

**LICENSING PANEL HEARING held at ZOOM - [HTTPS://ZOOM.US/](https://zoom.us/), on
WEDNESDAY, 5 MAY 2021 at 11.30 am**

Present: Councillor P Lavelle (Chair)
Councillors C Day and R Freeman

Officers in attendance: J Livermore (Senior Licensing and Compliance Officer),
C Shanley-Grozavu (Democratic Services Officer), E Smith
(Interim Legal Services Manager) and R Way (Licensing and
Compliance Manager)

LIC29 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC30 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.

LIC31 REVIEW OF PRIVATE HIRE OPERATOR'S LICENCE

The Senior Licensing and Compliance Officer gave a summary of their report
and the Licensing Manager made a statement to the panel.

In response to questions, the Senior Licensing and Compliance Officer
confirmed that the operator was in receipt of paragraph 7 of the conditions of
license which states that an operator shall notify the UDC Licensing Team of any
complaints made against the operator or any driver used by the operator within
two working days of receipt of the complaint. They highlighted that the Licensing
Team had contacted the operator once they had contacted by another local
authority, regarding complaints about the operator over 3 months previously, and
the operator's failure to respond prompted the review of the License.

Officers felt that the polite reminder about condition 7, which was emailed to the
operator, was an adequate opportunity for the operator to raise their concerns
and in-line with council policy.

The Solicitor, Director and Managing Director for the operator addressed the
panel.

The Solicitor said that regarding the 3 incidents concerned, the contracting local
authority had contacted the company, but offered them limited information, so
the operator did not understand the concern.

The Director then addressed the Committee and summarised a timeline of the three complaints. They said that the contracting local authority had asked the operator to take the drivers off their route, which they agreed to do immediately. They also highlighted that the events had taken place during the Covid-19 pandemic, where the company had been heavily impacted due to factors such as shielding drivers, home-working, sourcing PPE, and passenger disruption, and the priority was to ensure that the routes continued. They said that since January, communication with Uttlesford District Council had been limited, and that they believed that the risk was minimal to the public, as the drivers could not be given any work by other operators within the company group, due to the location. In addition, since the incidents, they have been looking to employ a Compliance Officer for the group who will be responsible for contacting the Council, should any future complaints arise.

In response to Member questions, the operator's Director confirmed that the contracting local authority had asked for the drivers to be removed but, due to data protection concerns, did not provide the operator with any details about the complaints which they had received. They acknowledged both that they were aware that one driver was involved in a police investigation and that there were complaints about their drivers, but had felt that they had dealt with any safeguarding issues by removing the drivers, as requested by the contracting local authority. Furthermore, they explained that it was initially difficult to establish whether the complaints were serious and the circumstances under which they received three complaints in quick succession was highly unusual.

The operator's Managing Director addressed the Panel and said that they take safeguarding very seriously and have put additional measures in place to ensure that failures such as those complained of do not recur, including, employing a Compliance Manager to liaise with Uttlesford District Council, and taking internal disciplinary action if needed in the event of there being any future breaches of the Licensing conditions.

In response to Member questions, the Managing Director emphasised that there would be further measures introduced to address safeguarding concerns including a re-education programme across the company, and ensuring that there are spare drivers available. They also confirmed that they will expect all staff to comply with the Licensing conditions.

To summarise, the Solicitor said that a one-line email from Uttlesford District Council did not alert the company to the severity of their concerns; however the operator did fully accept that they had not appreciated the possible severity of the situation. It was further confirmed that the operator now understood the nature of our expectations in terms of reporting, and that all concerns would be referred to UDC in the future as they are fully committed to meeting every condition of their license. They hoped that any sanction was proportionate, especially as no further concerns have been raised by contracting local authority about the company's operations.

The operator left the meeting at 12:58pm and the Committee retired to make its decision.

DECISION NOTICE – 24 x 7 (Hants) Ltd

The matter before the Panel today is a review of the PHV Operator's licence granted to 24 x 7 (Hants) Ltd (24x7) by the Council. We are hearing this case remotely.

