

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on WEDNESDAY, 20 NOVEMBER 2019 at
10.30 am**

Present: Councillor P Lavelle (Chair)
Councillors C Day, V Isham and M Tayler

Officers in attendance: A Bochel (Democratic Services Officer), M Chamberlain (Enforcement Officer), J Jones (Licensing and Compliance Officer) and E Smith (Solicitor)

Also present: The drivers in relation to items 3, 4, 5, 6 and 7, the partner of the driver in relation to Item 6.

LIC40 EXCLUSION OF THE PUBLIC AND PRESS

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

LIC41 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION

The Chair moved Item 7 forward in the proceedings.

The Enforcement Officer gave a summary of the report, which noted the applicant had made a false statement on his application form. He therefore did not meet the Council's suitability criteria for new drivers. The applicant had attended an interview where he explained that his failure to answer a question correctly was a genuine mistake and this was because he was in a genuine rush and had his medical to do that day.

Members noted that the answers to questions 10 and 12 on the application form were pre-filled by 24/7 Ltd, and it was incumbent upon applicants to cross 'no' out and answer differently if this statement was incorrect.

The applicant said the application day run by 2/7 had been a rush and he had had to leave to do his medical without properly completing the form.

At 10.55, the Panel retired to make its decision.

At 11.15, the Panel returned. The decision was read to the applicant.

DECISION NOTICE –

The application before the Panel today is the applicant's application for a joint hackney carriage/PHV driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd on the school contract side of the business.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, and we have also seen, as has he, the background documents annexed thereto, including an enhanced DBS Certificate dated 19th August 2019 showing three convictions. The two later ones are related and together they amount to a course of conduct giving us cause for serious concerns.

Conviction 1 on 29 April 1981 was for an offence of theft by an employee where the applicant was fined £150 and made to pay compensation of £22 and costs of £7.

Conviction 2 dated 12 November 1999 was for an offence of driving with excess alcohol where he was fined £300, ordered to pay costs of £55 and disqualified from driving for 36 months which was reduced to 27 months after completing an appropriate course. However, conviction 3 on 10 November 2000 was for an offence of driving whilst disqualified. An appeal was dismissed and the applicant was imprisoned for 8 weeks, disqualified from driving for a further year and ordered to pay costs of £500.

However, we note the following responses to questions on the applicant's application form:

Question 10 asks 'have you ever been disqualified from driving or had your licence revoked?' The answer given here was 'no.'

Question 12 asks 'have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?' The answer given was 'no' however, two offences of 'D/D' and 'Traffic lights' were given to this question with no further answers.

In the light of the discrepancy between these answers and the information on his DBS records, the application was invited to attend an Interview under Caution (IUC) on 16 August 2019, which was conducted by two Council Officers. The following things were noted from the IUC:

The answers on the application form were partially typed in and the applicant said this was done by 24x7 Limited. He then explained that his failure to amend the form and answer question 10 correctly was a genuine mistake and this was because he was in a rush and had his medical to do that day.

In relation to the 1981 offence, the applicant said that at the time he was a delivery driver and was delivering some coffee to a customer. Someone at the shop asked him did he want a case of coffee and stupidly he accepted this. He now regrets it.

The applicant also believed that he was disqualified from driving in the early 1990s for a drink driving related offence, but there is no evidence of that.

For the driving whilst disqualified offence in 2000 he explained that he was a passenger that was being driven by one of his employees around Stansted Airport. The vehicle was stopped and inspected by the Police, deemed to be in acceptable condition and he was allowed to leave. A number of weeks later the Police came to his house and accused him of driving: he believed that he had

been stitched up by the Police. He appealed this but lost which led to his imprisonment. It has been explained to him that the fact of the conviction is conclusive and that we cannot go behind this.

At the date of the forms completion, he could not remember the convictions, the dates of them or how far back to go when completing the form. The form is actually quite clear: it requires all convictions, even spent ones, to be disclosed.

