

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 2 FEBRUARY 2017**

Present: Councillor R Chambers (Chairman)
Councillors G Barker, E Hicks and J Parry.

Officers in attendance: M Chamberlain (Enforcement Officer), T Cobden
(Principal Environmental Health Officer – Head of Licensing), R
Dobson (Principal Democratic and Electoral Services Officer), J
Jones (Licensing Officer), E Smith (Solicitor) and M Watts
(Principal Environmental Health Officer).

Also present: Barry Drinkwater, Chairman – Uttlesford Licensed Operators
Association; Paul Gwilliams, 24 x 7.

LIC46.1 APOLOGIES FOR ABSENCE

There were no apologies for absence.

**LIC46.2 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE
DRIVER'S LICENCE**

Members considered a report by the Enforcement Officer in relation to a private
hire/hackney carriage driver's licence held by Peter McKelvey.

The Chairman welcomed the Driver, introduced all Members and officers and
then explained the process.

The Licensing Officer presented the report, detailing the fact that a driver check
completed on 2 December 2016 showed that Mr McKelvey had received five
penalty points on his licence for a CD10 offence (driving without due care and
attention). He had been convicted on 17 June 2016. Mr McKelvey completed
his application form for a private hire/hackney carriage driver's licence on 11
November 2015, and the offence had taken place four days later. He had not
notified the Council of this pending prosecution in that period. Mr McKelvey
was interviewed (not under caution) on 6 January 2017, by the Licensing lead
officer and Enforcement Lead Officer along with his contract manager from
24x7 Limited. He had stated that the incident had occurred in Milton Keynes
on the Wellingborough roundabout in a 30mph zone when he was in collision
with another car. He was unable to recall exactly what happened and while
disputing that he was at fault, he was advised by his legal representative to
accept the blame for the incident, stating "someone had to take the blame." He
was aware five points had been placed on his licence and he was fined £260.
He did not attend Court and his contact manager had offered the opinion that
the matter had been dealt with via Northampton Magistrates Court. The
meeting had been adjourned to get further information from Northampton Court
Service.

On 10 January 2017, a member of the Licensing department made enquiries with Northamptonshire Magistrates Court Service who provided a memorandum of conviction for Mr McKelvey dated 17 June 2016. The memorandum reported that Mr McKelvey pleaded guilty to the offence of driving without due care and attention in his absence. The situation was that he was driving on London Road, Wellingborough on 15 November 2015, and was witnessed drifting over into the oncoming traffic's carriageway and caused a collision with another vehicle. The other vehicle was written off and the driver suffered slight whiplash. In addition to receiving five penalty points Mr McKelvey was fined £165, ordered to pay a victim surcharge of £20 and costs of £85.

In March 2014, the Rehabilitation of Offenders Act 1974 was amended to lower the time periods before a licence became spent. Previously when a fine was issued, it was spent after five years but now it was one year. As Mr McKelvey had been convicted on 17 June 2016, the matter was not spent. Therefore, Mr McKelvey fell below licensing standard 7: 'no other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974.'

Mr McKelvey did not meet licensing standards as he had an unspent conviction; this was in addition to his breach of conditions for which he had yet to be sanctioned. Therefore the matter now appeared before members to consider whether Mr McKelvey remained a fit and proper person to hold a licence.

The Chairman invited Mr McKelvey to ask questions about the report. Mr McKelvey said his only comment was that the incident did not happen in Milton Keynes, but was on London Road, in Wellingborough. Otherwise the report was accurate.

There being no members' questions, the Chairman asked Mr McKelvey to put his case.

Mr McKelvey said he did not dispute the majority of the facts, and proceeded to give his account of the incident.

He said his barrister had advised him to plead guilty to the offence, but he now regretted doing so, due to the impact on his family as his wife had been injured. He admitted he was wrong not to tell the Council, and was truly sorry.

