worse.

Given the responsibility the operator also has for the condition of this vehicle, we will permit the driver to retain his licence. We note he is now checking his vehicle meticulously and he should continue to do so. We strongly urge him to study the conditions of his licence and follow them strictly, and we do not expect him ever to see him before us again

LIC23

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Chair asked the applicant if he was content to continue despite the late issue of his documents. The applicant confirmed that he was content to proceed.

The Panel and Officers present introduced themselves to the applicant.

The Licensing and Compliance Officer gave a summary of her report which requested that members considered a Review of a Private Hire and Hackney Carriage Driver Licence.

In response to questions from Members the Licensing and Compliance Officer confirmed;

- The Driver License Application Form submitted was signed by the applicant and that the two signatures required within the document looked reasonably similar.
- It was necessary for an applicant to sign the Driver License Application Form.

In response to questions from Members the applicant confirmed;

- The applicant did not complete the form.
- If the applicant had completed the form he would have declared the previous conviction as he was not dishonest.
- The applicant confirmed that he had informed the operator of his penalty points and explained that the operator also had access to the DVLA site and had the ability to check their employees records.
- The applicant said that he was told to sign the blank form and that he did not see the completed form. He confirmed that the signatures dated 23/12/2021 on pages 4 and 5 of the application form were his signatures and noted that his signature was rarely identical.
- The applicant said that the operator wanted the forms completed as quickly as possible.
- The operator had apologised for the oversight in inaccurately completing the form on the applicant's behalf.
- On the day the form was signed four other drivers were present and also signed blank forms.
- The applicant had worked for the operator since August 2021 and was previously a Public Service Vehicle driver working with buses.

The applicant left the meeting at 11:06 and the meeting was adjourned; the Panel retired to make its decision.

The meeting reconvened at 11:18.

The Chair confirmed that the Panel had resolved to grant the applicant his license.

There was a unanimous vote to grant him a license and to write to the operator.

DECISION NOTICE

The matter before the Panel today is an application for the grant of a new HC/PHV driver's licence to the applicant. If successful he has an offer of employment as a Home to School Transport (HtST) driver. This is a hybrid hearing with the Panel, and our Legal Advisor in the Council Chamber at London

Road and the other parties, including the applicant, attending remotely. Due to a clerical error he did not receive the paperwork timeously but has agreed to deal with the matter on abridged notice.

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 and we have had the opportunity of hearing from the Case Officer and from the applicant.

Briefly, the Drivercheck report submitted alongside the application dated 5th January 2022, a copy of which is before us, shows that the applicant has 3 points on his DVLA licence for a TS10 on 16th June 2018. Unfortunately, he failed to declare this information on his application form. The Rehabilitation of Offenders regime does not apply to the licensing of HC/PHV drivers. The Drivercheck report dated 5th January 2022 (copy attached) showed that the applicant has 3 points on his DVLA licence for a TS10 in June 2018. Unfortunately, the applicant failed to declare this information on his application form. Question 4 of the UDC application form clearly asks "Do you have any endorsements on your DVLA Licence" the box ticked is "No" (copy attached). The UDC application form also clearly states that "You must include all Driving Licence Endorsements within the last 7 years".

The applicant did not enter the details of this conviction on the form, and though it would normally be spent and would drop off his licence, this does not apply to PHV licensing and we are entitled to take into account spent matters.

Question 4 of the UDC application form clearly asks "Do you have any endorsements on your DVLA Licence". The box ticked is "No". The form also clearly states that "You must include all Driving Licence Endorsements within the last 7 years". The applicant did not enter the details of this conviction on the form.

When interviewed over the telephone he stated that the form had been completed by his intending employer, rather than he himself, and that he

believed the points were spent. This raises two issues – it is the applicant's responsibility to ensure the application documentation is correct, and it shows a failure to familiarise himself with the Council's requirements for the issue of a licence.

Clause 2.3 of the Council's Driver Conditions policy states as follows:-

“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 (eg 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”

We have heard from the Case Officer and from the applicant. He is clearly very unhappy about what happened and we too are very unhappy about the practices of a number of PHV operators regarding the completion of driver licence application forms. He assured us that if he had completed the form himself then the conviction would have been declared but that instead the operator had asked him to sign a blank form. He was at a recruitment session and was one of five aspiring drivers. They were all instructed to sign blank forms and their putative line manager said she would do the rest. The operator had access to the DVLA check and the applicant was clear he told them about the conviction. He also told us that the line manager had admitted the mistake was hers and that she had forgotten the conviction, but that he was not happy with the way the company had handled the matter. He felt that this had made him look dishonest, that he would have filled in the form correctly and that this was not satisfactory. We agree.

However, the primary function of this Committee is the protection of the travelling public. The legislation makes this clear as does the case law and all authority in the area. Our role is to determine whether or not an applicant is a fit and proper person to hold a HC/PHV licence and if we consider that he is not, then our duty is clear – we should refuse the application.

We have heard what the applicant has had to say and note that this appears to be yet another case in which an operator is cutting corners. We deplore the practice of requiring applicants to sign blank forms for the operator to complete on their behalf – the accuracy of their application is their responsibility, not the operator's. We note how unhappy he was about this practice and that he had complained about it. We are therefore prepared to grant him a licence but would urge him to be very careful about what he signs in future.

The meeting concluded at 11:19am.