



## Public Document Pack

# Uttlesford District Council

Chief Executive: Peter Holt

## Licensing and Environmental Health Committee

**Date:** Tuesday, 23rd January, 2024

**Time:** 7.00 pm

**Venue:** Council Chamber - Council Offices, London Road, Saffron Walden,  
CB11 4ER

**Chair:** Councillor A Armstrong

**Members:** Councillors M Ahmed, M Coletta, J Davey, A Dean, G Driscoll (Vice-Chair), J Moran, A Reeve, B Regan and M Tayler

**Substitutes:** Councillors S Barker, N Church, M Foley, R Freeman and J Loughlin

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# **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.

#### **2 Minutes of Previous Meetings**

4 - 60

To consider the minutes of the following meetings:

- 7<sup>th</sup> August 2023 (Licensing Panel)
- 10<sup>th</sup> August 2023 (Extraordinary Meeting)
- 24<sup>th</sup> August 2023 (Licensing Panel)
- 13<sup>th</sup> October 2023 (Licensing Panel)
- 14<sup>th</sup> December 2023 (Licensing Panel)

#### **3 Proposed 2024/25 Licence Fees for Hackney Carriage and Private Hire Drivers, Vehicles and Operators**

61 - 89

To consider the proposed Licence fees for the period of 1 April 2024 to 31 March 2025 relating to Hackney Carriage and Private Hire Drivers, Vehicles and Operators.

#### **4 Enforcement Update**

90 - 93

To note the compliance and enforcement activities carried out by Licensing Officers during the period from 1 June 2023 to 31 December 2023.

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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.

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# Agenda Item 2

**LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on MONDAY, 7 AUGUST 2023 at 1.00 pm**

Present: Councillor A Armstrong (Chair)  
Councillors S Barker and G Driscoll

Officers in attendance: J Jones (Licensing and Compliance Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also Present: E Smith (Legal Representative, Birketts)

## LIC15 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies were received from Councillor Moran.

There were no declarations of interest.

## LIC16 **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.

## LIC17 **REVIEW OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Licensing and Compliance Officer gave a summary of her report which requested that members determine whether the Driver was "Fit and Proper" to continue to hold a Private Hire and Hackney Carriage Driver's Licence.

In response to questions from members, the Licensing and Compliance Officer clarified that the Licensing Team conduct endorsement checks on all their taxi drivers' DVLA licences both during the application process and then once annually.

In respect to the case before the Panel, the Driver had completed an application for a Private Hire and Hackney Carriage Licence in May last year and the licence was subsequently issued that June. The IN10 offense (using a vehicle uninsured against third party risks) was committed during the application process, 12 days before the licence was granted but after the checks had been completed and was not reported to the Council.

The Driver addressed the Panel and said that whilst he was guilty of the offense, there were mitigating circumstances. He explained that his vehicle had been off the road, but he had believed that it was still insured as there was a Direct Debit

coming out of his account every month. He later discovered, after being charged for having no insurance, that this was for road tax.

He said that he was stopped by the police when taking the car for its MOT. He proceeded to ring his insurer in the presence of the police, and they confirmed that they had contacted him by email five weeks prior to the expiration of the policy; something which he had overlooked. He had not been contacted by the provider any time after this.

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

- He had failed to report the offense to the Council as he was under a lot of stress at the time. He had undertaken several tests, including medicals and a driving exam, to obtain his taxi licence whilst recovering from a cancer operation and being a victim to an investment scam.
- It had not occurred to the Driver that he needed to report the offense to the Council, even after reading the Terms and Conditions of the application as he also had many things on his mind at the time. Furthermore, he was unaware who to contact at the Council as he had not seen a contract.
- He believed that he had been paying for insurance, but not road tax, as he had taken the car off the road. He confirmed that he had not signed or completed a SORN declaration to register the car as off the road.
- The Direct Debit, which the Driver had believed was for insurance, was payable to the DVLA.
- The tests which he had undertaken to obtain the licence were more centred on safeguarding and there was no emphasis on insurance.
- The Driver's employer checked their drivers' DVLA licences once a year. The Driver had not thought to report the offense at the time to his line manager.

The Driver outlined that he had driven over 1.5 million miles in his life and only had one insurance claim, which was a non-blame claim. He had also undertaken a police driving course and was a member of the Institute of Advanced Motorists.

The Driver's Manager then addressed the Panel and said that the Driver had initially applied for the job as they were in a difficult financial situation. They were a well-organised and well-spoken employee and the oversight on their insurance was out-of-character.

The Manager sympathised with the Driver, given at the time of the offense, they were dealing with health concerns, financial instability and the long process of obtaining a taxi licence. Yet, he felt not many people of the Driver's age would have taken these difficult circumstances on the chin.

The Driver concluded by saying that they were in desperate financial straits as they owed a considerable amount of money on a buy-to-let property which was current uninhabitable. Even if it was repossessed, he would still owe money on it. He said that he needed to keep his job in order to keep their head above water.

*The meeting adjourned at 13:36 for the Panel to retire to make their decision.*

*The meeting was reconvened at 14:00.*

## **Decision Notice**

The matter before the Panel today is for a review of HC/PHV driver's licence. The Driver is employed on school and social services contract work and a reference from them is among the papers we have before us today. We are charged with determining whether the Driver is considered 'fit and proper' to continue holding the licence, and depending on our determination upon that issue, we may impose any of the following sanctions:

- No further action
- A suspension of the licence for a prescribed period
- Revocation of the licence

We first consider the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states :

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:*

*Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

- (i) That the applicant is a fit and proper person to hold a driver's licence.*

This responsibility is ongoing and whether the Driver remains a fit and proper person is what we must decide today.

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

- (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 the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence being revoked a driver has the right of appeal to a Magistrates Court

Para 1.3 of this Council's Suitability policy is clear:

*"If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so"*

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.

The facts of the matter are as follows:-

A routine check of the Driver DVLA licence this year showed a 6 point endorsement for an IN10 offence (using a vehicle uninsured against third party risks) from 2022. The Council requires drivers to agree to this as a standard condition precedent to the grant of a licence.

The Driver had not notified the Licensing Authority of this conviction which is a breach of driver conditions.

Point 2.29 of the 'Policy on deciding the suitability of applicants and licensees in the hackney and private hire trades' states as follows:-

*'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.'*

Furthermore, in reference to existing licence holders, point 2.41 of the policy further 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**'.*

On 29 June 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.

The Driver responded by email of the same date and apologised for not informing us of the endorsement. All of these documents are before us, and we have read them carefully. He went on to explain that he believed insurance was in place as he had a monthly direct debit in place, but that he subsequently discovered this was for payment of road tax and not insurance. He had been taking his car for an MOT when he was pulled over by the police and informed that his vehicle was not insured: he stated he immediately rang his insurance company, was told that his cover had expired, and he immediately reinstated his policy so that he could continue his journey. The fact remains, though, that the police did take the matter further and the Driver now has a criminal conviction which he did not declare to the Licensing Authority. He no longer meets the suitability standards for licensed drivers.

In mitigation, he says that at the time he was stopped he was in the middle of applying for his UDC driver's licence. He was desperate to earn money, having been defrauded of a large sum through an investment scam and explained that he is still in real financial straits. Though sad, hardship to the individual is not something we should take into account in making our decision today: our function is the protection of the travelling public and that is of paramount importance.



The Driver is currently employed and his runs include transporting a gentleman with dementia, children with autism and 'difficult' teenagers. He enjoys his job and does it to the very best of his ability. The Driver became a member of the Institute of Advanced Motorists and has only ever made one blame-free insurance claim.

On 5 July 2023 the Driver's manager submitted a reference for the Driver. We have read this with care. He further attended before us this afternoon and spoke most eloquently in support of the Driver. The manager describes the Driver as an asset to the company and an exemplary member of their team, someone who has contacted the office on several occasions to ask relevant questions to ensure he meets his safeguarding responsibilities. The Driver had a long unblemished driving record up to this point and has been a member of the Institute of Advance Motorists in addition to undertaking a one-day Police Driver Training course. The manager states that they have had no complaints about the Driver and have in fact received glowing reports about his interaction with passengers. They say that the Driver deeply regrets the oversight he made in the renewal of his insurance and his failure to notify UDC about his points but believe this was unsurprising given the mitigating circumstances which they detail in their statement.

We have read all the papers before us most carefully and we have listened to what the Driver and his manager have said to us. We understand that the Driver has had a great many challenges in his life, both in terms of his health and in terms of his personal finances, and we do, on a purely personal level, have a great deal of sympathy for him. However, we are charged with the protection of the public, and though there was not an accident on the day in question, there might have been. We do not accept what the Driver had to say about the direct debit.

As on a traditional bank statement, when a person banks online, the identity of the recipient of a direct debit payment is clear on both the bank's website and upon the app. It would have been obvious to him that his monthly payments were to the DVLA and the making of a SORN declaration does not relieve the

vehicle owner of the need to have a valid policy of insurance in place. We also note that the Driver admitted to having had a reminder about his insurance renewal in plenty of time for him to seek cheaper cover if needs be.

Finally, the Driver was pulled up by the police while his application for and HC/PHV licence was in progress. He knew he had committed an offence; he could have spoken to his intending operator, sought their advice, which would have been to disclose the matter to the Council, and then his application might have come before this Committee. He did neither of those things and there can be no excuse.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. 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 a person 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.

We have listened to the Driver and their manager, and we have read and considered the other material before us. However, we cannot ignore the fact that this is an insurance offence and he was driving without a valid policy of insurance in place for almost a month, even though this was in respect of his own personal vehicle and not one in which he carries very vulnerable passengers.

We have carefully considered whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence and sadly we have been driven to conclude that he is not. We have heard what he has told us about his personal circumstances and we have listened to what the manager has told us about the passengers he drives and how positive his interactions with them are. However, hardship to the driver is not mitigation and in all the circumstances we regard ourselves as having no alternative but to revoke his licence. We regard what he did, cumulatively, as being so serious that revocation must be with immediate effect on the grounds of public safety.

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. During that period and until the determination of an appeal he would normally be allowed to continue driving. However, in this case his licence has been revoked with immediate effect on the grounds of public safety and this period of grace does not apply:

The Driver will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights.

LIC18 **REVIEW OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Licensing and Compliance Officer gave a summary of her report which requested that Members determine whether the driver was “Fit and Proper” to continue to hold a Private Hire and Hackney Carriage Driver’s Licence.

The Driver addressed the Panel and said that they were aware that it was illegal to answer the phone whilst driving, but they felt they needed to take the call as it was from work.

The Driver’s partner added that the fleet of vehicles were issued with unreliable hands-free equipment. Furthermore, the call which the Driver received was not relevant. They concluded by saying that she was an asset to the company, and regularly worked a lot of overtime.

In response to questions from members, the Driver clarified that the phone was in a hands-free system, and she did try to cancel the call when she was not able to make a satisfactory connection. However, as she was required to answer incoming calls from her employer as it may regard information about her jobs, she continued to take the call. The call was however not important as it was regarding a quiz night outside of work hours.

*The meeting was adjourned at 14:24 for the Panel to retire to make their decision.*

*The meeting was reconvened at 14:44*

**Decision Notice**

The matter before the Panel today is for a review of HC/PHV driver’s licence. The Driver is employed on school and social care contract driving. She appeared before us today with her partner.

We are charged with determining whether she is considered ‘fit and proper’ to continue holding the licence, and depending on our determination upon that issue, we may impose any of the following sanctions:

- No further action
- A suspension of the licence for a prescribed period
- Revocation of the licence

We start with the law, namely Part II of the Local Government (Miscellaneous Provisions) Act 1976.

S 51 thereof states:

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:*

*Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

*(i) That the applicant is a fit and proper person to hold a driver's licence.*

This responsibility is ongoing, and whether the Driver remains a fit and proper person is what we must decide today.

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

*(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 the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence being revoked a driver has the right of appeal to a Magistrates Court

Para 1.3 of this Council's Suitability policy is clear:

*"If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so"*

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.

The facts of the matter are as follows:-

In April 2023 the Driver advised the Licensing Department by email that she had recently been “pulled over” by the police as she had been observed to have a mobile phone in her hand. In May 2023 the Driver notified the Licensing Department of the outcome which was that her DVLA licence would be endorsed with 6 penalty points.