Paul Gwilliams as Contract Manager for Mr McKelvey's employer, 24 x 7, said as a manager, the fact that drivers often signed papers without reading them had focussed his mind on the need to do so. He felt he should take some of the blame.

Councillor Hicks said he would have thought that by this time 24 x 7 would have had in place a system for prompting drivers to report such matters to the Council. It was worrying that the company had not been doing so as a matter of routine.

The Enforcement Officer said the need to report to the Council within 7 days of an offence being committed was communicated by licensing officers to the

operators, and had been publicised in Taxi Chat so the company should have been aware and should have ensured its drivers were made aware.

Paul Gwilliam said he was new to the job and had not had any such information disseminated to him.

Councillor Barker asked whether Mr McKelvey had another job.

Mr McKelvey said he was retired.

The Committee withdrew at 2.30pm to determine the application.

At 2.50pm the Committee returned to give its decision.

DECISION

MR PETER MCKELVEY

The application before the Panel today is for the revocation of Mr McKelvey's joint private hire/hackney carriage licence in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. This licence was granted on 17th December 2015 and is due to expire on 30th November 2018. He drives for 24 x 7 Ltd on a Northamptonshire school contract.

On 2nd December 2016 a routine DVLA check revealed Mr McKelvey had received five penalty points on his licence for a CD10 offence (driving without due care and attention) on 15th November 2015. He was convicted by Northampton Magistrates on 17th June 2016, receiving five penalty points, a fine of £165, and being ordered to pay a victim surcharge and costs. Enquiries revealed that he had been involved in a collision on London Road, Wellingborough. This incident took place four days after Mr McKelvey had completed his licence application but nevertheless he did not at any time notify the Council of the matter.

Condition 18c of the Council's Driver Conditions requires drivers to notify the Council within seven days of the date thereof of a conviction, caution or fixed penalty notice. Mr McKelvey failed to do so, and he further signed a declaration dated 14 January 2016 stating he would abide by the conditions of the licence. No decision has as yet been made regarding this omission.

Since the conviction is dated 17th June 2016 Mr McKelvey does not have the protection of the Rehabilitation of Offenders Act 1974 as amended. He therefore falls below Licensing Standard 7, which states:-

“...no other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974”

The rehabilitation period for a fine is one year.

Having heard from Mr McKelvey and his manager Paul Gwilliams, we understand that this accident led to members of Mr McKelvey's family suffering injuries. As to the failure to notify UDC, Mr Gwilliams on behalf of 24x7 Ltd accepted full responsibility for the training failures leading to this, which are currently being addressed.

Mr McKelvey is extremely sorry for what has happened.

We regard these matters as being serious but in the light of Mr McKelvey's contrition and the admissions of his employers, we do not feel it appropriate to revoke Mr McKelvey's licences. However, we do feel that the incident should attract some penalty and accordingly we suspend Mr McKelvey's licences for a period of 14 days under S61(b) of the 1976 Act.

There is a right of appeal against this decision and Mr McKelvey will receive a letter from the Legal Department explaining this.

LIC46.3

EXCLUSION OF THE PUBLIC

RESOLVED that under section 100I of the Local Government Act 1972 the public be excluded for the following item 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.

LIC46.4

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (Agenda item 4)

The Driver and his solicitor, Stuart Cooper, were present for this item.

The Chairman introduced all Members and explained the process.

Members considered a report by the Enforcement Officer seeking consideration of suspension or revocation of a joint private hire/hackney carriage driver's licence.

At the beginning of January 2017, the Council had received a report that the licence of an Asian man fitting the Driver's description and who was working for Stansted Airport Cars had been revoked by East Herts District Council in 2016, for a sexual offence. As a result of this report, the Council's Enforcement Officers had sent a Data Protection Act request to East Herts District Council, requesting details of the revocation. It transpired that East Herts District Council had revoked the Driver's licence after taking into consideration the findings of a Data Protection Act request received from Hertfordshire Police and a subsequent interview under caution. At this time, East Herts District Council were notified that Hertfordshire Police had decided to take no further action in relation to the allegation but due to the serious manner of the alleged offence, the District Council were of the opinion that the Driver was not a fit and proper person; and that his licence should be revoked immediately in the interests of public safety.