We are mindful of the following provisions of the Council's Licensing Policy. These are set out in the report so the applicant has the text of them before him. Section 2.3 deals with '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, false references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.' In this regard, we are aware that making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976, and this carries a fine of up to £1000 per conviction; and Conviction 1 is for an aggravated offence of dishonesty the theft being from an employer.

We have also been referred to clause 2.10 of the suitability criteria which states '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.' Convictions 2 and 3 are so related.

Finally, we have taken into account para 1.6 of the policy which states 'each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so.'

As a consequence, the matter has been reviewed by the Environmental Health Manager (Commercial) and the Chair of the Licensing and Environmental Health Committee. It was decided to address the criminal aspects of the matter by way of formal caution and this was administered by the Council's Legal Department on 23rd October. However, a decision has been made to refer the application to the Committee for their consideration due to the circumstances of the case.

The primary function of this Committee is the protection of the public and these convictions are for serious matters. Theft from your employer is regarded, rightly, as being a breach of trust attracting additional opprobrium and taken together, the two later convictions are considered to be deeply disquieting. Though we understand the applicant still asserts innocence in respect of the third matter, the fact remains he was convicted, his appeal against conviction was dismissed and he served a custodial sentence. We are entitled to take those facts as being conclusive, and this is in its origins an offence very relevant to a professional driver.

We have heard from the applicant. He still asserts that he was wrongfully convicted and that there was collusion between the Police and another public official. However, he was advised when he was cautioned on 23rd October last that a conviction, particularly one following a not guilty trial, is final and this has

been repeated today. The penalties he received for these cumulative offences in our view reflect the seriousness with which the Courts regarded them. The lack of insight he has displayed gives us great concern and we cannot believe that anyone would “forget” an aggregate of four years disqualification from driving and a custodial sentence. We accept that a 24 x 7 Ltd mass recruitment day may be chaotic, but we are afraid that this past history is not one that can be overlooked.

Our primary function is the protection of the public and this is always in the forefront of our minds. Unanimously, we cannot consider the applicant to be a safe and suitable person to hold an Uttlesford licence and we therefore refuse this application. We understand that he has other driving work through an agency which, though temporary, is work of a kind for which there is always a demand.

There is a right of appeal against this decision which must be exercised within a period of 21 days. The applicant will receive a letter from the Legal Department explaining this.

LIC42

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION

The Licensing and Compliance Officer gave a summary of the report. The applicant had declared an offence of battery in 2016 for which she received a fine of £200. The applicant understood why her application was being referred and said that she has learnt a lesson following the conviction. The offence was 6 years ago during which her family were going through a rough time and there had not been any repeat offending.

The applicant said there was no excuse for what she had done. She noted while her family had been going through a bad time, things were better for her now.

At 11.30, the Panel retired to make its decision.

At 11.45, the Panel returned. The decision was read to the applicant.

DECISION NOTICE –

The application before the Panel today is the applicant's application for a joint hackney carriage/PHV driver's licence. If successful, she has an offer of employment from 24 x 7 Ltd on the school contract side of the business.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, and we have also seen, as has she, the background documents annexed thereto, including an enhanced DBS Certificate dated 27th August 2019 showing one conviction dated 2nd February 2016 for an offence of battery under S39 Criminal Justice Act 1988. The applicant quite properly declared this conviction upon her application form.

Our attention has been drawn to section 2.14 of the suitability policy which states – “Where an applicant has a conviction for 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”.

The applicant therefore was asked to give some details about the conviction and she e-mailed the Licensing Department on 13 September. A copy of this is before us. She explained that at the time of the conviction she and her family were going through a hard time; her brother had been assaulted and sustained injuries leaving him with disabilities and the family were being mocked for this; and furthermore, at the same time her mother was also critically ill.

The applicant states that she and her family have moved on and that she has learnt from her mistake. It was explained to her that in view of the fact she had a conviction for an offence of violence her application could not be dealt with administratively and that it would have to be considered by a senior manager. This was done and the matter was considered by the Environmental Health Manager (Commercial) in conjunction with the Chair of this Committee and as a consequence the matter has been referred to ourselves. The reason for this decision was explained to the applicant and she understood why the referral was being made. The primary function of this Committee is the protection of the public and an offence of violence is always regarded as being serious.