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, in reference to existing licence holders, point 2.41 of the policy further 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**’.*

As a result the Driver was advised by email that her licence would be referred to Committee to consider possible suspension or revocation as, once her DVLA licence had been endorsed with 6 points for a CU80 offence, she would no longer meet the Council’s suitability standards. The Driver was invited to submit a statement explaining what had happened and explain why she felt she was still a ‘fit and proper person’ to hold a licence. She replied explained that she had been called out for an overtime run for two passengers needing transport. She was travelling alone on her way to the pickup when she received a call from her employer.

Her mobile phone was on hands free in a suitable holder she but was unable to hear what was being said, and as she didn’t know the nature of the call, which could have been a change of route or passenger list, she tried to press the

speaker option on the phone which was still in the holder on the dashboard. This was not practicable, and so she took the phone out of the holder to press the speaker button and then immediately put the phone into the door card whilst on loudspeaker. By an unfortunate co-incidence it was then she was seen by the police and pulled over. In June 2023 the Driver advised us that the 6 points were now on her DVLA licence and provided a share code for the Council to check. All these documents are before us

The Driver no longer meets the suitability standards for licensed drivers. Mobile phone offences are regarded very seriously by the legislature and by the Council given the number of serious accidents that occur as a result of this distraction. The Driver accepts that it was a mistake to pick up the phone, and has attended a formal disciplinary meeting with her employer regarding the matter. She has read and understood the terms of her employment and licence contracts and would not do the same thing again.

We have read all the papers before us most carefully and we have listened to what the Driver has said to us. Their partner also spoke to us in support of what she had to say, and in response to a question he confirmed he does not work for the same company. The Driver told us that the hands free facility control on the wheel of her vehicle does not often work, but since the incoming call was from her office she felt obliged to take the call in case it was relevant to her journey. In answer to our questions, she further confirmed that she had received no training from her operator and admitted she had learned more from the police officer who had pulled her over than from her employer. She freely admitted that what had happened was wholly her fault, that she had learned her lesson and that it would not happen again.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. 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 a person remains a fit and proper person to hold a HC/PHV licence, and if we consider that she is not, then our duty is clear – we should revoke the licence. As we have already said, mobile phone offences are regarded so seriously that they have a discrete section of the Council's policy dealing specifically with them.

We have listened to the Driver, and we have read and considered the other material before us. However, we cannot ignore the fact that this is a mobile phone offence and she was driving a licensed vehicle, though there were no passengers being carried at the time.

We have carefully considered whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence and sadly we have to conclude that she is not. More accidents occur over any given time period as a result of mobile phone usage than drink driving, and Parliament has tightened the parameters of the offence further to cover usage while the vehicle is stationary



but the engine is running. We have heard what the Driver has had to say but the fact remains, this is the time she was caught and we cannot run the risk of a repeat offence. Sadly, we are left with no choice but to revoke her licence. We regard mobile phone offences as being very serious given the incidence of accidents and that revocation is therefore with immediate effect in the interests of public safety.

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. During that period and until the determination of an appeal she would normally be allowed to continue driving. However, in this case her licence has been revoked with immediate effect on the grounds of public safety and this period of grace does not apply: she has not brought her badge with her today but she should hand it into her operator tomorrow and if she has a licensed vehicle in her custody they must collect it. Only a licensed driver may drive a licensed vehicle.

The Driver will receive a letter/email from the Licensing Department with a copy of our decision and explaining her appeal rights.

#### LIC19 **REVIEW OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Licensing and Compliance Officer advised the Panel that the Driver was not in attendance but had submitted a written statement. The Driver had also confirmed that they were happy for the case to be heard in their absence.

The Legal Advisor suggested that the item be deferred so that the Driver may be given another opportunity to address the Panel. This was agreed by the Panel.

*Meeting ended 15:01*

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, CB11 4ER, on THURSDAY, 10 AUGUST 2023 at 7.00 pm**

Present: Councillor A Armstrong (Chair)  
Councillors J Davey, A Dean, G Driscoll (Vice-Chair), J Moran  
and A Reeve

Officers in attendance: S Mahoney (Licensing and Compliance Manager) and  
C Shanley-Grozavu (Democratic Services Officer)

Also  
Present: E Smith (Legal Advisor – Birketts)

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

There were no apologies for absence or declarations of interest.

**LIC21 MINUTES OF PREVIOUS MEETINGS**

The minutes of the previous meeting were approved as a correct record.

**LIC22 LICENSING ACT 2003 - REVISED STATEMENT OF LICENSING POLICY**

The Licensing Manager presented the revised Statement of Licensing Policy for the period 2022 to 2027. It was confirmed that consultation on the draft policy took place over a 12-week period and all the persons listed in s5(3) of the Act, including responsible authorities, premises licensed in the district, local businesses, Councillors, and Town and Parish Councils were consulted. It was also displayed on the Council's website for public comment.

In response to questions from members, officers clarified the following:

- The Council had the power to adapt policies within the Statement of Licensing Policy in order to reflect local issues, needs and initiatives, as long as the statutory requirements continued to also be met.
- The Council had not adopted a Street Trading Policy, so did not have the power to move street traders, such as food trucks, on if required.
- The Statement of Licensing Policy did not have the jurisdiction for licensable activities on private land, however these were still subject to Environmental Health legislation such as noise and waste.
- Overcrowding in premises was no longer the responsibility of the Licensing Authority and guidance was issued by the emergency services.
- Should a premise wish to put table and chairs out on the public highway, then they are required to obtain a separate permit.
- The draft policy had been written by the previous Licensing Manager.

Members commended the document, however raised concerns regarding the lack of training in which members had on the policy and how it would be applied in practice. It was agreed that members would receive further training.

The Chair requested that any feedback be sent to the Licensing Team in writing before the policy was due to be approved at Full Council.

Councillor Dean proposed that the recommendation be amended to include the requirement for further training for members. This was seconded by Councillor Davey.

The Legal Advisor clarified that the amendment was not necessary, given that it duplicated the primary legislation requirement that policies be under regular review.

Members debated the amendment.

The Chair called for a vote and the amendment fell.

Councillor Davey proposed the recommendation be approved. This was seconded by Councillor Moran.

RESOLVED: That members recommend that Full Council adopt the proposed statement of licensing policy with effect from 1 December 2022.

LIC23

## **REVISION TO THE HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY**

The Licensing Manager presented an update on the revisions made to the Hackney Carriage and Private Hire Licensing Policy, following the approval of the new Restricted Home to School Private Hire Driver's licence.

Councillor Driscoll queried the inclusion of footwear twice within the revisions. The Legal Advisor clarified that the law did prescribe appropriate footwear and this was reflected in the policy.

Members requested several errors within the revisions be amended, including removing the inclusion of Thaxted and Takeley as towns in the District.

The revisions were noted.

*Meeting ended at 19.40*

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, CB11 4ER, on THURSDAY, 24 AUGUST 2023 at 1.00 pm**

Present: Councillor A Armstrong (Chair)  
Councillors G Driscoll and J Moran

Officers in attendance: K James (Licensing Support Officer), J Jones (Licensing and Compliance Officer), S Mahoney (Licensing and Compliance Manager), S Nemeth (Licensing Support Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also present: E Smith (Legal Advisor - Birketts)

**LIC24 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

**LIC25 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

Due to the absence of the driver, the Chair announced that Agenda Item 3 (Review of a Private Hire/Hackney Carriage Driver's Licence) would be heard last.

**LIC26 REVIEW OF PRIVATE HIRE DRIVER LICENCE**

The Licensing and Compliance Manager gave a summary of the report which requested that members determine whether the Driver was "Fit and Proper" to continue to hold a Private Hire and Hackney Carriage Driver's Licence.

In response to questions from the Panel, the officer confirmed that the Driver had returned their Private Hire Driver Licence to the Licensing Team, following the notice of suspension. The date of the offense was also confirmed.

The Driver addressed the Panel and provided an account around the circumstances in which they were charged with the assault of an emergency worker. They explained that the offence took place during a period of mental health crisis.

He had pled not guilty in court to the charge of assault, and it was subsequently downgraded to assault of an emergency worker. He was advised by his legal representation to pay the fine as the conviction would be spent after a year. He was also advised against appealing, as the legal costs would outweigh the cost of the fine.

In response to questions from the Panel, the Driver confirmed that the police had been called to his home as he had self-harmed. He was initially charged with Assault by Beating; however this was downgraded by the Magistrates Courts once the police body cam footage was reviewed.

After the trial, the Driver's solicitor had advised him that once the fine had been paid, the charge would not show up on anything after a year. He was not informed that it would still affect his DBS.

The Driver also confirmed that he did not have any orders against him under the Mental Health Act.

The Driver summarised that he wished that it hadn't happen and had since received help through the NHS Mental Health Services. He said that they had never had any complaints or problems in their driving job, and his operator was looking forward to having him back.

*Meeting adjourned 13:23*

*The meeting reconvened at 13:48*

## DECISION NOTICE

The matter before the Panel today is for a review of HC/PHV driver's licence. The licence was administratively suspended in April 2023 and today we are required to decide whether that suspension should be lifted, enabling the Driver to return to driving or whether that licence should be revoked with immediate effect in the interests of public safety. Our choice is binary in this case and most important of all, we are charged with determining whether the Driver is considered 'fit and proper' to continue holding the licence.

We first consider the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states :

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:*

*Provided that a district council shall not grant a licence*

- (a) Unless they are satisfied*
- (i) That the applicant is a fit and proper person to hold a driver's licence.*

This responsibility is ongoing and whether the Driver remains a fit and proper person is what we must decide today.

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

- (a) That since the grant of the licence he has-*
  - (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 the Act: or*  
(b) *Any other reasonable cause.*

In the event of a licence being revoked a driver has the right of appeal to a Magistrates Court

Para 1.3 of this Council's Suitability policy is clear:

*"If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so"*

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 record we have read with care the information supplied by the Driver's legal representation, though we note the offence took place in 2022 not 2023 as he states in his letter.

The facts of the matter are as follows:-

The Council requires all existing licensed drivers to have an active subscription to the Disclosure and Barring Service Update Service, meaning that the Licensing Team are notified of any addition of new information on a driver's criminal record. Following such notification being received against the Driver's record, Licensing Officers issued a suspension of his Private Hire Driver's Licence effective from April 2023, due to the unknown circumstances at that time of the reason for the information being recorded. A copy of that letter is before us and upon receipt thereof, the Driver contacted the Licensing Team to discuss the circumstances. He was advised to provide correspondence from the Court together with anything else that might assist the Council. The Driver had been represented by solicitors and Counsel in the Court proceedings. We are advised, however, that Taxi and Private Hire driving is a profession exempted under the Rehabilitation of Offenders Act 1974, meaning that 'spent' offences can still be considered in decision making.

The DBS certificate was issued in July 2023 and is before us. It states that the Driver was convicted of 'common assault of an emergency worker' and issued a fine of £1,500. This largely corresponds with the detail given in the email from his legal team and the account given by the Driver to Licensing Officers in which he said he had 'bitten' a Police Officer.

The Uttlesford Driver Suitability Policy references that *"Where an applicant has a conviction of 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."* Though this specifically addresses new applicants, our duty to ensure drivers remain fit and proper persons is ongoing, and we may regard it as being guidance in making our decision on this matter. Existing drivers are expected to conform to high personal and professional standards and a conviction for assault, particularly one upon an emergency worker, naturally raises a question as to whether the Driver remains a 'fit and proper' person to retain his licence. We note that the identity of the victim is considered to be an aggravating factor that justifies an increased sentence and

we note the penalties to which the Driver was subjected are entirely punitive in nature.

There is currently an indefinite suspension of the Driver's licence in place until our determination is made. Whilst the issuing of a further suspension would in theory be an option, it would not be a pragmatic in this case and instead the Panel are guided to consider either the lifting of the current suspension thus allowing the Driver to return to work, or the revocation of the licence with immediate effect. On that basis he would not be allowed to resume driving. We repeat, our decision must be made on the basis of whether we consider him to be a 'fit and proper' person to hold the licence based on the information presented before us.

Furthermore, in reference to existing licence holders, point 2.41 of the policy further 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 has been convicted of such an offence and the DBS certificate records that there were aggravating features.

We have read all the papers before us most carefully and we have listened to what the Driver has told us. We limit the details in order to protect his privacy given the circumstances. The offence took place in April of last year during a period of mental health crisis. He had the benefit of legal representation in Court on his not guilty plea, though sadly he was wrongly advised regarding the bringing of an appeal. For the purposes of the HC/PHV driver regime a conviction is never spent.