Members were informed of incident details taken from the internal memorandum of the East Herts Licensing Enforcement Officer to the East Herts Head of Service and Chair of Licensing Committee, as summarised in the report. As a result of a concern about the fitness and propriety of the Driver, a Data Protection Act request was sent to Hertfordshire Constabulary asking for details of an alleged offence and the investigation. Details were supplied to East Herts District Council regarding an allegation by a female complainant of kidnap and rape during the early hours of 07 May 2016, when she took a taxi from a nightclub in Bishops Stortford town centre. The Driver was arrested on suspicion of kidnap and rape on 10 May 2016. On 13 May 2016 the female complainant picked the Driver from a VIPER (Video Identification Parade Electronic Recoding) straight away. However on 6 November 2016, the police took the decision to take no further action with regards to this allegation as they had no confirmed account from the complainant and the Driver had responded with 'no comment' to all questions during interviews. The police added that the Driver currently remained on bail for another offence as during the search of a lock up used by the Driver over £50,000 in cash was seized for which he was arrested.

Members were reminded that when the police proceed with a criminal matter they were trying to prove an offence 'beyond all reasonable doubt.' However in relation to licensing, the standard of proof was 'on the balance of probabilities. The onus was upon the licence holder to show that they remained fit and

proper. Members were informed it was understood that the Driver was appealing the revocation by East Herts District Council and a preliminary Court hearing was due on 06 February 2017.

On 19 January 2017, the Principal Environmental Health Officer - Protection suspended the Driver's licence with immediate effect in the interests of public safety. The suspension would last until the date of the committee hearing. On 29 December 2016, the Driver had telephoned the Licensing Officer to notify her that he had moved address. He did not at any point in that conversation tell the officer about the police investigation or revocation of his licence by East Herts District Council. The Driver was offered the chance to attend a meeting with the Principal Environmental Health Officer – Protection and an Enforcement Officer at 1pm on Friday 20 January 2017, to discuss the matters at hand. He initially agreed to come in but had since declined the meeting as he wanted to seek legal advice. The Driver confirmed within his e-mail correspondence that he was no longer on bail for any offence. The Driver did not currently meet licensing standards as he had had a private hire/hackney carriage licence revoked within in the last three years. He had also breached his conditions of licence in not notifying Uttlesford District Council of the investigations being carried out into his activities.

At the time that this report had been prepared, the Council was unaware of the details concerning the police investigation into the other offence where they found the £50,000 in cash. The matter had appeared before members to consider whether the driver remained a fit and proper person to hold a licence.

The Chairman asked the Driver to comment on the report.

The Driver confirmed he had received a copy of the report, and Mr Cooper asked questions as follows.

He asked what information had been provided in relation to the Data Protection request referred to in the report. The Enforcement Officer confirmed this comprised the information provided by the police. Mr Cooper asked further questions about the response from the police regarding why they had not proceeded with a prosecution. The Enforcement Officer said the reason was given that the evidence was insufficient to continue the investigation.

Mr Cooper asked for confirmation that the licensing policy supplied was the current version. The Enforcement Officer said it was and explained that when it was last changed, due process had been followed, including consultation. He said all drivers and operators would have been informed at the time.

In response to a question regarding whether the Driver would have seen the condition regarding a requirement that any investigation should be notified to the Council, the Enforcement Officer said every licence had the conditions attached, and that the Driver on signing would have received a receipt.

The Driver was invited to ask questions, but said he had none.

Mr Cooper was invited to make a statement on behalf of the Driver. He said he accepted this was not a trial, and the test which the Committee had to consider was different to that of the criminal courts, but members should treat with suspicion evidence not supported by a police investigation. The Driver was innocent until proven guilty and was a fit and proper person.