This review is about compliance with Condition 7 of the Council's Private Hire Operators Conditions of Licence, which states:

“The operator shall notify the UDC Licensing Team of any complaints made against the operator or any driver used by the operator within two working days of receipt of the complaint. This includes complaints received from third parties and relates to any journey whether a hiring by the public or from contract work. Any response to a complaint should be forwarded to Licensing when made” (Emphasis added)

The obligation is to report matters to the Licensing Team within two working days of receipt of the complaint, not within two working days of the conclusion of the operator's own investigation into it, or within two working days of the conclusion of any disciplinary investigation against the perpetrators thereof. Prompt reporting in this fashion is considered even more important when the drivers and vehicles working under the operators' licence are remote from Uttlesford, and doubly so when vulnerable children are involved.

We consider this matter to be extremely serious since the coming into effect of the new HC/PHV Standards in July 2020 the transportation of children to and from school has become a fully regulated activity under the Safeguarding of Vulnerable Persons legislation and the detailed requirements of the “Every Child Matters” and “Working Together” guidance papers are now applicable. Uttlesford licences a considerable number of school contract operators and the 24 x 7 Group are the biggest of all. We therefore consider it to be of the utmost importance that they – and this Committee - adheres to best practice in all respects.

We have had the opportunity of reading a detailed officer's report in this case, a copy of which has been served on 24x7, and we have also seen, as have they, the background documents annexed thereto. These include a number of email chains passing between Hampshire County Council's LADO for Children on behalf of the LEA, and the Licensing Department, a short statement from the Council's Licensing and Compliance Manager under S9 Criminal Justice Act 1967, and the correspondence passing between 24x7 and UDC following receipt of the information from Hampshire. We have also had the benefit of reading a lengthy statement from Philip Henley, one of the directors of 24 x 7 and he spoke to it and answered our questions.

We have also taken into account the Council's policy, the DfT Standards and the DfE documents previously mentioned, and have heard from Mr Livermore and Mr Way on behalf of the Council and from Mr Henley and Mr Mahoney, the Group Managing Director, on behalf of 24 x 7. They were represented by Mr

Button, solicitor, who made most eloquent representations upon the company's behalf and we thank him for his assistance.

On 4th January 2021 the Licensing Team were contacted by the LADO for Hampshire County Council (HCC) regarding action being taken by them and by the Police against drivers employed by 24x7 and licensed by Uttlesford. A request for further information from HCC was made and the request, and the response received, are within the papers before us. This gave the Licensing Department cause for concern, and Mr Way contacted 24 x 7 by email regarding the reporting of complaints. This should have set alarm bells ringing given that by this time Mr Henley was well aware the Police were also involved. HCC's response was received on 26th January, and later that week the Licensing Team formally made contact with 24x7 to enquire what action had been taken by the company. It was clear from the information supplied by HCC that 24x7 had been aware of the investigations since September 2020 but had at no time attempted to contact the Licensing Authority as required by Condition 7 of their licence. In fact they never expressly notified UDC of the complaints against their drivers: officers found out following contact from HCC and we cannot but take the most serious view of this.

At this point we pause to note that the licences of two of the three individual drivers involved have been revoked with immediate effect on the grounds of public safety, and the third is on long term sick and therefore not driving. However, it remains the responsibility of the Licensing Authority to determine whether the individuals who hold a Hackney Carriage and/or Private Hire Driver licence with it remain 'fit and proper' persons with regard to public safety; workplace disciplinary action by an employer/operator cannot be a substitute as it does not prevent them working for someone else or obtaining a second licence. The fact of a revocation of a driver's licence is entered upon the national NR3 database of revocations and refusals, which is consulted by all licensing authorities as part of the application process; and as a licensing authority Uttlesford also has an obligation to refer relevant individuals to the DBS service to ensure they can no longer obtain paid or voluntary work with children or vulnerable adults. One driver has been so referred: dismissal by an employer does not provide this safeguard and further information can be found at <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>.

The failure of 24x7 to notify the Licensing Authority of complaints made against those individuals prevented that critical determination taking place timeously. One driver who subsequently had their licence revoked with immediate effect was the subject of very serious allegations and the associated risk posed to the safety of the public was also serious. 24 x 7 were aware from 19th October that the Police were involved in one case, yet still no contact was made with the Licensing Authority. This is disgraceful. As a result of 24x7's non-compliance with their licence conditions, that driver remained licensed and might have been able to continue working unsupervised for any other UDC licensed operator anywhere in the country; more to the point, the fact that that licence remained extant might have been regarded as sufficient guarantee of them being a fit and proper person for them to obtain a second licence elsewhere.