However, we are charged with the protection of the public, and this was an aggravated offence. We do not recite the details but this was an offence that Parliament considered should attract an enhanced penalty given the aggravating features surrounding it. The Driver did not plead guilty to a lesser charge, one charge was substituted for another given certain elements of the original charge could not be satisfied, but he proceeded with a contested trial and was duly convicted.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of*

*all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. 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 a person 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. We have carefully considered whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence and sadly we have been driven to conclude that he is not. We have heard what he has told us but this was an offence of violence in circumstances Parliament considered merit an increased penalty. He has produced no correspondence from his operator, we have seen no medical evidence, and he did not report the fact of the charge to the Licensing Team. We are aware of the backlogs in the Court system and make no comment. In all the circumstances we regard ourselves as having no alternative but to revoke his licence. We regard what he did as being so serious that revocation must be with immediate effect on the grounds of public safety.

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. During that period and until the determination of an appeal he would normally be allowed to continue driving. However, in this case his licence has been revoked with immediate effect on the grounds of public safety and this period of grace does not apply.

The Driver will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights.

LIC27

## **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Licensing Support Officer gave a summary of their report which requested that members determine an application for a Private Hire Drivers Licence.



In response to questions from the Panel, it was confirmed that there were no active points on the applicant's DVLA Drivers Licence as these had now expired. However, the previous points would be retained on the Licence for period of 4 years.

The applicant addressed the Panel and said that he had never been dishonest and did not intend to deceive on his application form. He confirmed that both he and his potential employer had checked the DVLA website at the time of submitting the application and there were no points displayed.

He explained that the points were as a result of a problem with his previous employer. He had notified the company of a change of address but the letters informing him of speeding offenses in vehicles in his name were sent to the wrong address. He attended court with the driver who had been driving at the time of the offences, but as it had been 6 months since the offence, the points were given to him.

He said that he had never committed any other offences before or after the ones disclosed and that he wasn't his intention to mislead. He was sorry for any offence caused and, if a licence was granted, he would never be seen before the Panel again.

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

- There were two separate MS90 offenses disclosed, along with an SP10. The Driver confirmed that the MS90s were both separate vehicles which were both driven by different drivers. The SP10 was due to driving at 71mph, in a 60mph limit.
- After moving from the previous address, the Driver had done a one-month redirection with the Post Office and informed relevant parties, including his employer of the change of address. However, his employer did not update his file and continued to forward the fines to the old address. They had only found out about the point on the licence when they were unable to rent a minibus.
- The Driver leased a number of vehicles from his previous employer, and he employed the drivers directly. Letters regarding any fines or offenses committed in the vehicles were sent to Head Office, who then forwarded them to him to deal with. As he had not received the letters, he was unable to inform the DVLA that he was not driving the vehicle and the points were added to his licence, as the registered owner.

*Meeting adjourned at 14:20*

*The meeting reconvened at 14:50*

## DECISION NOTICE

The matter before the Panel today is an application for a new HC/PHV driver's licence. If he is successful today he has an offer of engagement.

This application is made under Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states :

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence*

*(b) Unless they are satisfied*

*(ii) That the applicant is a fit and proper person to hold a driver's licence.*

It is this we must decide 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. Most important is his DVLA check which revealed a number of matters. None of these were listed in his application and we are reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving.

Put very briefly, applicants to the Council must complete an application form. It should be done by them personally and it contains a declaration of truth. On the Driver's application form the answer given to question 4, namely 'Do you have any endorsements on your DVLA?' had been 'NO'

However, on checking the Driver's driving licence details the DVLA record showed:

(c) SP10 (Exceeding goods vehicle speed limit) - received 3 driving points.

(d) MS90 (Failing to give information as to identity of driver etc.) - received 6 points.

(e) MS90 (Failing to give information as to identity of driver etc.) - received another 6 points.

The Licensing Support Officer had a telephone conversation with the Driver where he was asked why he had not declared the points. He advised officers that the application form had been completed by the operator and that he thought the points had dropped off his licence. He said that the two sets of six points were from few years ago when he had a franchise, had had people working for him, and using his vans leased in his name. He explained that one of his drivers had got caught speeding a few times and because the company he worked for hadn't updated the system with his new address, he did not receive any paperwork regarding the offences which meant he could not pass the drivers details over to the police.

Nevertheless UDC driver conditions policy states:

Dishonesty

*2.3 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.*

Other motoring offences

*2.28 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). 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.*

We have also had the opportunity of hearing from the Driver and from the Case Officer and have read the papers before us most carefully. The Driver gave us a lengthy account of his problems over the last few years, but apparently he had had a delivery franchise involving fifteen vans, and he had employed a number of others. However, he did not keep proper records, did not promptly notify DVLA or the company of his change of address and did not arrange for the Royal Mail to re-direct his post. He should have done, and he should have kept proper records and followed the company's internal procedures. He did not. Further, in completing his application to the Council he relied totally on his potential operator. The picture he has painted today is one of chaos and that is not acceptable. He was evasive in answering our questions and emphasised the financial hardship he faces if his application was unsuccessful. That is not something we may take into consideration.

We are also mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. Appendix A contains the relevant details, and we quote them here:

*2.5 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.*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

*2.10 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 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 listened to the Driver and we have read the papers before us. He told us that at some point he attended Court and the court Legal Adviser had stated

that he should be disqualified under the totting up provisions: we can only assume the Bench accepted a severe hardship plea, but that is not something we may do. As an employer he was responsible for those working for him in 2020 and he signally failed in meeting his responsibilities in this respect. Even this month, he essentially delegated making his application to the Council to his potential operator. He does not meet the Council's standards and he has told us nothing that would make us decide to exercise our discretion to depart from them.

We therefore have to consider whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and we have to conclude that he does not. It is not the points themselves that are in issue, since they have fallen away, but the fact that he failed to disclose their existence. He also failed to carefully read and check a document that he allowed a third party to complete on his behalf. That document contained a statement of truth, and sadly his application was therefore made dishonestly. We therefore refuse this application.

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. He will receive a letter/email from the Licensing Department explaining this but he should be aware the Court does not have the power to grant a licence: only this Council can.

LIC28

## **DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Licensing Support Officer gave a summary of their report which requested that members determine an application for a Private Hire Drivers Licence.

The applicant addressed the Panel and provided a detailed account of the circumstances around the matters which had been disclosed by the police on his DBS, including a serious allegation of sexual misconduct made against him, a custodial sentence under the Misuse of Drugs Act and a caution for Common Assault.

In response to questions from the Panel, the applicant confirmed that he had previously been convicted for the possession of cannabis and served a short jail sentence for this. He explained that the Common Assault charge related to swearing in a heated argument.

Further questions were asked in regards to the events surrounding the serious allegation of sexual misconduct made against him and the Driver responded with his version of events.

*Meeting adjourned at 15:18*

*The meeting reconvened at 15:34*

DECISION NOTICE

The matter before the Panel today is an application for a new HC/PHV driver's licence. If he is successful today he has an offer of engagement.

This application is made under Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states :

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence*  
*(c) Unless they are satisfied*  
*(iii) That the applicant is a fit and proper person to hold a driver's licence.*

It is this we must decide 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. These reveal a number of very serious matters, including a serious allegation of sexual misconduct made against him, a custodial sentence under the Misuse of Drugs Act and a caution for common assault. He also held a licence issued by Transport for London which was revoked by them because of the indecent assault allegation we have previously referred to, plus non-compliance matters. None of these were listed in his application and we are specifically reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving.

In considering this application, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. Appendix A contains the relevant details, and we quote them here:

*2.5 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.*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

*2.10 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.*

**2.15 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 7 years have elapsed since the completion of any sentence imposed.*

## **2.18 Dishonesty**

*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.*

## **2.20 Drugs**

*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 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.*

A history of dishonesty, indecency or violence is regarded by this Council as being a very serious matter and it is to the question of honesty that we now turn.

Put very briefly, applicants to the Council must complete an application form. It should be done by them personally and it contains a declaration of truth. On the Driver's application form the answer given to question 5, namely 'Have you ever had a licence to drive a hackney carriage and/or private hire vehicle refused, revoked or suspended?' had been 'NO'

However, on checking the NR3 database, details of the revocation referred to above were revealed and TfL provided further information in response to a request. All of this information is before us and has been served upon the Driver. Nevertheless UDC driver conditions policy states:

### Dishonesty

*2.3 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.*

We have also had the opportunity of hearing from the Driver and from the Case Officer and have read the papers before us most carefully. The Driver gave us a detailed account of the events surrounding the allegation of sexual misconduct. That account does not correspond adequately with the facts set out in the police information set out in the DBS certificate, and in response to our questioning further extremely disturbing discrepancies came to light. The same evasiveness surrounded his replies to our questions regarding the other matters set out in the DBS certificate, namely the Misuse of Drugs Act conviction and the common assault caution. If events had been as stated by the Driver then those would not have been the charges brought and he would not have received a custodial sentence. These matters worry us greatly, and unlike the criminal courts, if we have any doubts about the safety and suitability of a licence applicant then the answer is clear.

We are also mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. Appendix A contains the relevant details, and we quote them here:

*2.5 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.*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

*2.10 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 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 listened to the Driver and we have read the papers carefully. There are too many unanswered or inadequately answered questions and we cannot trust what the Driver has told us. We prefer the police information. We also remember that the Rehabilitation of Offenders Act does not apply to matters before us, and in short, we are not prepared to take the risk of licensing the Driver.

We have therefore had to consider whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and we have to conclude that he is not.

There is a history of offending that troubles us greatly, the revocation of a previous licence and the failure to carefully read a document containing a statement of truth; he was untruthful about an matter that went to the root of his application, hence that application was made dishonestly. We therefore refuse this application.

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. He will receive a letter/email from the Licensing Department explaining this but he should be aware the Court does not have the power to grant a licence: only the Council can.

LIC29

## **DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Licensing Support Officer gave a summary of their report which requested that members determine an application for a Private Hire Drivers Licence

The applicant addressed the Panel and provided them with an account regarding a number of serious allegations of sexual misconduct which had been disclosed on his DBS.

He explained that since the year of the first two entries on the DBS, he had applied for a number of jobs and has been refused because of those entries. These applications had included roles in the NHS, schools and taxi licences from other authorities.

He stated that in the case of all the allegations made against him, there had been no convictions. In the first two instances, the complaints were dropped and in the last one he was found not guilty in court.

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

- The first two allegations made against him were colleagues at his work. They were investigated both by the police and the employer, but he was not convicted.
- The third complaint was at a separate workplace, but the allegations were of a similar nature. Following an internal investigation which cleared him of misconduct, the complainant went to the police and the case went to court. He was acquitted following the inability of a jury to decide on a verdict.

The Driver said that he had not received a letter from the DBS to invite him to provide representations prior to disclosure of the allegations to the Council and he was not asked for evidence by officers in advance of the hearing. He produced a certificate of acquittal before the Panel which was the first time it had been seen by the Council.

*Meeting adjourned at 16:05*

*The meeting reconvened at 16:18*

## DECISION NOTICE

The matter before the Panel today is an application for a new PHV driver's licence. No information has been provided regarding the operator for whom he intends to drive and this of itself is somewhat worrying in the light of what the Driver said to us today.

This application is made under Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states :

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:*

*Provided that a district council shall not grant a licence*

*(d) Unless they are satisfied*

*(iv) That the applicant is a fit and proper person to hold a driver's licence.*

It is this we must decide 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. The enhanced DBS Certificate reveals



a number of very serious matters, including several serious allegations of sexual misconduct made against him which were not proceeded with but nevertheless concerned Essex Police enough to keep them on record. Two date back to 2008 and one to 2013. There are also two entries against him listed on the NR3 database of revocations and refusals, available to licensing authorities: as at the date of the report only Harlow Council has responded to the Council's enquiries. We have not heard from Wolverhampton. We are specifically reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving, that we must be satisfied on the balance of probabilities whether the Driver is a safe and suitable person to hold an Uttlesford licence, and, unlike in other forums, the applicant is not entitled to the benefit of any doubt.

In considering this application, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. Appendix A contains the relevant details, and we quote them here:

*2.5 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.*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

*2.10 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.*

A history of indecency is regarded by this Council as being a very serious matter and even though these matters are not convictions but allegations which were not proceeded with the DBS certificate does not say why the CPS did not see fit to proceed.