There was nothing out of the ordinary with a person making no comment in response to police questioning about an allegation, as very often a lawyer would advise a client not to say much. The Driver was a man of good character, he had no issues with driving with this authority, he had been advised by his lawyer about his right to silence and he should not be criticised for it. The Driver had however made a short statement to the Police, and had stated there had been no inappropriate contact with the complainant. He had been arrested for kidnap but had not been prosecuted for that offence. Although forensic samples had been taken, no evidence had been produced, which would indicate prosecutors were not satisfied there was a realistic prospect of conviction. Regarding monies found during the Police search at his property, the Driver had given an innocent explanation. The test for this committee was the lower civil burden of proof. Subsequently the Driver had attended an interview with East Hertfordshire licensing authority, and had given a full account. The Driver could be forgiven for thinking by making a full statement to one local authority he had let all relevant authorities know the circumstances. There must be a presumption in his favour that he had not committed any crime. He had not remembered the conditions of his licence, and he remained a fit and proper person.

The Enforcement Officer asked various questions, to seek information on when the Driver had started working for his current employer. The Driver said he had started in January. Prior to that, he had worked as a hackney carriage driver. The Enforcement Officer asked why the Driver had not given his badges back to both authorities. The Driver said he had not been aware he was obliged to do so.

In response to a question regarding the monies found at the property of the Driver, Mr Cooper said there was no allegation of wrongdoing.

The Chairman invited the Driver to ask questions; the Driver said he had none.

Councillor Barker asked when Uttlesford licensing authority had issued the Driver with his licence. Officers stated the first licence had been issued in 2008.

Councillor Barker said the Driver had stated he had only started working for his employer in January 2015.

Mr Cooper said the Driver had been prevented by bail conditions from driving; he had chosen to use the East Hertfordshire licence prior to his arrest. After bail, he had resumed using the Uttlesford licence.

Councillor Barker asked whether there was evidence that between May and November 2016 the driver had used the licence.

The Enforcement Officer said there was no such evidence. Mr Cooper said there had been no suggestion that the Driver was driving on Uttlesford plates once the East Hertfordshire plates had been relinquished.

Following further questioning by Members regarding the alleged circumstances of the complaint, the Chairman invited Mr Cooper to sum up on behalf of his client.

Mr Cooper said the only failure on his client's part was to notify the local authority; there was a question as to whether he had complied with that duty as he had informed one of the two local authorities. The Driver had done everything he could to say he was a fit and proper person, and no information had been submitted by the Police. The complainant's account was not confirmed. Mr Cooper respectfully asked Members to find the Driver a fit and proper person.

At 4.15pm the Committee withdrew to determine the report. At 4.45pm the Committee returned to give its decision.

DECISION

The application before the Panel today is for the revocation of the Driver's joint private hire/hackney carriage licence dated 1st November 2015, in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The three year licence is due to expire on 31st October 2018 and the Driver has held a licence in Uttlesford since June 2008. He currently drives for Stansted Airport Cars.

On 29 December 2016, the Driver telephoned the Licensing Officer to notify them that he had moved address. He did not at any point in that conversation tell the officer about the matters in respect of which he appears before us today, namely the Hertfordshire Police investigations, or the revocation of his licence by East Herts District Council.

At the beginning of January 2017, the Council received a report that an Asian man fitting the Driver's description and who was working for Stansted Airport Cars had had his licences revoked by East Herts District Council in 2016, for a sexual offence. As a result of this report, on 03 January 2017 a Data Protection Act request was sent to East Herts District Council, requesting details. On 10 January 2017 the Senior Specialist Licensing Officer at East Herts District

Council confirmed that the Driver had been licensed with them, but that his licence had been revoked with immediate effect on 11 November 2016. It was subsequently confirmed the revocation was effective as of 2nd December 2016. This decision is subject to appeal, and it is understood a preliminary hearing is to take place on 6th February.