We have heard from the applicant this morning and we had the opportunity of observing her body language. She was plainly remorseful and the incident in question followed a number of totally unacceptable comments regarding close family members. We accept this mitigation and do not believe she poses a risk to members of the public.

We therefore grant this application and hope, in the nicest possible way, that we do not see the applicant before us again.

LIC44 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION**

The Chair brought Item 5 forward in the proceedings.

The Licensing and Compliance Officer gave a summary of the report which noted that the applicant had failed to declare a conviction for using threatening, abusive, insulting words or behaviour with intention to cause fear or provocation of violence. He therefore did not meet the Council's suitability policy for new drivers. The applicant had apologised and said it was not his intention to deceive.

In response to a Member question, the applicant said he had no explanation for why he had not recorded his conviction.

At 12.05, the Panel retired to make its decision.

At 12.30, the Panel returned. The decision was read to the applicant.

DECISION NOTICE

The application before the Panel today is the applicant's application for a joint hackney carriage/PHV driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd on the school contract side of the business.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, and we have also seen, as has he, the background documents annexed thereto, including an enhanced DBS Certificate dated 30th September 2019 confirming a conviction dated 28th September 2009 for using threatening, abusive or insulting words or behaviour with the intent to cause fear of violence under the Public Order Act 1986. He also declared a 2018 motoring offence for which his licence was endorsed with three penalty points.

Whilst this conviction is spent under the Rehabilitation of Offenders Act 1974 this legislation does not apply to proceedings before this Committee and the applicant does not meet the Council's suitability policy for new drivers which states at 2.3 "Any dishonesty by an 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".

On 10 October the applicant was interviewed by officers and was asked why he had failed to declare the conviction. He responded by apologising and saying that it was not his intention to deceive. He also explained that he has had previous DBS checks, has a current one for the job that he does now, and another when he applied for the hackney carriage licence he holds with Forest Heath Council. The fact another licencing authority has seen fit to grant him a licence is in no way binding upon us: each and every authority may make its own decision on the basis of its local policies.

He was then asked to provide some details about his conviction. In a subsequent e-mail dated 4 November (a copy of which, as are the notes of the earlier discussion, is before us) he explained that he had been taking one of his staff home (from the pub where he was the publican) when he saw a child on a bike, and a man running alongside waving his arm and telling him to slow down. The applicant maintains he had already slowed down as he was approaching a bend and had seen a dog running in the road.

Having dropped his staff member off at home he returned along the same road and the man waved him down. There followed an altercation during which the man punched the applicant causing his nose to bleed. The applicant blocked a second punch, there was a verbal exchange and the applicant got back in his car and returned home. He did not report the matter to the Police, but over a week later the other man did so and it went to court. The applicant said he pleaded guilty as the other man had a witness and he could not afford to fight the case.

The applicant had never been in trouble before the conviction in 2009 and has had no further convictions. He deeply regrets the incident and says it was out of character. In 2011 he left the Plough and worked for Asda home delivery until March 2013 when he got a job at RAF Mildenhall working as a coach driver. Part of his duties are driving VIPs on trips, and he has provided us with various commendation letters included in our background papers. He also does part time taxi work for A1 cars in Bury St Edmunds and has worked for them since April 2014.

In line with UDC policy the applicant's application was referred to the Environmental Health Manager (Commercial) to determine in consultation with the Chair of the Licensing and Environmental Committee. The decision was made to request the applicant to present himself to Committee to give a fuller account of the circumstances that resulted in his conviction and to allow Committee to gain a greater insight into the applicant's character. We are mindful of para 1.6 of the policy which states 'each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so.'

We have heard from the applicant and should say at the outset that this is not the first time today we have heard of the chaos at 24 x 7 Ltd recruitment days. We also note that he holds a personal alcohol licence and a PHV/hackney carriage licence from Forest Heath District Council and that as a consequence he would be familiar with the enhanced DBS procedure: we therefore do not understand how he could have omitted to declare the 2009 conviction and this does cause us some concern.