We have also had the opportunity of hearing from the Driver and from the Case Officer and have read the papers before us most carefully. The Driver told us that since the date of the first two entries on the DBS, he has applied for a number of jobs and has been refused because of those entries. These applications have been for roles in the NHS, schools, this is his third HC/PHV licence application, and van driving. Many of these applications have been, did he but know it, to organisations to which the Rehabilitation of Offenders Act does not apply, and further we note the complainants were workplace colleagues, one considerably younger than him. We are aware that English is not the Driver's first language but he was unable to answer many of our questions and showed a tendency to blame the complainants for his troubles. He did however produce a certificate of acquittal this afternoon. This is the first time this has been seen by the Council and we also note he had the opportunity to correct his records last

December. He did not take it up, and our understanding is that the acquittal was a directed one following the inability of a jury to decide on a verdict.

We are also mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. Appendix A contains the relevant details, and we quote them here:

*2.5 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.*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

*2.10 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.*

Though in this case we are dealing with allegations rather than convictions, there appears to be some similarity and the behaviour concerned continued over a number of years. Over the years the Driver has shown no insight into his history and has made applications for various roles that would involve contact with vulnerable people and been rejected. He admits those rejections were because of the DBS. We agree with those refusals. 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 must make this determination ourselves but though not being in any way “bound” by the decisions of Harlow and Wolverhampton Councils we cannot but take note of the fact of those determinations.

We have listened to the Driver and we have read his DBS certificate, the transcript and the certificate he produced today most carefully. He is applying for a licence from us today because he needs to work around school times and because he has been told Uttlesford grants licences very readily. That is no longer the case, and his personal circumstances are not something we may take into account. The pattern of allegations against him is clear and consistent. We do not believe he should be placed in a position of trust where he will be with vulnerable people and over the years several schools and NHS Trusts have clearly thought the same thing. The jobs he has secured, night cleaning and the like, show the concerns of prospective employers, and we share them.

We therefore have to consider whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and we have to conclude that he is not. There is a history of offending that troubles us greatly, the two NR3 entries – and our

decision today will make a third – and if we are in *any* doubt about an applicant's suitability our duty is clear. We therefore refuse this application.

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. He will receive a letter/email from the Licensing Department explaining this but he should be aware the Court does not have the power to grant a licence: only the Council can.

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

The Licensing and Compliance Officer gave a summary of their report which requested that members determine whether the Driver was "Fit and Proper" to continue to hold a Private Hire and Hackney Carriage Driver's Licence.

The officer confirmed that the Private Hire/Hackney Carriage Driver's Licence was still in place and the Driver continued to work for their operator.

The Driver addressed the Panel and provided an account surrounding her recent conviction of criminal damage. She maintains that she was wrongly convicted and was pursuing an appeal. In addition, the Criminal Cases Review Commission has accepted the referral of her case.

In response to questions from the Panel, the Driver clarified that the flag in question was an A4 piece of paper with a depiction of a gay pride flag. She was unsure how long the poster had been put up for, however she believed that it was the same day, and her actions were in response to the dog getting agitated.

She highlighted that she had a difficult relationship with the neighbour in question, so did not ask them to remove it at the time.

*Meeting adjourned at 16:49*

*Meeting reconvened at 17:10*

### DECISION NOTICE

The matter before the Panel today is for a review of HC/PHV driver's licence. This hearing was adjourned from 7<sup>th</sup> August to enable her to attend. She duly did so and without hearing from her we would not have been able to arrive at a fair determination of this matter.

We are charged with determining whether she is considered 'fit and proper' to continue holding the licence, and depending on our determination upon that issue, we may impose any of the following sanctions:

- (e) No further action

(f) A suspension of the licence for a prescribed period

(g) Revocation of the licence

We first consider the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence*

*Unless they are satisfied*

*(f) That the applicant is a fit and proper person to hold a driver's licence.*

This responsibility is ongoing and whether the Driver remains a fit and proper person is what we must decide today.

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*) That since the grant of the licence he has-*

*(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 the Act: or*

*) Any other reasonable cause.*

In the event of a licence being revoked a driver has the right of appeal to a Magistrates Court

Para 1.3 of this Council's Suitability policy is clear:

*"If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so"*

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.

The facts of the matter are as follows, and it is fair to say the problem has its roots in what is a long-standing neighbour dispute, about which we have no view.

In March 2022 the Council received a complaint from the Driver's neighbour regarding parking issues. She does not reside in the District of Uttlesford. Her then operator advised this was a dispute with complaints from both parties that had been referred to the local council and police. We concluded that this was not a licensing issue and the complaint was closed. In December 2022 the Driver contacted the Licensing Department to advise that she had attended the Magistrates Court regarding a dispute with a neighbour and that a further court date had been set for April 2023. The Driver then rang to advise that she had been found guilty of criminal damage, she was appealing the verdict and that the neighbour dispute involved her removing a poster from a fence which was annoying her dog as it kept flapping. She said she returned the poster to her neighbour by posting it through his letterbox, and he contacted the police.

The Driver sent copies of a Restraining Order in respect of their neighbour, and a Community Order against her for 100 hours of unpaid work to be carried out. The next day, TaxiPlus advised that the Driver's DBS certificate was no longer current and their employer advised that they had submitted a new DBS application the result of which the Council would receive as soon as possible.

On 18 May the Senior Licensing and Compliance Officer, Jamie Livermore, sent a S115 data request form to Essex Police to enquire about the circumstances that led to the conviction. They responded to explain that the Driver had been arrested for racially aggravated criminal damage for cutting down her neighbour's gay pride flag with a pair of scissors, and that the victims felt that this was due to her being homophobic. The new DBS certificate showed a conviction for an offence of "Destroy or damage property (value of damage £5000 or less – offence against

Criminal Damage Act 1971 only). The disposal was a Community Order, costs of £620 and a Restraining Order - Protection from Harassment, and an unpaid work requirement. The Driver was therefore advised that her licence would be referred to the Licensing Panel for determination and she was asked for her comments. The Driver responded with the basic facts that she had been charged with criminal damage at Chelmsford Magistrates, had received a fine and restraining order and unpaid work hours.

The Driver has complied with the conditions of her driver's licence by informing us about the conviction, providing us with copies of the relevant documents and keeping us updated at all times. She maintains that she was wrongly convicted and is pursuing an appeal. The employer are happy for her to continue driving and do not consider her to be a danger to the public. The Licensing Officer has told us today that they had offered to attend today to support her but she had declined.

We have read all the papers before us most carefully and we have listened to what the Driver has said to us. She has given us a detailed account of the problems she has had with her neighbour since he moved in next door, and this includes parking issues, misuse of drugs, ASB and noise. Specifically, she told us he was served with a noise abatement notice by the relevant local authority.

She confirmed that the object which leads to her being before us today was a poster, not a physical flag, and that she had taken legal advice regarding the action she could take regarding affixing materials to her property. She further told us that the neighbour had admitted in cross examination that he knew he had affixed the poster to her property, and that the Criminal Cases Review Commission has accepted the referral of her case. We are advised they have to be satisfied of certain things before they accept a case and if they are satisfied there are defects in a conviction the conviction is quashed.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of

any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. 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 a person remains a fit and proper person to hold a HC/PHV licence, and if we consider that she is not, then our duty is clear – we should revoke the licence.

We have listened to the Driver, and we have read and considered the other material before us. The Council takes its responsibilities under the Equality Act seriously, though on the other hand Kinect do not consider her to be in any way a risk to those passengers she carries, and in short that these convictions relate to a specific person and this behaviour is unlikely to be replicated as against anyone else.

We have carefully considered whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence and on balance we have concluded that she is. If she had not attended today, we would not, perhaps, have been able to arrive at this view. We have noted what she has said about the CCRC and that she has the support of her employer. We note the admission apparently made by the neighbour in court regarding trespass to property and were told he had recently been fined for parking in a manner that obstructed her driveway. In short, the parties do not speak.

We do not think the Driver is a danger to the public and nor does her employer: she remains at work and they offered to accompany her today. We therefore will allow her to keep her licence but do not expect to see her before us again.

*Meeting ended 17:15*



**LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on FRIDAY, 13 OCTOBER 2023 at 1.00 pm**

Present: Councillor A Armstrong (Chair)  
Councillors G Driscoll and J Moran

Officers in attendance: S Bartram (Licensing Support Officer), K James (Licensing and Compliance Officer), S Mahoney (Licensing and Compliance Manager), S Nemeth (Licensing Support Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also Present: E Smith (Legal Representative, Birketts)

Observers: Councillor M Coletta and K Lolotte (Birketts)

**LIC31 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declaration of interest.

**LIC32 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.

**LIC33 DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Licensing and Compliance Officer presented their report which asked members to determine an application for a Private Hire Drivers Licence.

The Driver, and a representative from their prospective operator, were introduced.

In response to questions from members, the following was clarified:

- The Driver already had an offer of employment in place, which would be subject to a six-month probation period.
- The Driver had disclosed on their application form that they had an endorsement on their DVLA Driver licence for six penalty points in relation to a CU80 mobile phone offence. They explained that they had committed the offence whilst working for a parcel delivery company and had picked up their mobile phone to check the location of their next drop. This had been witnessed by a police officer who subsequently pulled them over and issued the charge.
- Prior to the most recent offence, the Driver had only been convicted once before for a speeding offence.

- The Driver had been a professional driver for many years and was currently driving a 7.5-ton vehicle. However, they sought to leave this role for health reason and hoped to return to their previous career as a professional chauffeur.
- In their current employment, the Driver was provided extensive, ongoing training, which included a film comparing the impact of mobile phone offences to that of drink driving. They explained that, as a result, they understood the dangers of mobile phone use whilst driving.

A representative from the Drivers' prospective operator addressed the Panel. They outlined the reasoning behind the company's move from Luton Borough Council to Uttlesford District Council, which included a change in the former's Licensing policy and the requirements of UDC being more favourable to the company's model and needs.

They explained that they had read the Council's Suitability policy carefully but was not aware that applicants had to wait until five years had elapsed on a CU80 conviction before they could apply for a licence with UDC. They took their role as an operator seriously by conducting bi-annual licence checks and advising their Drivers not to use the phone whilst working.

*The meeting adjourned at 13:25 and reconvened at 13:38*

#### DECISION NOTICE

The matter before the Panel today is an application for a new private hire driver's licence. If successful the Driver has an offer of engagement. The Driver disclosed in their application form that he had an endorsement on his driving licence in respect of a CU80 mobile phone offence, for which he had received six penalty points. We are charged with determining whether he is considered 'fit and proper' to hold such a licence.

We start with the law, namely Part II of the Local Government (Miscellaneous Provisions) Act 1976.

S 51 thereof states:

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

- (i) *That the applicant is a fit and proper person to hold a driver's licence.*

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

- (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 the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence application being refused an applicant has the right of appeal to a Magistrates Court.

The Council has adopted the Institute of Licensing's Guidance on determining the suitability of applicants in the hackney and private hire trades. This is considered to be a statement of best practice and is founded upon the premise that the aim of local authority licensing of the taxi and PHV trades is to protect the public.

More specifically, para 4.41 of the Institute's Guidance is clear:

*"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 five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is later."*

Para 4.39 deals more generally with motoring convictions and states:

*"Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor*

*traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.”*

This stance is supported within the Government’s mandatory Taxi and Private Hire Vehicle Standards, para 5.14 of which provides that:-

*“Licensing authorities have to make difficult decisions, but 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 the doubt. If the Sub-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.”*

Further, para 1.3 of this Council’s Suitability policy is clear:

*“If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so”*

Point 2.27 of the ‘Policy on deciding the suitability of applicants and licensees in the hackney and private hire trades’ goes on to state *‘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’*

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. These include a number of competency certificates in driving related matters and a written testimonial from the prospective employer. A representative from the prospective employer also

attended before us today and explained the reasoning behind his company's move from Luton to Uttlesford. It appears Luton Borough Council changed their licensing requirements and he considered this Council's more favourable.

We have heard from the Driver and listened very carefully to what we have been told. The Driver said that he had been a professional driver for many years and is currently driving a 7.5 ton vehicle. He wishes to leave this role for health reasons as he finds the manual handling too much and he hopes to return to professional chauffeuring, which is not the same as HC/PHV driving. He said he was still employed at his current company and inter alia they provided considerable training which is on going and included a film comparing the impact of mobile phone offences to that of drink driving. He explained that as a result he now understands just how dangerous mobile phone usage could be and that he will never do it again. In response to a question, though, we were told the contract with the prospective employer would include a six months probationary period and though we believe the employer to be a conscientious operator we cannot restrict a licence to that one employment.

