

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at ZOOM -
HTTPS://ZOOM.US/, on WEDNESDAY, 4 NOVEMBER 2020 at 11.00 am**

Present: Councillor P Lavelle (Chair)
Councillors C Day and P Lees.

Officers in Attendance: S Mahoney (Senior Licensing and Compliance Officer)
K James (Licensing Support Officer), E Smith (Interim Legal Services Manager) and C Edwards (Democratic Services Officer).

Also present: The applicants in relation to agenda items 3 and 4.

LIC13 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC14 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 part1 of Schedule 12A of the Act.

LIC15 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The Senior Licensing and Compliance Officer gave a summary of the report. The applicant had applied to the Council for a Private Hire/Hackney Carriage Driver's licence on 30 March 2020 to work for Airports Direct on their contracts.

On the application form the applicant had not declared any convictions. The enhanced Disclosure and Barring Service (DBS) certificate showed two cautions. The applicant took part in an informal telephone interview with the Senior Licensing and Compliance Officer and when asked why these had not been stated in his application, the applicant said that they were cautions with no further action and he had not realised that they needed to be declared.

The Senior Licensing and Compliance Officer said the delay in bringing the application before the Panel was due to the lockdown period and the applicant not returning all the relevant documentation.

The applicant now came before members for them to determine whether he was a 'fit and proper' person to hold a licence as he had not met the Council's licensing standards.

The applicant said that because they were cautions and not convictions he had not realised they had to be declared, he had read the application form incorrectly. The applicant said that he knew they would show up on the enhanced DBS and was not trying to be dishonest.

In response to Members' questions he confirmed that he was in full time employment with Harlow District Council. At the time of the cautions he had been going through a divorce and dealing with bereavement. The Interim Legal Services Manager said that a basic DBS would no longer show the cautions, however they would always remain on the enhanced DBS. The applicant stated that he had an all access pass for Stansted Airport and the basic DBS was carried out and nothing showed up.

The Chair explained that the Panel would retire to consider the case and would notify the applicant of their decision within 5 working days.

The applicant left the meeting at 11.20 and the Committee retired to make its decision.

DECISION NOTICE

The application before the Panel is to grant a new joint hackney carriage/PHV driver's licence to the applicant. We are hearing the case remotely. If his application is successful he has an offer of employment from Airports Direct.

We 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 the application form and the DBS documentation supporting the application. We have also taken into account the Council's policy and have heard from the Case Officer and from the applicant.

On his application form, in answer to question 12 '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 applicant declared that he had none.

However, the application process required applicants to produce an enhanced Disclosure and Barring Service certificate and the applicant's certificate dated 04 September 2020 showed 2 cautions as follows:

Caution 1 – Offence – Pursued a course of conduct which amounted to harassment on 31 May 2016.

Caution 2 – Offence: Pursued a course of conduct which amounted to harassment on 14 September 2016.

As a consequence, the applicant does not meet the requirements of the Council's suitability policy in two respects.

Firstly, clause 2.3 which states:-

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 name or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.

Further, clause 2.5 of our suitability policy provides:-

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.

The applicant took part in an informal telephone interview with the Senior Licensing and Compliance Officer, Steve Mahoney. When asked why he had not declared the convictions on his application form, the applicant said that as they were cautions with no further action he had not realised that he had to declare them. When asked for further information, the applicant said that the convictions were classed as digital harassment and the index incidents took place at a time when he was going through a difficult divorce and he sent his now ex-wife some emails because he had felt she was dragging her heels over proceedings. At the same time his mother was critically ill and she subsequently passed away. The combined stress of these situations caused the applicant to act in the way that he did. We take note of this but observe that the fact the incidents were domestic in nature does not in any way impact upon the seriousness of the behaviour concerned.

The primary function of this Committee is the protection of the public and if we are in any doubt as to whether an applicant is a safe and suitable person to hold a licence then our duty is clear – we should refuse the application. However, we have heard from the applicant and we are satisfied that there was no intention of hiding these matters from us and that harassment, and the nature of a caution are matters that many lay people do not fully understand. He further told us that the offences in question took place at a time when he was going through a divorce and his mother was also terminally ill: we acknowledge that these are major life traumas and that in these circumstances people can sometimes behave out of character. We are satisfied the applicant has insight into what happened and that he is a safe and suitable person to hold a licence.