However, we observe that he has not sought to offer any excuses and has apologised for his omission; he has also provided us with some glowing references from people, especially the USAF, who would not give such a testimonial lightly: furthermore, we have taken into account his history of the index incident given to the Licensing Department, and have been advised of a) the pressure to plead guilty, and the fact that b) had he had the benefit of legal representation, a successful argument of self defence may have led to an acquittal.

This is a finely balanced decision and on this occasion we have decided to give the applicant the benefit of the doubt. We do not believe that he is a danger to the public and that if he had been able to complete the forms at his leisure this error would not have occurred: we understand that the process question is being formally raised with 24 x 7 Ltd by the Licensing Department and we support this initiative: this level of error by a very large operator is unacceptable.

We therefore grant this application and trust we will not see the applicant before us at any time in the future.

LIC45

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION

The Licensing and Compliance Officer gave a summary of the report. The applicant had declared an offence of common assault in 2013 on his application form.

The applicant explained that he had attended a friend's work Christmas party and at the end of the night got a taxi home with his friend and three other men who had also been at the party, but who he did not know. During the journey one of the three men started to taunt him and this led on to a physical attack. Having first tried to cover up his head the applicant eventually fought back to try and defend himself. The case went to Colchester magistrates Court where the applicant was found guilty of common assault due to "acting in self-defence but using excessive force".

The applicant said it was a regrettable incident. He considered himself a family man and would like this additional opportunity to provide for his family. The taxi driver had testified to say that he was defending himself.

In response to a Member question, the applicant said his friend did not testify as he had a conflict of interest because he knew the attacker in the incident.

At 12.45, the Panel retired to make its decision.

At 12.55, the Panel returned. The decision was read to the applicant.

DECISION NOTICE

The application before the Panel today is the applicant's application for a joint hackney carriage/PHV driver's licence. If successful, he has an offer of employment from London Stansted Chauffeurs Ltd.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, and we have also seen, as has he, the background documents annexed thereto, including an enhanced DBS Certificate dated 7th October 2019 confirming a conviction for an offence of violence, declared by the applicant as being one of common assault. In fact the conviction was for an offence of battery under the Criminal Justice Act 1988 dated 9th May 2013 in respect of an offence taking place the preceding Christmas and for which the applicant was fined £625.

Whilst this conviction is spent under the Rehabilitation of Offenders Act 1974 this legislation does not apply to proceedings before this Committee and the applicant does not meet the Council's suitability policy for new drivers which states at point 2.14 – "Where an applicant has a conviction for 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".

The applicant was to provide further information about the conviction and he responded by e-mail on 12 August. A copy is before us. The applicant explained that he had attended a friend's work Christmas party and at the end of the night

got a taxi home with his friend and three other men who had also been at the party, but who he did not know. During the journey one of the three men started to taunt him and this led on to a physical attack. Having first tried to cover up his head the applicant defended himself.

At that point, the taxi driver stopped the vehicle and told the passengers that he could not continue the journey unless they stopped fighting. The journey then continued without any further problems. The applicant got home and went to bed, but was woken up at 4am by the police knocking at the door and arresting him for assault. The case went to Colchester Magistrates Court where the applicant was found guilty of common assault due to "acting in self-defence but using excessive force". He was open about the conviction at his interview on 12 August and declared it on his application form. He states that he was shocked to have been found guilty and would have appealed the decision had he been able to afford it; he had never been in trouble before this conviction and has had no convictions since 2013.

The applicant is a qualified football coach and swimming teacher and has spent a lot of time trying to have a positive impact on young people's lives through sport. He is also a qualified pool lifeguard and first aid trainer. He has no motoring offences.

In line with UDC policy the applicant's application was referred to the Environmental Health Manager (Commercial) to determine in consultation with the Chair of the Licensing and Environmental Committee. The decision was made to request the applicant to present himself to Committee to give a fuller account of the circumstances that resulted in his conviction and to allow Committee to gain a greater insight into the applicant's character. We are mindful of para 1.6 of the policy which states 'each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so.'