East Herts District Council revoked the Driver's licence after consultation with Hertfordshire Police, a Data Protection Act request to them for further information, and a subsequent interview under caution. Hertfordshire Police ultimately decided to take no further action in relation to the allegation but due to the serious nature of the alleged offence, the District Council were of the opinion that the Driver was not a fit and proper person; and that his licence should be revoked immediately in the interests of public safety.

The report before us, a copy of which has been provided to the Driver, contains information taken from documentation supplied by East Herts District Council and via them, Hertfordshire Police. All this information has been supplied to Uttlesford District Council by officials of those two bodies acting under a duty and the information itself is contained within records held by those two bodies.

We quote:-

- On 17 August 2016, the Driver contacted the [East Herts]taxi office regarding a reminder sent to him for his expired vehicle insurance. During the subsequent conversation the Driver confirmed that he would not be renewing his vehicle insurance due to a bail condition not to work as a taxi driver.
- Enquiries were made with the police and on 19 August 2016 we were informed that the Driver had been arrested and bailed following an allegation of rape of a female. The police had seized the roof light and plate from the Driver's hackney carriage vehicle and imposed a bail condition stating: Not to act in the capacity of a taxi driver, licensed or unlicensed including private hire and the carrying of passengers for reward.
- As the roof light and plate remain the property of the Council they were requested from the police who provided them. The Driver voluntarily gave the licensing

section his driver's badges to hold until the matter was resolved. Neither the vehicle nor drivers' licences were suspended or revoked at this time as East Herts District Council were satisfied that the Driver was not working as a taxi driver.

- On 06 November 2016, the police confirmed that the extensive and complex investigation into the allegation had been finalised and that there was insufficient evidence to charge the Driver with any offence. In this email the police stated that: *Whilst at this time we cannot prove his involvement in the offence, we have confirmed the victim was picked up by him as a taxi from the club and a journey that should have taken 5 minutes actually took 40 minutes, The Driver declined to comment during his police interview and would not account for this fact amongst others.*

And that:

The Driver is still on bail for a separate serious matter with Herts Police that is not a sexual matter.

- Concerned about the fitness and propriety of the Driver a Data Protection Act request was sent to Hertfordshire Constabulary asking for details of the alleged offence and the investigation. The following details were supplied to East Herts District Council.
- In the early hours of 07 May 2016, the female complainant took a taxi from a nightclub in Bishop's Stortford town centre, she was alone at the time and heavily intoxicated. She lives 5 minutes away from the scene of collection. The following morning she awoke at home and had a feeling she had been taken to a strange address and someone had had sex with her, she spoke to her friends and relatives and worked out that the 5 minute journey had taken 40 minutes (from collection at the club to her arriving home). She described the layout of a flat and remembers an Asian man leading her down some stairs. She had arrived home with the same amount of money she had on her meaning that the taxi had not been paid for.
- The length of time that the journey took was corroborated from timed CCTV at the venue the female left and from three witnesses who were waiting for her to arrive home.
- CCTV confirmed that during the taxi journey the passenger left the vehicle and used a cash point to withdraw money to pay for the fare. When she arrived home

she still had all of the money that her bank statement shows was withdrawn at this time.

- The police confirmed through CCTV enquiries that the complainant was collected by the vehicle licensed to the Driver.
- The Driver was arrested on suspicion of kidnap and rape on 10 May 2016.
- On 13 May 2016 the female complainant picked the Driver from a VIPER (Video Identification Parade Electronic Recoding) straight away. She stated that she knew it was him the minute he moved his head on the video.

NOTE: A VIPER is a video ID parade which is shown to witnesses replacing the old fashioned line-ups of suspects.