However, mobile phone offences are regarded very seriously by the legislature and by the Council given the number of serious accidents that occur as a result of this distraction. It does not matter whether the phone was being handled to take a call or for any other reason, the distraction remains the same. We have read all the papers before us most carefully and we have listened to what has been said to us.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services. The Council's policies incorporate Government and Institute of Licensing recommendations and therefore amount to best practice.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. 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 a person is a fit and proper person to hold a PHV licence, and if we consider that he is not, then our duty is clear – we should refuse the application. As we have already said, mobile phone offences are regarded so seriously that they have a discrete section of the Council's policy dealing specifically with them. This mirrors Government and Institute of Licensing recommendations

We have carefully considered whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and sadly we have to conclude that he is not. He has a job and will receive on-going training there. More accidents occur over any given time period as a result of mobile phone usage than drink driving, and Parliament has tightened the parameters of the offence further to cover usage while the vehicle is stationary but the engine is running. We have heard what the Driver has had to say but the fact remains, he was caught and we cannot run the risk of a repeat offence. Sadly, we are left with no choice but to refuse this application. We regard mobile phone offences as being very serious given the incidence of accidents.

The Driver has a right of appeal to the Magistrates Court against this decision and this right must be exercised within 21 days of the date of our decision. He will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights but we feel it right to warn him that the magistrates cannot grant a licence, all they may do is review the reasonableness of our decision and they will do so in the light of the documents we have quoted above.

#### LIC34 **DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Licensing Support Officer presented their report which asked members to determine an application for a Private Hire Drivers Licence.

The Driver addressed the Panel and said that they had been previously licensed in London and kept up their licence after ceasing active driving. They had moved into the property business but had agreed to assign the business to their separation, following their separation. They now hoped to return to their career in chauffeuring.

The Driver explained that they were a Type 1 diabetic and had received an endorsement for a CU80 mobile phone offence after checking their phone for a potential fluctuation in their blood sugar levels. Since the incident, they had installed a different monitor which was connected to their watch to eliminate the requirement to check their phone.

In response to questions from members, the Driver clarified the following:

- There was a discrepancy between the addresses on their DVLA licence and application form as they were living in rented accommodation, should they reunite with their spouse.
- Should they obtain a Licence, the Driver hoped to become self-employed but would initially help their friend, another taxi driver, with their Private Hire work.

*Meeting adjourned between 14:10 and reconvened at 14:24*

#### DECISION NOTICE

The matter before the Panel today is an application for a new private hire driver's licence. We have no information as to which operator the Driver proposes to drive for if successful, he hopes to become an owner driver. In the application form, the Driver disclosed that he had an endorsement on his driving licence in respect of a CU80 mobile phone offence, for which he had received six penalty

points. We are charged with determining whether he is considered 'fit and proper' to hold such a licence.

We start with the law, namely Part II of the Local Government (Miscellaneous Provisions) Act 1976.

S 51 thereof states:

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

*(i) That the applicant is a fit and proper person to hold a driver's licence.*

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

*(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 the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence application being refused an applicant has the right of appeal to a Magistrates Court.

The Council has adopted the Institute of Licensing's Guidance on determining the suitability of applicants in the hackney and private hire trades. This is considered to be a statement of best practice and is founded upon the premise that the aim of local authority licensing of the taxi and PHV trades is to protect the public.



More specifically, para 4.41 of the Institute's Guidance is clear:

*“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 five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is later.”*

Para 4.39 deals more generally with motoring convictions and states:

*“Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.”*

This stance is supported within the Government's mandatory Taxi and Private Hire Vehicle Standards, para 5.14 of which provides that:-

*“Licensing authorities have to make difficult decisions, but 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 the doubt. If the Sub-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.”*

Further, para 1.3 of this Council's Suitability policy is clear:

*“If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so”*

Point 2.27 of the 'Policy on deciding the suitability of applicants and licensees in the hackney and private hire trades' goes on to state *'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'*

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. These include his DVLA Medical report and a letter from him explaining why he had been apprehended with the phone in his hand. We have read this carefully.

We have heard from the Driver and listened very carefully to what we have been told. We have been told that he was previously licensed in London and kept up his licence after ceasing active driving: he moved into the property business but has agreed to assign that business to his wife as part of a matrimonial settlement.

He also told us that he is a Type 1 diabetic and has been for most of his life. He used his phone to monitor his blood sugar levels and unfortunately on the day concerned when he picked it up to monitor a perceived fluctuation he was seen by the police with it in his hand and consequently apprehended. We have sympathy for him, but he was caught with the phone in his hand and therefore the key elements of the offence have been made out.

However, mobile phone offences are regarded very seriously by the legislature and by the Council given the number of serious accidents that occur as a result of this distraction. It does not matter whether the phone was being handled to take a call or for any other reason, the distraction remains the same. We have read all the papers before us most carefully and we have listened to what has been said to us.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. 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 a person is a fit and proper person to hold a PHV licence, and if we consider that he is not, then our duty is clear – we should refuse the application. As we have already said, mobile phone offences are regarded so seriously that they have a discrete section of the Council's policy dealing specifically with them.

We have carefully considered whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and sadly we have to conclude that he is not. More accidents occur over any given time period as a result of mobile phone usage than drink driving, and Parliament has tightened the parameters of the

offence further to cover usage while the vehicle is stationary but the engine is running. We have heard what the Driver has had to say but the fact remains, even though he was not making or receiving a phone call and he now has another device fulfilling the same function, nevertheless he was caught and we cannot run the risk of a repeat offence. Sadly, we are left with no choice but to refuse this application. We regard mobile phone offences as being very serious given the incidence of accidents.

The Driver has a right of appeal to the Magistrates Court against this decision and this right must be exercised within 21 days of the date of our decision. He will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights but we feel it right to warn him that the magistrates cannot grant a licence, all they may do is review the reasonableness of our decision and they will do so in the light of the documents we have quoted above.

LIC35 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Licensing Officers advised the Panel that the Drivers for Agenda Item 5 and 6 were not in attendance.

The Panel agreed that the items be deferred so that the Drivers may be given another opportunity to address the Panel.

*Meeting ended at 14:39*

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on THURSDAY, 14 DECEMBER 2023 at  
1.00 pm**

Present: Councillor A Armstrong (Chair)  
Councillors G Driscoll and J Moran

Officers in attendance: S Bartram, (Licensing Support Officer) A Bonham (District Environmental Health Officer), N Katevu (Monitoring Officer and Head of Legal Services), S Mahoney (Licensing and Compliance Manager) and C Shanley-Grozavu (Democratic Services Officer).

Also present: T Averre-Beeson (Applicant), N Douglas, R McManus (Essex Police), Councillor R Ramm (Felsted Parish Council) and P Scott-Bowden.

**LIC36 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

Introductions were given by all.

**LIC37 APPLICATION FOR A NEW PREMISES LICENCE**

The Licensing Support Officer presented the report which asked the Panel to determine an application for a premises licence in respect of Rumblebees Bookshop and Music Café at Rumballs Shop, Braintree Road, Felsted, Dunmow, Essex CM6 3DJ.

The application sought to carry out the following licensable activities:

- Sale by retail of alcohol (Monday – Sunday 10:00 – 22:00)
- Performance of Live Music (Monday – Sunday 10:00 – 22:00)
- Playing of Recorded Music (Monday – Sunday 10:00 – 22:00)

In response to questions from the Panel, the Licensing Support Officer clarified the following:

- The consumption of alcohol would still be permitted in the outside area of the premises as it was not a licensing activity.
- The licensable activity would be the sale of alcohol.
- There were 22 seats within the premises.
- The applicant already held a personal licence.

Mr Ronan McManus, Senior Licensing Officer for Essex Police, addressed the Panel.

He said that his main concerns were regarding the licensing for the outside area as this would also result in additional deregulated music, especially in the summer months. Having consulted with the applicant, it was agreed to keep the licensable activities to within the parameters of the inside area. Additional conditions had also been agreed which were reasonable for the nature and type of business, as well as in line with the police's expectations.

He concluded by saying that the granting of a premise licence was not a once in a lifetime decision and the applicant must continue to demonstrate that the licensing objectives have been met. If this was not done, then they risked their licence being brought to a review.

Mr Andy Bonham, Senior Environmental Health Officer for Uttlesford District Council, addressed the Panel. He said that he understood the residents' concerns, and should there be any noise disturbances, the Premises Licence was a living document which could be challenged through a review by Licensing or Environmental Health.

He confirmed that he was happy with the additional conditions from the police.

In response to questions for the meeting, the Senior Environmental Health Officer clarified that Environmental Health were the experts in the field when it came to noise, hence the police had not commented on this.

He was content with the applicant's approach to holding events in the evenings, when the neighbouring business had closed and he believed that one event for up to two hours a month would not constitute as a statutory noise nuisance.

Councillor Roy Ramm, from Felsted Parish Council, addressed the Panel and raised their objections on the grounds of public nuisance. The following comments were made:

- The Parish Council strongly opposed the application.
- The premises were based in the Felsted Conservation Area. It had previously operated as a butchers, hairdressers and delicatessen without any noise disturbances.
- Rumblebees operated within a Grade II property where there were limited options in which to mitigate noise.
- The stress caused from the noise of the business was having a detrimental effect to the mental health of the neighbouring residents and business.
- Music events and alcohol, including cocktail nights, were frequently advertised on the shop's social media account which was a departure from the business selling books.
- Allowing music events after 6pm would be the worst possible outcome for the community and Cllr Ramm urged the committee to consider making concessions so that events were held before 6pm without electric and brass instruments.
- The proposed restriction of performing live music for five minutes would still allow the applicant to play a whole cannon of songs.

Mr Peter Scott-Bowden, a neighbour, addressed the Panel and raised their objections on the grounds of public nuisance. The following comments were made:

- He was speaking on behalf of the neighbouring properties, including the business above Rumblebees.
- When Rumblebees opened, they were granted a premises licence to serve alcohol at book club meetings. At the time, there were no noise issues and neighbours had no idea that the permission would allow the venue to host events such as DJ sets and cocktail evenings.
- There had been a shift in the purpose of the venue which had become a nuisance to the welfare of neighbours.
- Live music plays in the small premises both during the day and night. As there is no sound insulation, this noise breaks into adjoining properties, and is worst in the summer when the doors are opened which extends the noise pollution.
- When events are being held, his family are only able to use 50% of the house, due to the noise reverberating through the walls and their lives have been turned upside down.
- There has been a detrimental impact to his family's mental wellbeing due to the significant stress caused by the noise. The objector had been recovering from cancer and required frequent rest in the afternoon. However, they were unable to rest in bed, due to the noise.
- The noise was also impacting the business upstairs as it was disturbing the clients who were there to relieve stress.

Ms Nicola Douglas, a local resident, addressed the Panel and raised their objections on the grounds of public nuisance. The following comments were made:

- They had been a resident in Felsted for 25 years.
- Rumblebees was a small premise within the Conservation area. There was no sound insulation.
- When the premises was full, the only place customers could go was outside generating more noise.
- There was a beautician upstairs who would continue to be disturbed by the plan for occasional music during the day.
- Directly opposite the premises was Felsted School Medical Centre and there were three pubs within 200m, each with their own premises licences for music and alcohol.
- The business often advertised live music and cocktail events on their social media accounts which do not go ahead due to a lack of support in the community.
- The previous premise holder, Edgeley Estate, may be still trading despite being insolvent as the objector received a receipt with this business name on when purchasing a coffee recently from Rumblebees.
- The residents had not seen the agreed Noise Management Plan, referenced in Appendix D.

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

- They referred to DJ sets as a term used to host events where there was a combination of music.
- Ms Douglas had paid for her coffee with cash and, upon request, received a text receipt from Edgeley Estates.

Mr Trevor Averre-Beeson, the applicant, addressed the Panel in support of their application. The following comments were made:

- The applicant and his wife had originally bought the previous business, a hairdresser, and took on the lease of the premises from the former butcher.
- Their intention was to open a bookshop which also sold coffee. This developed into also selling music as this aligned with the applicant's interests.
- The shop shared a party wall with another old building and the applicant accepted that noise did leak next door as a result.
- They received a noise complaint in January 2023 for one of their music nights in which drums were played and accepted that this was highly disturbing to neighbours. Since then, drums have not been played in the shop and the applicant had written to neighbours about various events, but had not received any replies.
- The music events would be an open mic style, without amplification. It would last around two hours and there would be six performers primarily playing the acoustic guitar and singing.
- Rumblebees previously held an alcohol licence, however this lapsed on the insolvency of the premises licence holder, a business owned by his wife, and no transfer application was submitted within the required timeframe.
- Serving alcohol was to create a nice ambience in the shop, and alcohol only represented a very small percentages of sales.
- The premises was small with 22 seats. There were around 45 visitors a day and the majority of customers were older people who came in several times.
- There were very few younger people who visited the shop and those who did were often with a parent.
- The additional evening events were intended to add to the turnover as there was no passing trade at that time of day currently. These varied in success, the last music night attracted 12 people.
- The proposed Noise Management Plan demonstrated their intentions as a business and included a commitment to only holding events in the evening. The intended music during the day would be the applicant playing a song on request, for example to celebrate a customer's birthday.

