

LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on WEDNESDAY, 23 MARCH 2022 at 10.00 am

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

Officers in attendance: C Gibson (Democratic Services Officer), J Jones (Licensing and Compliance Officer) and E Smith (Solicitor)

LIC37 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC38 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.

LIC39 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing and Compliance Officer gave a summary of her report which requested that members determined whether the driver should have their private hire/hackney carriage driver's licence suspended or revoked.

A representative of the driver's employer spoke on behalf of the driver. He said that the driver had previously had a clean driving licence for 19 years. He explained the circumstances under which the driver had subsequently received six penalty points; he had been driving a private own vehicle at the time and not that of his employer. He had been passing the mobile phone to a colleague on the back seat of his vehicle.

The representative provided a very positive reference for the driver, who had worked throughout the pandemic providing a service to both children and adults in need. He had also transported NHS staff. He said that this employment was the driver's only source of income and that he had five children in f/t education to provide for.

In response to various questions the representative said that the employer had around 500 registered drivers of which around 100 were registered with UDC. He said that there had been no court case and that the driver had accepted the six penalty points and a fine but that he had expected to receive three points.

The Council's Solicitor said that Points 2.27 and 2.41 of the Policy were applicable but that the Panel were entitled to disallow these points.

The driver and his representative left the meeting at 10:25 am and the meeting was adjourned; the Panel retired to make its decision.

The driver and his representative re-joined the meeting at 10:50am and the meeting reconvened.

The Chair read the driver the main points of the decision notice.

DECISION NOTICE

The matter before the Panel today is an application for the review of the HC/PHV driver's licence No PH/HC2535 held by the driver since January 2018. He drives for his employer on the Special Education Needs Transport Team and though it is they who have brought the matters before us today to our attention, as they are required to do by the terms of their operators' licence, they support the driver and wish to retain his services. A representative of his employer has attended before us today and addressed us on behalf of the driver and he tells us that it is a wholly exceptional course of action for the company to do this.

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. We have also had the opportunity of hearing from the Case Officer and from a representative of his employer, and have read the papers before us most carefully.

On 19 September 2021 the Licensing Department received an email from his employer notifying them that the driver had received a letter the previous day advising him that his DVLA licence would be endorsed with 6 points for handling a mobile phone. The driver told his employer that he was not using the phone, but that he picked it up to hand to his friend who was in the rear of the vehicle. They asked us to make a note on the driver's record.

On 20 September 2021 a reply was sent to his employer advising them that once his licence had been endorsed there would likely be further action because he would no longer meet the standards of the UDC suitability policy for drivers. The annual check of the driver's DVLA licence which was carried out on 27 January 2022 showed a conviction for a CU80 offence on 28 July 2021 and a 6 point endorsement.

Point 2.27 of the 'Policy on deciding the suitability of applicants and licensees in the hackney and private hire trades' states

'Where an applicant has a conviction for using a hand-held mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later'.

Furthermore point 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**'.*

Accordingly, on 3 February 2022 the driver was advised by email that his licence would be referred to Committee to consider possible suspension or revocation as he no longer met the suitability standards. He was invited to submit a statement explaining what had happened and why he felt he was still a 'fit and proper person' to hold a licence.

A statement from his employer on 7 February in support of the driver, together with a statement from the driver which the employer's Head of Compliance, HR and Local Government, advised had been drawn up with their support and sent to UDC by them on the driver's behalf. On 9 February 2022 the employer provided a signed witness statement from the passenger in the vehicle at the time of the offence. We have read these documents carefully.

In his statement the driver explains that on the day of the offence he was driving his own private vehicle and giving his friend a lift. His friend was in the rear passenger seat and his mobile phone was charging in the front of the vehicle. When his friend's phone rang the driver passed it to him. The vehicle was stopped by a police officer and the driver says he explained the situation and was told that he would receive a fine and three points. He signed a form to confirm this.

The driver no longer meets the suitability standards for licensed drivers. He says he has had a blemish free licence for the past fourteen years and is dedicated to his work and serving vulnerable people. He accepts that he should not have passed the mobile phone to his passenger, but says this was a momentary lapse which he will not repeat. In his witness statement, his friend confirms that the driver was giving him a lift and simply passed the phone to him from the front of the car when it rang. His friend confirms that when he returned to the car having spoken to the police officer the driver was under the impression that he had been told the maximum penalty would be a fine and possible three points.

In his letter of support and again before us today, the employer's representative, who is the Head of HR states that the driver has been a valued member of staff for five years and has an exemplary employment record. His employer has invested significantly in his training and he is a popular driver valued by the passengers he assists. They believe that he has demonstrated sincere contrition and they are confident that he has learnt his lesson over the six months since the date of conviction.

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 continue to hold a HC/PHV licence and if we consider that he is not, then our duty is clear – we should revoke the licence.