- During interviews the female complainant gave a description of what she could remember about the address where she alleges she was taken. The police state that this was a very similar likeness to the home address of the Driver, even down to the colour of the bed sheets.
- During interviews with the police the Driver answered 'no comment' to all questions.
- On 06 November 2016, the police took the decision to take no further action with regards to this allegation as they had no confirmed account from the complainant and the Driver had responded with 'no comment' to all questions.
- The police did add that the Driver currently remains on bail for another offence as during the search of a lock up used by the Driver over £50,000 in cash was seized for which he was arrested.

On 19 January 2017, the Principal Environmental Health Officer - Protection suspended the Driver's licence with immediate effect in the interests of public safety. The Driver initially agreed to attend a meeting with officers but subsequently declined the meeting as he wanted to seek legal advice. The Driver confirmed within e-mail correspondence that he is no longer on bail for any offence.

However, the Driver no longer meets UDC's Licensing Standards for Drivers as

- a) He has had a private hire/hackney carriage licence revoked within in the last three years (Appendix A para 11), and
- b) He has also breached his conditions of licence in not notifying UDC of the investigations being carried out into his activities (Appendix G para 18d).

We are mindful that when a criminal matter proceeds to trial it must be proved 'beyond all reasonable doubt.' This traditional formula is very often these days replaced by words to the effect that 'you must be so sure as to be certain'. However in relation to licensing, the standard of proof is 'on the balance of probabilities', that is, 'it is more likely than not'. This is the test operated by the CPS in deciding whether or not to prosecute.

However, before this Committee the onus of proof is upon the licence holder to show us that they remain a fit and proper person to hold a taxi licence

We have read the papers before us with care and we have heard from Mr Cooper on behalf of the Driver. We have listened very carefully but sadly matters have arisen from the submissions made before us that leave us with serious unanswered questions.

We do have to be mindful that one of the roles of this Committee is the protection of the public. In particular we are aware that taxi drivers very often transport some of the most vulnerable members of our community, and we are mindful of our responsibilities under the safeguarding legislation. Both allegations against the Driver relate to extremely serious matters and we have had to consider most carefully whether this Committee can place any trust and confidence in him as a licensed driver within the District of Uttlesford. Unfortunately, the answer has to be no.

Accordingly, we have no alternative but to revoke the Driver's licences under S61(b) of the 1976 Act as he is no longer a fit and proper person to hold them.

There is a right of appeal against this decision and the Driver will receive a letter from the Legal Department explaining this.

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (Agenda item 5)

The Committee considered a report seeking a suspension for one year of the licence of a Driver who no longer met the medical standards of the licensing standards.

DECISION

The application before the Panel today is for the long term medical suspension or the revocation of the Driver's joint private hire/hackney carriage licence in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He has been licenced in Uttlesford since April 2013. He drives for 24 x 7 Ltd.

On 13th January 2017 the Driver's wife emailed the Council to advise that her husband had been involved in a RTA. The following day she advised that this was the consequence of a stroke and this was confirmed by Angela Markham of 24 x 7 Ltd on 16th January. Officers subsequently received a copy of a hospital letter confirming the diagnosis as being a Left MCA ischaemic stroke.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet

"...Group 2 medical standards as published by the Dept of Transport."

That Guidance states that following a stroke of any description drivers must not drive and must notify the DVLA. They may not drive for a period of one year following a stroke or TIA. Relicensing may then be applied for if certain conditions are met.

As the Driver no longer meets Group 2 medical standards his licence is suspended with immediate effect. The suspension is for a period of one year and may be lifted upon production of the appropriate medical certificate. The Driver has been advised of this by letter dated 19th January.

The decision of the Committee is that the suspension of the Driver's licence is confirmed pending production of the appropriate medical certificate in 2018.

We wish him a speedy recovery.

LIC46.6 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (Agenda item 6)**

The Committee received a report on an application for a private hire/hackney carriage driver's licence.

In the absence of the applicant, the Committee

RESOLVED to defer consideration of the report until the applicant was present, and that character references and a written offer of employment should be produced.

The meeting ended at 5pm.