We have heard from the applicant and though we all agree the facts of this case are somewhat unusual we note his contrition and that he has not been in trouble since. We also note that he declared the conviction in his application, that he is very active among the young people in his local community and that he is otherwise of good character. We are therefore prepared to grant this application and trust that he will never appear before us again.

LIC46

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION

The Enforcement Officer gave a summary of the report. The applicant had failed to disclose a conviction for assault on his application form, and as such did not meet the criteria of the Council's policy on suitability of new drivers. The applicant had thought that the conviction for theft was a suspended sentence and did not realise it was a conviction. The applicant had explained that he had an abscess on his brain approximately 2 years ago which has led to memory losses. He had also thought that he would only need to disclose convictions over 5 years ago.

In response to a Member question, the applicant said he thought the conviction was a warning that he would be prosecuted if a similar offence occurred. He had pleaded not guilty and the owners of the stolen camera were surprised the case had made it as far as court.

At 13.15, the Panel retired to make its decision.

At 13.35, the Panel returned. The decision was read to the applicant.

DECISION NOTICE

The application before the Panel today is the applicant's application for a joint hackney carriage/PHV driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd on the school contract side of the business.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, and we have also seen, as has he, the background documents annexed thereto, including an enhanced DBS Certificate dated 21st August 2019 showing a conviction for an offence of dishonesty, namely an offence of theft from a dwelling on 4th March 2013, for which the applicant was convicted on 25th November of that year. He received a 12 month conditional discharge, and was ordered to pay compensation of £25, costs of £350 and a victim surcharge.

However, question 12 of the application form asks 'have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?' The answer given was 'no'.

In the light of the discrepancy between this and the information on his DBS records, the applicant was interviewed under caution (IUC) on 18th September 2019 by two Council Officers. The following things were noted from the IUC: The answers on the application form were partially typed in and the applicant said this was done by 24x7 Limited. The applicant explained that he did not realise the nature of his conviction, believing it was a type of warning, and thought that only an immediate custodial sentence was a conviction. He then explained that he had an abscess on his brain approximately 2 years ago which has led to memory losses: he also did not realise that he also needed to disclose convictions over 5 years ago.

In relation to the offence he said that he had been renting a single room in a house. When the owners of the house went on holiday he went to stay with his girlfriend and returned once to get a change of clothes. A camera was stolen during the owner's holiday and their son was still at the house during this time: however, the applicant got blamed and then went to Court. He is now a part-time steward and is hoping to get his SIA licence.

The applicant said that his long term memory was affected after the illness but it is returning.

We are mindful of the following provisions of the Council's Licensing Policy. These are set out in the report so the applicant has the text of them before him. Section 2.3 deals with '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, false references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.' In this regard, we are aware that making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976, and this carries a fine of up to £1000 per conviction.

We have also been referred to clause 2.10 of the suitability criteria which states '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.' Convictions 2 and 3 are so related.

Finally, we have taken into account para 1.6 of the policy which states 'each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so.'

As a consequence, the matter has been reviewed by the Environmental Health Manager (Commercial) and the Chair of the Licensing and Environmental Health Committee. It was decided to address the criminal aspects of the matter by way of formal caution, and this was administered this morning. However, a decision has been made to refer the application to the Committee for their consideration due to the circumstances of the case.

The primary function of this Committee is the protection of the public and this conviction is for a serious matter. The allegation is that he stole from the people in whose house he was living.

We have heard from the applicant and have to say that this is the third case before us today in which the administrative failures of 24 x 7 Ltd have played a part. This is not acceptable.

We have listened to what he has to say and have seen his Group 2 medical certificate. We note that he is fully recovered from his abscess and has been passed as being fit and well. We also note that his SIA licence application has been successful.

The applicant does exhibit a certain naivety and although the payments that he was ordered to make by the Courts were substantial, we can nevertheless understand why he believed that he had not been convicted. The nature of a conditional discharge is not altogether easy to understand. We are therefore prepared to give him the benefit of the doubt and therefore grant this application. We do not, however, expect to see him before us ever again.