This dereliction is regarded very seriously by this Committee. Our primary function is the protection of the public, especially children, and if we are in any doubt as to whether an operator is a safe and suitable corporate person to continue to hold a licence then our duty is clear – we should revoke the licence.

We have heard from officers of UDC and from the directors of 24 x 7 (Hants) Ltd. Sadly, we found Mr Henley to be an unimpressive witness. He failed to realise that the very fact of LADO involvement was sufficient to amount to a raising of concerns serious enough to amount to a complaint requiring notification and further failed to appreciate that even though 24 x 7 has responsibilities under employment law to its workforce, there might be other issues that might override this including the legal obligations relating to the safeguarding of children and other vulnerable persons. The transportation of children to and from school is now a fully regulated activity. He admitted in response to our questions that safeguarding is indeed of paramount importance, but he also thought that concerns surrounding a driver could be assuaged by negotiating severance. While that person continued to hold a licence they could have used its very existence to support the obtaining of a second one elsewhere. He further admitted that he might not have understood the imperative of the need to report concerns to UDC and that he did not give this obligation the priority he should have done. He seemed to think that the removal of the drivers would be sufficient: we do not regard it in the same way. Finally, he accepted that until UDC reached out he did not even consider making contact with us, and he now accepts the enormity of his error.

Mr Mahoney then spoke from a corporate perspective. He confirmed that the company takes safeguarding very seriously and that a raft of additional measures have been and are in the process of being put into place. They are recruiting a Group Compliance Manager with the support of the Institute of Licensing and henceforth will report the merest “sniff” of a complaint. He accepted full personal responsibility for the breaches of condition and undertook that it will not happen again. However, in the light of the admissions and failures of Mr Henley, Mr Mahoney did not mention disciplinary action or supervision and we do think measures of this type should perhaps be put into place for a period of time.

Finally, Mr Button made lengthy submissions to us. He emphasised that his client now understood the nature of our expectations in terms of reporting, and that all concerns would be referred to UDC in the future. Though the company does have a duty of care towards its drivers in employment law, and contractual and other obligations to HCC as its client, UDC as its regulator also has a place and we expect to be informed, within two working days, of all relevant matters. Mr Button concluded by repeating his clients’ wholehearted and unreserved apologies.

We have thought long and hard about our decision and have debated it most anxiously. The reporting requirement is within two working days and here it was almost four months before 24 x 7 admitted what had happened following questions from UDC Officers. We repeat, UDC had to find out and enquire of 24x7; we were not told. This involved potentially criminal allegations of a most serious nature and we had to discover it from elsewhere – what if the Licensing

Department had found about the allegations from a member of the public or a journalist?

In arriving at our decision, we have taken into account the number of people who will be affected by it. Vulnerable children and their families. School communities. Hampshire County Council. Last, but not least we consider the innocent employees of this company though we are mindful of the existence of TUPE. We note that the drivers involved are no longer licensed and have listened to what Mr Mahoney has had to say regarding the future.

Very many people depend upon what we decide today, and we also know that Mr Mahoney has every possible incentive to keep the promises he has made to us. The loss of an operators' licence, even that of a subsidiary company, could very easily have a domino effect as education authorities up and down the country learn what has happened. It is in Mr Mahoney's interests to improve and we believe that he knows this and will make good on his promises. It is for this reason that we do not propose to revoke the operators' licence for 24 x 7 (Hants) Ltd. However, the breach was so serious and so severe that it cannot go unsanctioned and so 24 x 7 (Hants) Ltd will receive a formal letter of reprimand from the Chair of this Committee. This will be separate and distinct from the decision notice, which will be sent to Mr Button as agreed with our Legal Adviser, and will be sent directly to Mr Mahoney.

We do not expect to see a 24 x 7 company before us ever again, and hope that this will lead to a root and branch overhaul of operating practices, including an appreciation of the paramount importance of safeguarding among all personnel.