

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.

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