The handling of a mobile phone while a vehicle is in motion is regarded as a serious matter in this country. Parliament recently substantially increased the penalties for offences of this nature and the forthcoming changes were given considerable attention, including an advertising campaign, in the media.

We have been told that the driver has 5 children in full time education and is the sole wage earner, and that his work for his employer involves transporting vulnerable children, adults and wheelchair users to schools, respite care and day care. We note this information but this is not something we may take into account in arriving at our decision – public safety is paramount.

However, we have listened to the driver's representative and regard this case as being one in which there are mitigating circumstances. The driver was driving his own car, the handling of the phone was momentary and the passenger was an adult and known to him. Given the seriousness with which Parliament regards mobile phone offences, however, we cannot allow this matter to pass unsanctioned. We therefore suspend the driver's licence for a period of seven days. Those days will run from 14th – 20th April inclusive and therefore encompass the Easter Bank Holiday.

The driver has a right of appeal to the Magistrates Court against this sanction and this right must be exercised within 21 days of the date of our decision. It is for this reason that the suspension does not begin until the period for lodging an appeal has passed, and the driver will receive a letter/email from the Legal Department explaining this.

The driver and his representative both thanked the Panel and officers for their time and left the meeting at 10.55 am.

LIC40 **REVIEW OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chair said that in the absence of the driver the Panel would proceed.

The Licensing and Compliance Officer gave a summary of the report which requested that members reviewed an existing Private Hire and Hackney Carriage Driver Licence – PH/HC0141 and determined whether the individual was considered 'fit and proper' to continue holding the licence.

There were no questions from the Panel.

The meeting was adjourned at 11.00; the Panel retired to make its decision.

The meeting reconvened at 11.05.

DECISION NOTICE

The matter before the Panel today is an application for the review of the HC/PHV driver's licence held by the driver. Her previous employer has brought the matters before us today to our attention, and they are required to do by the terms of their operators licence. They have already summarily dismissed her from their

employment. The driver has not appeared before us today and given the seriousness of the matters before us we are proceeding in her absence.

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 the statement of a Passenger Assistant also employed by the previous employer, who witnessed the entire incident. We have also had the opportunity of hearing from the Licensing Officer and have read the papers before us most carefully.

The facts of the case are that on 25 November 2021, the Uttlesford District Council Licensing Team were notified via email by the HR and Compliance Manager for her previous employer, of an accident and subsequent incident involving the driver.

In summary, on the previous day, the driver was travelling along Whielden Grange, Harlow, driving a Peugeot Expert motor vehicle, index WV19KNA. The driver was then informed by the PA on board, that she had forgotten to collect a child and she therefore stopped at a junction before beginning to reverse. However, she failed to notice another vehicle behind her and collided with this car. The driver of the other vehicle then got out of her car, as did The driver. A verbal altercation took place before the driver punched the other driver in the face. This was witnessed by the Passenger Assistant, and her account is also before us. Both parties then left the scene.

The other driver subsequently contacted licensing officer David Cole at Uttlesford District Council. She stated that she had been assaulted by a licensed driver, plate number 5922 earlier that day, and that she had suffered reddening to her cheek and had reported the incident to the police (The other driver subsequently informed Mr Cole that she had told police that she did not wish to take the matter any further).

The driver informed her previous employer of the incident on the day of the incident, and the statement taken by them is before us. She was immediately suspended from work. A Gross Misconduct hearing took place on 6th December 2021. Evidence from The driver and the Passenger Assistant was presented to the hearing. The driver was found to have assaulted the other party and was dismissed without notice. This is a decision her previous employer was entitled to make but their conclusions are in no way binding upon us. We decide for ourselves upon the basis of the evidence we have heard this morning. The driver has not attended before us and nor has she written in with any mitigation.

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 the person before us is a fit and proper person to continue to hold a HC/PHV licence and if we consider that she is not, then our duty is clear – we should revoke the licence.

This was an incident of violence following a road traffic accident, The driver was the guilty party in the accident and she was the aggressor in the subsequent altercation. This took place in the course of her employment as a school

contract driver, which is a fully regulated activity under the Safeguarding Vulnerable Groups Act and there was a child passenger in the car. Only the most disabled have a Passenger Assistant allocated to them.

There is no excuse. This was an unprovoked incident of violence in the presence of a witness and there was a vulnerable child in the car. Even though ultimately the driver did not face criminal charges, for which she should count herself fortunate, she was summarily dismissed from her employment and we do not consider her to be a fit and proper, i.e. safe and suitable, person to undertake work of this kind.

Accordingly we revoke her licence and we do so with immediate effect on the grounds of public safety. The driver has a right of appeal to the Magistrates Court which must be exercised within 21 days and ordinarily the licence would remain in being pending the determination of such an appeal. However, in this case we consider she poses an unacceptable risk, which is why we have taken the decision we have and she does not have this period of grace. She will receive a letter from the Legal Department explaining the position.

The meeting concluded at 11:10am.