In response to questions for the Panel, he clarified that:

- The businesses social media was run by the applicant's wife who co-owned the business.
- The Felsted Cocktail Club was run by a Colchester-run company who used the venue. The last event was attended by around 6 people and the applicant did not intend to run the events in future.



- The applicant had previously invited a DJ to play at the premises; however, following the receipt of the noise complaint, he realised that this was unacceptable and had not done so since.
- The Quiz night would run for a maximum of two hours and consist of six rounds of six questions.
- The applicant currently played recorded music in the premises at a low volume, using a domestic system. They had never received any complaints about the volume of this.
- The Open Mic nights were for amateur musicians who were invited to attend and play without arrangements. They did not have any amplifier or microphones.
- The applicant would politely decline brass instruments for their Open Mic nights as the emphasis was on guitars.
- The applicant had not made any effort to introduce soundproofing into the premises as this would not be effective, and it was not possible to find a solution that was both non-intrusive and at a sensible cost.
- The applicant usually attended the events at the business. He said that the social media posts shown to the Panel by the objectors were not reflective of the type of event which took place.
- The applicant opened the shop under his wife and brother-in-law's company as it had a good financial background, but it recently stopped trading for several reasons.

The Senior Environmental Health Officer confirmed that no noise complaints had been received since January.

*The meeting adjourned between 14:08 and 14:51*

*Meeting ended 14.54*

#### Decision Notice

The application before the panel today is for the grant of a Premise Licence in respect of Rumblebees Bookshop and Music Cafe. The application is dated 14 October 2023 and has been made by Trevor Averde-Beeson

The application has sought to grant the following:

- Sale by retail of alcohol: 10:00 – 22:00 (Monday -Sunday)
- Performance of Live Music: 10:00 – 22:00 (Monday -Sunday)
- Playing of Recorded Music: 10:00 – 22:00 (Monday -Sunday)

We have had the opportunity of reading the officer's report on this case, a copy of which has been served on the applicant, the objectors, the supporters and the statutory consultees.

The proposed licensable activities and times are set out in the application form in Appendix A. The proposed licensable activities are therefore for the sale by retail of alcohol between 10:00 and 22:00 Monday to Sunday, performance of live music between 10:00 and 22:00 Monday to Sunday and playing of recorded music between 10:00 and 22:00 Monday to Sunday.

A plan of the premises and of the exterior premises can be found in Appendix A.

The application had been advertised, as required, by way of a public notice displayed at the premises and by advertisement in a local newspaper as well as on the Council's website. 8 valid representations were received from Other Persons, these are contained in Appendices E-L. The representation referred to matters that related to the noise disturbance. In addition, the Other Person raised concerns regarding public safety during live events performed outside.

Copies of the application had been served on all the Responsible Authorities and 2 positive representations were received. A copy of the Police's response is included in Appendices B & C. A copy of the Council's Environmental Health Team is included in Appendix D.

In carrying out its statutory function, the Licensing Authority must promote the licensing objectives as set out in the Licensing Act 2003. These are:

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

There is no hierarchy of importance among the objectives, and all must be given equal weight.

The decisions that the Committee can make 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, due regard should be given to the Council's Licensing Policy and the Secretary of State's Guidance issued in accordance with the 2003 Act. Copies of these documents are before us and our Legal Advisor has reminded us of the requirements of the statutory regime under which we operate.

The Secretary of State's Guidance provides at paragraphs 10.8 and 10.10 the following assistance for members:

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 must 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.”

Furthermore, if the Committee’s decision is to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relevant to the representations received. The Committee should not impose conditions that duplicate the effect of existing legislation.

We have considered the application carefully and have read the documents before us, including written submissions both in support of and against the application and the additional representations from the Other Person. We have also listened carefully to all of those who have spoken before us this afternoon and remind ourselves that no objections have been received by the Responsible Authority.

We have heard from the applicant and from Nicola Douglas, Cllr Roy Ramm and Peter Scott-Bowden, who raised a variety of matters which included public safety, mental well-being and noise nuisance.

We also heard from the Senior Licencing Officer for Essex Police and the Senior Environmental Health Officer for Uttlesford District Council who provided agreed premises parameters and a noise management plan respectively.

The applicant clarified that they have not done any soundproofing at the premises and in any event they might not have the desired effect. They also confirmed that they only allow acoustic instruments to be played.

We therefore grant this application subject to the modification on the hours and an additional condition previously submitted by the applicant as well as the following:

1. Sale by retail of alcohol: 11:00 – 21:30 (Monday -Sunday)
2. No percussion instruments to be played at the Premises.

All parties have a right of appeal against this decision 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 but in the circumstances, we feel it right to add that we have given our decision anxious consideration and it is the policy of the Council to defend the decisions of this Committee. All respondents to an unsuccessful appeal are entitled to seek their costs of defending, and caselaw suggests they will receive them.



# Agenda Item 3

<b>Committee:</b>	Licensing and Environmental Health	<b>Date:</b>	23 January 2024
<b>Title:</b>	Proposed 2024/25 Licence Fees for Hackney Carriage and Private Hire Drivers, Vehicles and Operators		
<b>Report Author:</b>	Jamie Livermore, Senior Licensing & Compliance Officer, 01799 510326		

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## Summary

1. This reports sets out the procedure for the setting of Licence fees for applications within the remit of the Licensing & Environmental Health Committee, and updates Members on the proposed Licence fees for the period of 1 April 2024 to 31 March 2025 relating to Hackney Carriage and Private Hire Drivers, Vehicles and Operators.

## Recommendations

2. It is recommended that Members note the contents of this report
3. It is recommended that the Committee refer the approval of the revised fees to full council following the end of the consultation period and the production of the full report findings.

## Financial Implications

4. The Local Authority is required to review its fees and charges as part of its annual budget setting process. In accordance with both legislation and guidance, it is appropriate for fees and charges associated with the Licensing regime to be set as cost-recoverable.

## Background Papers

- 5.

- A. Proposed Licence fees for 2024/25, and costs/income from 2022/23, 2023/24 and 2024/25
- B. Local Government Association Guidance on locally set Licence fees (Dec 2023)
- C. S70 Local Government (Miscellaneous Provisions) Act 1976

**Impact**

6.

Communication/Consultation	Statute requires notice of proposed changes to be published in at least one local newspaper for a period of at least 28 days.
Community Safety	None
Equalities	Any changes in fees must be communicated to all existing licence holders, and consultation on any proposed changes will be conducted with interested parties and the wider public to ensure there is an opportunity to contribute to any such decision.
Health and Safety	None
Human Rights/Legal Implications	The Local Authority is permitted to charge a reasonable fee for the grant of a licence with the view to recovering the costs of the issue, administration and supervision of such licences.

Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

7. In accordance with S70 of the Local Government (Miscellaneous Provisions) Act 1976, the Local Authority is required to consult with interested parties where there is any proposal by it to vary the existing fee structure. The requirement relates only to vehicle and operator licences, however the Authority has previously done and continues to include driver fees within this consultation for full transparency.
8. Consultation for the upcoming financial year was necessary as there are small increases compared with the previous year period. The proposed fees and current fees are both illustrated in **Background Paper A** for Members' assistance.
9. The reason for the increase relates only to national inflationary changes, the Council wide staff pay award, and any staff salary increments applicable within the Licensing Team. Therefore, increases have been kept to a minimum, however, still necessary in order to fully recover the permitted costs associated with the issue, administration and supervision of the licensing regime.
10. **Background Paper A** additionally shows the movement on the licensing reserve. The licensing reserve holds the income that pays for the cost of work required in future years of Driver and Operator licences, which are generally issued for 3- and 5-year durations respectively. The surpluses transferred to the licensing reserve in 2023/24 and 2024/25 are caused by an increase in the volume and cost of driver licences being issued compared to the previous years, so that more income is transferred to the reserve than taken from it.
11. The consultation commenced on the 18<sup>th</sup> January 2024 lasting for a period of 28

days, with a final date for objections of 15<sup>th</sup> February 2024. In accordance with the statutory requirements, the proposals were published on the Authority's website, in a local newspaper, and sent directly to existing licence holders by way of email. Licensing Officers will additionally look to offer both an in-person and/or virtual meeting with members of the Taxi and Private Hire trade for their views.

12. As the consultation is in progress at the time of this Committee, it is not possible to present Members with the full report findings or be able to seek the Committee's referral for approval to full council.

13. Members are advised to refer to **Background Paper B and C** for further information and clarification on Licence fee setting from the Local Government Association and Local Government (Miscellaneous Provisions) Act 1976 respectively.



**PROPOSED CHANGE IN HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING FEES**

	<b>2023/24</b>	<b>Notes</b>	<b>24/25 proposed fee</b>
Driver - 3 years	226		239.50
Vehicles	145	1	171.00
Transfer fee	116.5		123.50
Operator	549.5		583.00

Note 1: Vehicle fee for 23/24 of £145 includes a £16 discount

**HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING COSTS AND INCOME**

	<b>Notes</b>	<b>2022/23 Actuals</b>	<b>2023/24 Forecast</b>	<b>2024/25 Forecast</b>
Salaries		213,418	218,495	269,397
Other employee related	1	3,759	3,849	4,745
DBS/Driver checks		9,684	11,520	11,520
Other (materials etc.)		54,261	64,951	65,411
Recharges from other departments				
Management and corporate overheads		20,982	21,481	26,486
Accounts		1,184	1,212	1,494
Legal		19,147	19,603	24,169
Audit		6,747	6,908	8,517
HR		10,793	11,050	13,624
Printing		1,116	1,142	1,408
Mailroom		8,659	8,865	10,930
Customer services		12,592	12,892	15,895
ICT		43,204	44,231	54,536
Offices		9,291	9,512	11,728
Safeguarding		19,777	20,896	21,732
Total costs		434,614	456,607	541,593
Income		431,565	482,735	549,098
Deficit/(surplus)	2	3,049	-26,128	-7,504

## Notes

1. travel and training and clothing

2, The surpluses represent income received for Driver licenses for the cost of work that the licensing team will need to conduct in future years to 'support' these licenses. These surpluses are taken to the licensing reserve and drawn down in future years to meet the costs incurred.

**MOVEMENT ON LICENSING RESERVE**

	<u>2022/23</u>	<u>2023/24</u> Forecast	<u>2024/25</u> Forecast
Opening balance	65,507	62,458	88,585
Transfer to reserve	46,157	60,813	59,256
Transfer from reserve	49,206	34,685	51,752
Closing balance	62,458	88,585	96,090

## LGA guidance on locally set licensing fees

This guidance aims to help councils to understand the full breadth of issues that should be considered when setting local licence fees in order to meet legal obligations and provide the necessary reassurances to local businesses.

14 Dec 2023 | 10.74

### Introduction

Councils are responsible for administering a range of licences and approvals relating to both national legislation and discretionary functions that are adopted locally. For the majority of these regimes the costs are recovered through fees set by each council and paid by the licence applicant. It is an accepted principle in relation to these functions that those who benefit from the system (such as licence holders) should cover the cost of it. Locally set fees are a vital means of ensuring both that full costs can be recovered by each and every council, reducing the risk of a subsidy from local taxpayers, and that businesses do not pay more than they should.

Licensing decisions that are made by councils can face scrutiny from businesses, the public and in the media, particularly in relation to fee setting. Therefore, every council should ensure it sets fees in a legally robust and transparent manner.

This guidance aims to help councils to understand the full breadth of issues that should be considered when setting local licence fees in order to meet legal obligations and provide the necessary reassurances to local businesses. It does not contain a fees calculator because this assumes a uniformity of service design and associated costs, when it is vital that councils are free to design services that best serve the needs of their community and recover costs accordingly. Whilst this guidance is focused primarily on licensing fees, the principles of good fee setting apply equally to other fees set by council regulatory services (and beyond) so officers working in those fields may also find this guidance useful.