Accordingly, we are prepared to grant this application and the applicant will receive his paperwork from the Licensing Department in due course. However, we would urge him to read forms more carefully in the future and trust we do not see him before us again.

LIC16

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

The Licensing Support Officer gave a summary of the report. The applicant had applied to the Council for a Private Hire/Hackney Carriage Driver's licence on 27 July 2020 to work for 24/7 Ltd on their contracts.

On the application form the applicant had not declared any convictions. The enhanced Disclosure and Barring Service (DBS) certificate showed one conviction.

The applicant now came before members for them to determine whether she was a 'fit and proper' person to hold a licence as she had not met the Council's licensing standards.

The applicant apologised and said that 24/7 had filled in the application on her behalf and had sent in the wrong form.

In response to Members' questions she confirmed that due to current restrictions the form had been filled in over the phone. She has been a passenger assistant for 4 years in Central Bedfordshire. The conviction was 4 years ago and related to her son's attendance at school. The applicant confirmed that she had not been told where she would be driving for 24/7 but said she thought they had a contract in Bedfordshire.

The importance of applicants filling out their own applications was discussed. This and previous mistakes had been caused by 24 x 7 Ltd completing the application on behalf of the applicant. The Senior Licensing and Compliance Officer explained that the application process was due to become an online system and this would hopefully alleviate the problem. Members discussed and the Chair agreed to send another letter to 24 x 7 Ltd.

The Chair explained that the Panel would retire to consider the case and would notify the applicant of their decision within 5 working days.

The applicant left the meeting at 11:40 and the Committee retired to make its decision.

DECISION NOTICE –

The application before the Panel today is for the grant of a new joint hackney carriage/PHV driver's licence to the applicant. We are hearing this case remotely. If her application is successful she has an offer of employment from 24 x 7 Ltd on the school contracts 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 the application form and the DBS documentation supporting the application. Additional information has been supplied by 24 x 7 Ltd, accepting some responsibility for what has happened. We have also taken into account national and the Council's policy and have heard from the Case Officer and from the applicant.

On her application form, in answer to question 6 '*Do you have any unspent convictions?*'

The applicant declared she had none.

Part of the application process requires applicants to produce an enhanced Disclosure and Barring Service certificate and the applicant's certificate dated 28 July 2020 shows 1 conviction as follows:

Conviction 1 – Offence – Knowingly failed to cause regular attendance at school of a registered pupil on 06 November 2017.

The applicant therefore does not meet the requirements of clause 2.3 of the Council's suitability policy which states:-

'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 name or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.'

The applicant's employer 24 x 7 Ltd accepted full responsibility for the error, advising that the fault lay with them insofar as the applicant was apparently unaware of the Court decision against her, arising from the failure of one of her children to attend school. Furthermore, the applicant advised that she had completed two application forms, the later one disclosing the conviction, and that the operator had sent in the wrong form. However, though this is some mitigation, nevertheless it was her application and she is responsible for its accuracy.

The primary function of this Committee is the protection of the public and if we are in any doubt as to whether an applicant is a safe and suitable person to hold a licence then our duty is clear – we should refuse the application. However, we have heard from the applicant and note what she said about the forms above. We also note that she has been working as a passenger assistant on school contract runs for some six years: we do have some concerns regarding her uncertainty as to where she would be driving, but understand from officers that 24 x 7 Ltd have a bank of school contract drivers and assign them a route as and when needed.

We were not entirely satisfied with what the applicant told us about the offence. We consider that she did not tell us very much about the surrounding circumstances and we do not have sufficient information as to current prosecution practice in Bedfordshire, where she lives, to decide whether this was an exceptional case or not. However, we do note her enthusiasm and commitment to the work and see no reason why she should not be a safe and suitable person to undertake this role.

Accordingly, we are prepared to grant this application and the applicant will receive her paperwork from the Licensing Department in due course.

The meeting ended at 11.54am.