## **Key issues for consideration**

### **Balancing the need for funding with a proportionate approach**

Regulatory services are at the heart of councils' approaches to economic growth. Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, at the same time as ensuring they adhere to important safeguards.

To ensure that councils can promote growth and protect the public, there is a need to ensure that licensing and wider regulatory regimes are adequately resourced. This requires funding, and it is an accepted principle that licensed activities should be paid for by those benefiting from the licensed activity, rather than drawing on the public purse.

Where councils have the flexibility to set local fees, it is possible to consider how resources can be focused on risk; whether business support is effective; and how the burden of inspections can be removed where it is not necessary. A streamlined approach to licensing will ensure that fees are kept to a minimum and businesses can be encouraged to prosper. However, councils should ensure they are accurately setting their fees, including checking that the hourly rates of licensing and other officers are correct and considering wider costs such as administration or on-site costs, to enable full cost recovery.

## What are the Provision of Services Regulations 2009 and how do they impact on locally set licence fees?

Whilst the detail of what may or may not be chargeable under a licensing scheme is sometimes set out in individual pieces of legislation, or is established through case law, councils need to be aware of and comply with the **Provision of Services Regulations 2009**. These Regulations have important implications for licence fee setting, and there have been legal challenges to licensing fees based on the Regulations in the past.

The Provision of Services Regulations protect UK businesses and consumer rights by maintaining obligations on UK competent authorities to ensure that their regulation of service activity through authorisation schemes is proportionate, justified in the public interest and such authorisation schemes are administered in a fair, accessible and transparent way.

They were first introduced in 2009 and transposed the European Union Services Directive 2006, which aimed to make it easier for businesses to provide cross-border services with other European Economic Area countries by lowering non-tariff barriers to trade. This included reducing administrative and regulatory burdens on businesses providing a service activity. The European Services Directive no longer applies to UK law following the UK's exit from the European Union. However, the European Union (Withdrawal) Act 2018 preserved the Provision of Services Regulations 2009 under UK law, so councils still need to comply with the requirements of the Regulations. For example, the principles of no profit-making, no cross subsidies between licence types or leakage to the General Fund, taking forward deficits and surpluses when deciding following years' fee levels, and using fees to cover enforcement costs where relevant domestic legislation allows still apply.

Councils should note that the Government has been conducting a review of the Regulations and intends to reform the Provision of Services Regulations using the powers within the Retained EU Law (Revocation and Reform) Act.

**Further guidance about the Provision of Services Regulations is available on the Department for Business and Trade's website. ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/975587/provision-of-services-guidance-march-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975587/provision-of-services-guidance-march-2021.pdf))** Councils should specifically note that the Regulations do not apply to the licensing of taxis or gambling activities; however, the principles remain a helpful way of providing a transparent and business-friendly approach to licensing.

### **Principles of the Provision of Services Regulations**

The general principles of the Regulations apply to the processes and procedures applied by competent authorities (regulators and councils) who administer authorisations schemes. These provide benefits to service providers when seeking a relevant authorisation, such as a licence, in order to establish their business.

The core principles of the Regulations – **justified by an overriding reason relating to the public interest (such as public safety, public health or public policy); proportionate to the public interest objective; clear and unambiguous; objective; made public in advance; transparent and accessible** – apply to fee setting and are already practiced by a large number of councils with the aim of ensuring a fair and transparent approach for local businesses and communities.

Councils should also ensure that the principle of non-discrimination applies. When considering fee setting, councils should ensure that all applicants are treated equally irrespective of protected characteristics, location and/ or nationality. However, councils do have a discretion not to impose a full cost recovery charge, provided this is to achieve a legitimate aim.

The importance of this approach has also been established by case law on taxi and PHV licensing which, although not covered by the Regulations, illustrates an important precedent which councils should adhere to. *Cummings v Cardiff* ruled that the charges within a licensing regime for different categories of licence should not subsidise each other; so, a surplus gained on hackney carriage licences should not reduce the cost of a private hire vehicle licence.

This can be logically extended to mean that the fees received under one licensing regime must not subsidise fees charged under another. For instance, a surplus generated by taxi fees must be reinvested back into taxi licensing and not used to reduce the cost of, for instance, a scrap metal dealer's licence. Councils should also be aware of the R (Rehman) v Wakefield case, which made it clear that driver enforcement costs cannot be covered by vehicle licences, but they can be covered by driver licence fees.

All councils should, therefore, ensure that they have individual, discrete cost-calculations for each of the licensing regimes that they operate. This may require a change in the way that some councils operate.

### **Administering payment of fees**

Under the Provision of Service Regulations councils need to ensure that details of any fees are easily accessible online, including the ability to make payments online.

Councils should be able to separate out the cost of processing an initial application from those costs associated with the ongoing administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants.

### **Hemming v Westminster**

In Hemming v Westminster, the Supreme Court referred to the European Court of Justice (ECJ) the issue of how the charges were levied. The Court identified two different approaches to charging fees:

(a) Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach.

(b) Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.

The Court found the type A approach of charging two fees is permissible under the European Services Directive and the Provision of Service Regulations but felt that the type B approach of charging a single fee was not compatible with the Services Directive or the Regulations.

Therefore, licensing authorities should confirm that their fee structures ensure that application fees relate solely to the cost of authorisation procedures (the costs associated with reviewing an application and granting / refusing a licence). Under the type A approach, successful licence applicants should subsequently be charged an additional fee relating to the costs of administering and enforcing the relevant licensing framework.

Not all legislation in England and Wales permits councils to separate out elements of the fee in this way. For instance, the Licensing Act 2003 has nationally set fees, which constrains councils' ability to adopt this approach. It is therefore unclear whether a council could offer a refund of the enforcement element if an application is refused under this Act: the LGA view is that this is not possible, as the legislation requires that the specified amount (fee) must be paid on application.



Nevertheless, despite these constraints, councils could consider calculating the notional costs of administration and enforcement separately and make applicants aware of the two elements to the fee. In addition to meeting the transparency requirements of the Provision of Service Regulations, this enables councils to examine the efficiency of their internal processes and make improvements where necessary. The process adopted and information available about this should be simple and cost effective for both the council and businesses.

### Reasonable and proportionate

The Regulations also includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. **Councils must not use fees covered by the Regulations to make a profit or act as an economic deterrent to deter certain business types from operating within an area.**

### Keeping fees under review

Fees should be broadly cost neutral in budgetary terms, so that, over the lifespan of the licence, the budget should balance. Those benefitting from the activities permitted by the various licences should not, so far as there is discretion to do so, be subsidised by the general fund.

To ensure that fees remain reasonable and proportionate it is necessary to establish a regular and robust review process. This has particular advantages in the early stages of a new licensing regime, where fees have been set on best guess estimates of the number of applications that will be received.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Councils that divert fees' income from the relevant licensing scheme to fund other licensing work, or to fund other council activities, will be breaking the law.

Where fees charged result in a surplus, both *Hemming v Westminster* and *Cummings v Cardiff* stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of **R v Tower Hamlets LBC (1994)** may also be of relevance, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council taxpayers”.

### Open route for challenge

In the interests of transparency, it is helpful to give an indication of how the fee level has been calculated; the review processes in place and a contact method for businesses to query or challenge the fees. Open consultation with businesses and residents to design a local service, including understanding the implications for fees, helps to provide a robust answer to challenge.

It may also prove helpful to engage elected members in the scrutiny of fees. They will use their knowledge as local representatives to consider councils’ assumptions and challenge them where necessary.

### What can be included in a licence fee?

Local authorities and organisations such as the LGA have previously identified that cost recovery and charging models for chargeable services is a key issue affecting the financial sustainability of regulatory services, and this can in part be due to outdated charging approaches. Councils should take a holistic approach to costs and think about the total cost of putting an officer on the ground, and not just their salary cost. As such, councils should consider the following

elements when setting licence fees. It should be noted that this list is for **consideration only**, as councils may choose not to charge for all the elements listed if they do not apply locally, or there may be additional areas of work carried out during the licensing process that are not included in this guidance.

Individual pieces of legislation may also have specific items that may or may not be chargeable under the scheme. The lists below will apply for most schemes, but should always be checked against the relevant piece of legislation. If councils have any concerns, they should seek the advice of their in-house legal department.

More generally, when thinking about fees it is crucial that councils have a clear understanding of what the hourly rates of their licensing officers are. The LGA has a broad concern that councils often underestimate the overall hourly rate of officers, and this can lead to councils not recovering their costs.

#### **Initial application costs could include:**

**Administration** – This could cover basic cost of office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

**Initial visit/s** – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include 'on-costs' in this calculation. Councils will need to consider whether 'on-costs' include travel costs and management time.

**Third party costs** – Some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.

**Liaison with interested parties** – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

**Management costs** – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the 'on-costs' attached to officer time referenced below.

**Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

**On costs** – including any recharges for payroll, accommodation, including heating and lighting, IT hardware and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

**Development, determination and production of licensing policies** – The cost of consultation and publishing policies can be fully recovered.

**Web material** – The Provision of Services Regulations require that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

**Advice and guidance** – This includes advice in person, production of leaflets or promotional tools, and online advice.

**Setting and reviewing fees** – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

**Further compliance and enforcement costs could include:**

- **Additional monitoring and inspection visits** – Councils may wish to include a charge for risk-based visits to premises in between licensing inspections and responding to complaints. As with the initial licensing visit, councils can consider basing this figure on average officer time, travel, administration, management costs and on costs as suggested above.
- **Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to review existing licences or respond to problems.

- **Registers and national reporting** – some licensing schemes require central government bodies to be notified when a licence is issued. The costs of doing this can be recovered.

### **Charging for action against unlicensed traders**

Councils' ability to charge for these costs as part of a licensing scheme depends on the licensing scheme in question. In **Hemming v Westminster**, the Supreme Court ruled that the Services Directive made no mention of enforcement costs. Councils' ability to charge these costs to applicants for licences is therefore dependent on the UK legislation.

The Court ruled that licensing authorities are entitled under the **Local Government (Miscellaneous Provisions) Act 1982** to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme; in this case, the licensing scheme for sex shops.

Taxi and PHV licensing case law is clear that driver enforcement costs cannot be covered by vehicle licences, but they can be covered by driver licence fees. This was established by the **R (Rehman) v Wakefield** case. The LGA believes that section 70(1) of the 1976 Act makes it clear that the costs of enforcement against licensed operators can also be recovered through a fee; however, the position on recovering these costs is contested.

**[Home Office guidance under the Scrap Metal Dealers Act \(https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance\)](https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance)**,

Councils **[must have regard to this guidance \(https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance\)](https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance)**, which prevents the recovery of enforcement costs against unlicensed dealers only. Great care must therefore be taken when setting fees to check what is and is not permitted under that specific licensing regime.

### **Unrecoverable costs**

It is worth considering that the costs of defending appeals in the magistrate’s court or via judicial review can be recovered through the courts. Including these costs within the fee's regime could lead to recovering the costs twice, which would be inconsistent with the Provision of Service Regulations

Do	Don't	Maybe
Check the relevant legislation	Use a surplus from one fee to subsidise another	Include the costs of enforcement against unlicensed traders
Calculate processing costs and enforcement costs separately	Allow fees income to be drawn into the council's general fund	Include a condition on the issued licence that requires the payment of the enforcement part of the fee, where this is not charged upfront
Clearly communicate to applicants the elements that make up the fee	Allow fee levels to roll-over each year without a review	
Ensure fees are determined by the right person	Forget to ask the courts to award costs during a prosecution	
Include staff on-costs		
Include training costs for officers and councillors		

## Further support

The practical approach to designing a local licensing service, allocating costs accurately and considering legal implications can be a difficult task; therefore, it is strongly recommended that licensing teams work with their legal advisors and finance teams to make the best use of all expertise.

In addition, councils should consider working collaboratively with neighbouring authorities to provide mutual support. Working with other councils and reviewing fees set by similar authorities can be an extremely valuable way of ensuring that fees are not perceived to be disproportionate by businesses.

This document sets out high-level, over-arching principles for fee setting that apply across most licensing regimes. It is always important to check the specific details of the regime in question. The following links will take you to relevant legislation or guidance for the most common licensing regimes.

### ✓ Relevant guidance links

**Licensing Act 2003** ([//www.gov.uk/government/publications/alcohol-licensing-fee-levels](http://www.gov.uk/government/publications/alcohol-licensing-fee-levels) )

**Gambling Act 2005** (<http://www.legislation.gov.uk/ukpga/2005/19/section/212>) and **The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007** (<http://www.legislation.gov.uk/uksi/2007/479/content/s/made> )

**Scrap Metal Dealers Act 2013** (<https://www.gov.uk/government/publications/scrap-metal-dealer-act-2013-licence-fee-charges>)

**Taxis and PHV Licensing (Local Government Miscellaneous Provisions Act 1976** (<http://www.legislation.gov.uk/ukpga/1976/57/section/70> ))



**Sexual Establishments (Local Government Miscellaneous Provisions Act 1982 (<http://www.legislation.gov.uk/ukpga/1982/30/schedule/3> ) )**

**Street Trading (Local Government Miscellaneous Provisions Act 1982) (<http://www.legislation.gov.uk/ukpga/1982/30/schedule/4> )**

**Provision of Services Regulations 2009 (<https://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents>)**

## Case law

### Hemming v Westminster

[The Hemming v Westminster case](https://www.supremecourt.uk/cases/uksc-2013-0146.html) (<https://www.supremecourt.uk/cases/uksc-2013-0146.html>) tested the degree to which fees and processes must be proportionate, as well as the administrative processes for calculating fees, in the context of licensing sex establishments. The case established a number of key points about setting fees under the European Services Directive and Provision of Service Regulations.

The case has passed through a number of courts, including the Court of Appeal and Supreme Court, with different elements of the case being settled at different stages.

In 2013, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This meant that the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee. The Court of Appeal held that such costs could not be deemed to fall within the **EU Services Directive 2006** and associated **UK Provision of Services Regulations 2009**.

The Directive states that charges levied by a competent body on applicants under an authorisation scheme must be reasonable and proportionate to the cost of the *'procedures and formalities'* of the scheme and must not exceed these costs. However, the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement also found that the annual reviews were conducted by an officer of Westminster City Council who did not have delegated authority so to do, and that it was the Committee that was supposed to set the fees. However, the judgement did not suggest there was anything intrinsically wrong with an officer undertaking this function provided the function has been properly delegated (where it can be), and that the officer takes relevant considerations into account. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

The judgement would have left Westminster, and potentially other councils, liable to refund the proportion of sex shop licence fees deemed to be unlawful, dating back to the introduction of the Regulations in 2009.

Westminster appealed the Court of Appeal's judgement on the recovery of enforcement costs, and the case was heard by the Supreme Court in January 2016. Other matters determined by earlier hearings, such as the need to review fees annually and the requirement for councils to ring-fence income from licensing fees so that any surplus or deficit is carried forward to the next year's budget, were not contested.

The council's position that it was lawful for it to seek to recover all enforcement costs was supported by the LGA, which submitted written interventions to the Supreme Court. A range of regulatory bodies, as well as HM Treasury, also submitted written interventions in the case.

The Supreme Court ruled that licensing authorities are entitled under the **Local Government (Miscellaneous Provisions) Act 1982** to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. Crucially, it reasoned that the **European Services Directive** deals only with the issue of authorisation procedures and fees relating to applications to exercise a service activity (such as operating a sex shop).

**Therefore, the Directive does not prevent licensing authorities from charging those who receive licences, fees that are proportionate to the cost of administering and enforcing the licensing framework for that activity.**

**Cummings v Cardiff** ([https://docs.wixstatic.com/ugd/241720\\_86a9559ead8b44569ef0153631a1b766.pdf](https://docs.wixstatic.com/ugd/241720_86a9559ead8b44569ef0153631a1b766.pdf))

Cardiff Council had proposed a significant increase to hackney carriage and private hire vehicle charges in July 2013. Cummings and other claimants then challenged Cardiff City Council by way of judicial review over the manner in which these costs had been calculated. In 2014, Mr Justice Hickinbottom granted the claim for the review on the grounds that:

- the level of fees set failed to have regard to and/or account for any surplus or deficit generated in previous years dating back to 1 May 2009
- the level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under which they have accrued
- the level of fee set for hackney carriage licences in 2013 included part of the cost of funding taxi marshals for the Council's administrative area.

The Judge also made declarations that:

(1) A local authority when determining hackney carriage and private hire licence fees under ss.53 and 70 of the LG(MP) Act 1976 must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees as provided by ss.53 and 70 above.

(2) A local authority must:

- keep separate accounts for hackney carriage and PHV licence fees under ss.53 and 70 of the LG(MP) Act 1976
- ensure that any surplus or deficit identified under each part of the hackney carriage and private hire licensing regimes is only applied to the part of the system from which it has been raised/lost
- ensure that any surplus from one licensing regime shall not to be used to subsidise a deficit in another.

## References

### ∨ References

R v Westminster City Council ex parte Hutton (1985) 83 LGR 516.

R v London Borough of Tower Hamlets ex parte Tower Hamlets Combined Traders Association, 19 July 1993; [1994] COD 325 QBD Sedley J. Although the decision was about the London Local Authorities Act 1990, it would appear to have general effect as a principle.



# Local Government (Miscellaneous Provisions) Act 1976

## 1976 CHAPTER 57

### PART II

#### HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

#### **70 Fees for vehicle and operators' licences.**

- (1) Subject to the provisions of subsection (2) of this section, a district council may charge such fees for the grant of vehicle and operators' licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part—
  - (a) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;
  - (b) the reasonable cost of providing hackney carriage stands; and
  - (c) any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.
- (2) The fees chargeable under this section shall not exceed—
  - (a) for the grant of a vehicle licence in respect of a hackney carriage, twenty-five pounds;
  - (b) for the grant of a vehicle licence in respect of a private hire vehicle, twenty-five pounds; and
  - (c) for the grant of an operator's licence, twenty-five pounds per annum;or, in any such case, such other sums as a district council may, subject to the following provisions of this section, from time to time determine.
- (3) (a) If a district council determine that the maximum fees specified in subsection (2) of this section should be varied they shall publish in at least one local newspaper circulating in the district a notice setting out the

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**Changes to legislation:** There are currently no known outstanding effects for the Local Government (Miscellaneous Provisions) Act 1976, Section 70. (See end of Document for details)

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variation proposed, drawing attention to the provisions of paragraph (b) of this subsection and specifying the period, which shall not be less than twenty-eight days from the date of the first publication of the notice, within which and the manner in which objections to the variation can be made.

- (b) A copy of the notice referred to in paragraph (a) of this subsection shall for the period of twenty-eight days from the date of the first publication thereof be deposited at the offices of the council which published the notice and shall at all reasonable hours be open to public inspection without payment.
- (4) If no objection to a variation is duly made within the period specified in the notice referred to in subsection (3) of this section, or if all objections so made are withdrawn, the variation shall come into operation on the date of the expiration of the period specified in the notice or the date of withdrawal of the objection or, if more than one, of the last objection, whichever date is the later.
- (5) If objection is duly made as aforesaid and is not withdrawn, the district council shall set a further date, not later than two months after the first specified date, on which the variation shall come into force with or without modification as decided by the district council after consideration of the objections.
- (6) A district council may remit the whole or part of any fee chargeable in pursuance of this section for the grant of a licence under section 48 or 55 of this Act in any case in which they think it appropriate to do so.

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**Modifications etc. (not altering text)**

- C1** S. 70 modified (27.11.2009) by [The Local Services \(Operation by Licensed Hire Cars\) Regulations 2009 \(S.I. 2009/2863\)](#), regs. 1, 4 Table (with reg. 3)



**Changes to legislation:**

There are currently no known outstanding effects for the Local Government (Miscellaneous Provisions) Act 1976, Section 70.

# Agenda Item 4

**Committee:** Licensing and Environmental Health

**Date:**

**Title:** Enforcement update

23 January 2024

**Report Author:** Joanne Jones, Licensing and Compliance Officer, (01799 510473)

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## Summary

1. This Enforcement Update report is to inform the Committee of the compliance and enforcement activities carried out by Licensing Officers during the period from 1 June 2023 to 31 December 2023.

## Recommendations

2. That Members note the content of this report.

## Financial Implications

3. None arising from this report

## Background Papers

4. None

## Impact

- 5.

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. This report outlines the statistics and general activities of the compliance and enforcement team during the latest period from 1 June 2023 to 31 December 2023.
7. Visits were made to 28 schools across Bedfordshire, Cambridgeshire, Hertfordshire, Essex, Buckinghamshire, Suffolk and Norfolk. There were 26 visits to other locations such as Audley End Station, Stansted Airport, Adult Care Centres and taxi ranks in Harlow Town Centre, Chelmsford City Centre and Saffron Walden. In total 151 vehicles were inspected and checks carried out on 110 drivers. 40 offences/policy contraventions were identified which were dealt with by the officer on the spot.
8. Licensing Officers have continued to carry out work in relation to alleged 'taxi touts' at the airport in joint operations with TfL officers. In total 5 late night visits took place on 15 and 22 August, 16 September, 13 October and 19 December. Three drivers licensed by TfL were found to be touting and were dealt with by TfL officers and others were scared off by the presence of enforcement officers.
9. An inspection was carried out on a new Private Hire Operator on 20 June. Booking records were checked for compliance with the Council's Licensing policy and were found to be satisfactory.
10. Five visits were made to licensed premises - 4 of these were following complaints from the public and one was to visit the new owner/DPS and give advice. Officers continue to work on night time economy checks with Essex Police colleagues as part of their 'Operation Benison' with visits taking place on Saturday 21 October to premises in Saffron Walden, Stansted and Dunmow. Further visits were made to more rural premises in the run up to Christmas to hand out anti drink drive posters.
11. There have been 5 Pubwatch meetings during this period in Saffron Walden and Stansted. The DISC system is fully operational in Saffron Walden and should be accessible to members of the Stansted scheme shortly.
12. In respect of licensed hackney carriage and private hire drivers there have been 3 revocations (made by the Licensing Panel), 6 refusals to grant a licence (3 made using delegated powers and 3 by the Licensing Panel) and 93 suspensions (1 by the Licensing Panel and the rest by Officers). These can be broken down as follows:
  - 1 revocation was made in accordance with the Suitability Policy for an endorsement of an IN10 offence on the driver's DVLA licence (driving without insurance).

- 1 revocation was made in accordance with the Suitability Policy for an endorsement of a CU80 offence on the driver's DVLA licence (using a mobile device)
- 1 revocation was made in accordance with the Suitability Policy following a conviction of Common Assault on an Emergency Worker.
- Of the 93 suspensions 1 was made by the Licensing Panel for failing to display door stickers on more than one occasion. 63 licences were suspended because drivers were not registered with the DBS Update Service as required, and 9 because of medical conditions which meant that the driver would not have met the DVLA Group 2 medical standards. 14 licences were suspended as drivers had not taken the driving proficiency test within the required time limit and 5 because the Green Penny training course had not been undertaken within the time limit. Lastly 2 licences are currently suspended following information received from the Police Disclosure Unit regarding ongoing police investigations.
- In addition 1 driver was required to retake a driving proficiency course in accordance with the Suitability Policy as he had accumulated 9 points on his DVLA licence.

13. In respect of licensed hackney carriage and private hire vehicles there have been 110 licence suspensions. 90 were suspended following either the failure of their compliance tests or not having taken the compliance test by the required deadline, 13 were suspended following accidents and 7 because we had not been supplied with current insurance certificates.

14. A total of 40 complaints were received during this period broken down as follows:

- 30 complaints relating to drivers. The majority relate to driving standards, parking issues or not displaying plates, but 1 complaint alleged that a driver refused an assistance dog, 2 related to parking on taxi ranks in other districts, 1 was a driver seen smoking in the vehicle and one complaint alleging that a driver was watching TV on a phone whilst driving is still being investigated.
- 2 complaints relating to private hire operators. One concerned use of an unlicensed driver which, following an extensive internal investigation by the operator, resulted in a warning letter being placed on file and the other alleging overcharging and not using the meter is still being investigated.
- 2 complaints relating to unlicensed activity taking place. One concerned unlicensed airport parking and transfers and one possible unlicensed 'raves' taking place.
- 6 complaints relating to licensed premises. One concerned use of an outside courtyard and out of hours activity which was resolved by a visit to meet the licence holder to go through the licence conditions. One concerned an unlicensed event which had taken place and resulted in a joint visit with the Senior Licensing Officer from Essex Police as a result of which the DPS was replaced and a warning letter placed on file. One

noise complaint led to a joint visit with an Environmental Health Officer and advice being given. One complaint alleged that the DPS named on the licence had left, this was resolved by a visit and as a result an application to vary the DPS was received. Two further complaints are still open and under investigation and a joint visit with the Police Licensing Officer is planned for mid- January 2024.