

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, CB11 4ER, on THURSDAY, 12 AUGUST 2021 at 2.00 pm**

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

Officers in attendance: D Cole (Licensing and Compliance Officer), C Gibson (Democratic Services Officer), J Livermore (Senior Licensing and Compliance Officer), E Smith (Solicitor) and Sullivan (Licensing and Compliance Officer).

LIC10 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC11 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.

LIC12 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Licensing and Compliance Officer gave a summary of her report which requested that members considered an application for a Private Hire/ Hackney Carriage Driver Licence.

The applicant said that he considered that the report had explained the situation quite well. In response to questions from Members, he said that he was unaware that he had a criminal record. He provided explanations for the events surrounding the convictions from 2016.

The applicant left the meeting at 14:25 hrs and the meeting was adjourned; the Panel retired to make its decision following the next Agenda item.

DECISION NOTICE

The matter 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 Home to School Transport (HtST) side of the business. This is a hybrid hearing with the Panel and our Legal Advisor in the Council Chamber at London Road and the other parties attending remotely.

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

On the applicant's application form the answer given to question 6 '*Do you have any spent convictions?*' the applicant had answered 'NO'. The applicant had also answered 'NO' to the question of '*Do you have any unspent convictions?*'

However, the applicant's enhanced DBS check submitted to Uttlesford District Council Licensing Department showed that he had 5 convictions as set out below:

- 16.3.2016 1. Use of threatening/abusive behaviour likely to cause harassment/alarm or distress – Public Order Act 1986 – Compensation £150
- 16.3.2016 2. Resist or obstruct constable – Police Act 1996 – Conditional discharge 2 years
- 16.3.2016 3. Resist or obstruct constable – Police Act 1996 – Conditional discharge 2 years
- 16.3.2016 4. Destroy or damage property at a value unknown - Compensation £50
- 20.5.2016 5. Failing to surrender to custody at appointed time under the bail act – No separate penalty.

These matters, taken together, mean that the applicant does not meet the requirements of the Council's suitability policy in a number of respects.

Our starting point is clause 2.5 which states

"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."

Furthermore, UDC's driver conditions policy goes on to state:

Dishonesty

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

2.10 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.

Offences involving violence

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.

These matters were therefore raised with the applicant on 11th June 2021 during a Right to Work meeting. He was asked regarding his criminal convictions and why they were not declared on his application form. The applicant stated he had 'forgotten' about his convictions, and thereafter explained the circumstances in which he had obtained his criminal record. The applicant stated that a 'friend who holds a 'green card which exempts him from arrest was about to be arrested by an Officer of the law'. When we asked him about this he explained that his friend has multiple health conditions meaning he cannot be detained in a police cell.

The applicant attempted to stop the police from arresting his friend and as a result was sprayed with pepper spray and thereafter charged with two counts of resisting arrest and obstructing an Officer as there were two Officers present. The applicant had also stated that he was charged with 'Destroy or damage property at a value unknown' due to him being pepper sprayed; the carpet that it had landed upon needed to be professionally cleaned.

We have listened carefully to what the applicant has told us. It does not amount to a coherent explanation. The index incident took place within the confines of a Court building in which there will inevitably be a large police and security presence and where people generally are on their best behaviour. He was unable to explain what appears on the face of it to be a substantial overreaction to a minor incident which could have been addressed by a discreet warning regarding his friend's health condition. He went on to explain his friend has since received civil damages for the incident from which he paid the applicant's fine, and the latter believed that that resolved the matter and that he did not have to attend Court hence the Bail Act offence.

However, the applicant could not explain why he omitted to declare the fact of these convictions. The application form is clear, it asks for everything, and the incident was only five years ago and must have been very distressing. The only explanation offered is that it "did not occur to him" to put it down. We find this lack of an explanation most unsatisfactory, and the reality was that this was a violent offence: if a pepper spray was used upon him, in a Courthouse environment, there must have been good reason.

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, and we do so. These offences were ones of violence and suggest anger management issues which we consider to be a serious concern if the applicant is driving children; they can be very provoking and transporting them is a fully regulated activity under S5 Safeguarding Vulnerable Groups Act 2006.

The applicant does have a right of appeal against this decision to the Magistrates Court, which must be exercised within 21 days and he will receive a letter from the Legal Department explaining this. I feel it right to warn him though, that the Magistrates do not have power to grant a licence.

The meeting re-convened at 14.30 hrs.

LIC13 **REVIEW OF PRIVATE HIRE & HACKNEY CARRIAGE DRIVER LICENCE**

The Senior Licensing and Compliance Officer gave a summary of his report which requested that members determine a review of the applicant's Private Hire and Hackney Carriage Driver Licence.

In response to various questions from Members, the driver said that he had not attempted to bribe the vehicle technician but had said that the technician could keep the change when he paid a £35 invoice with a £50 note. The driver said that he had not used the vehicle since then but he had been using a vehicle supplied by Happicabs, the operator for whom he drives.

DECISION NOTICE

The matter before the Panel today is an application for the review of the driver's joint hackney carriage/PHV driver's licence reference PH/HC0187. Since the driver is an owner/driver, we may also need to consider vehicle licence reference number PHV 4109, dependent on our decision today. This is a hybrid hearing with the Panel, our Legal Advisor and the driver in the Council Chamber at London Road and the other parties attending remotely.

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 including the list of vehicle defects and the written statements of the vehicle technician involved. We have had the opportunity of hearing from the driver and have been able to ask him questions. We have also seen some video footage of the car in question prior to today's hearing. In reaching our decision we have also taken into account national and the Council's policy and have heard from the Case Officer and the driver. We also understand that the Police have become involved in this matter since it involves, inter alia, allegations of dishonesty

The facts of the case are simply that on 16 July 2021, Private Hire Vehicle PHV4109 underwent a vehicle compliance test at Takeley Performance Tyres (TPT), which is one of the testing stations on the Council's approved list. The car was due for a 6 monthly inspection.

The Private Hire vehicle owned by the driver failed its test on 11 items. A list of these items along with the compliance test certificate and photo of the vehicle are included in the bundle before us. TPT contacted the Licensing Team at the time the test was being carried out to advise of the poor condition of the vehicle, and they provided photographic evidence of this. Pictures of the car are in our bundle and a short video of the wheel being tested has also been viewed by us. Furthermore, a member of staff at TPT advised officers that the driver had

attempted to bribe him into passing the vehicle with a £20 note, both before and after the test had been carried out. A S9 Witness Statement provided by the member of staff at TPT is among our papers and we accept the truth thereof..

Licensing Officers attempted to arrange an interview with the driver following the incident, however he failed to attend at the scheduled date and time and no contact has been made with the Licensing Team. It was made clear to the driver in the letter that his attendance was voluntary but that failure to attend would not prevent the investigation continuing towards a possible outcome. We have seen this letter.

Licensing Officers have multiple concerns, which we share, namely;

- The driver presented the vehicle for inspection in the condition shown in our papers. The inference we can, and do draw is that he did so knowing the vehicle was going to fail the examination.
- He then attempted to bribe the staff member with money even before the test had commenced, indicating the possible knowledge and acceptance of the vehicle's condition as alluded to above.
- The driver then repeated the attempt to bribe the member of staff a second time after the vehicle test result was confirmed as being a failure.

We have heard from the case officer and the driver has had the opportunity to address us today. Unfortunately we have not found him to be a convincing witness, his explanation being merely that he offered the member of staff at TPT a large denomination banknote to cover the inspection fee, and told him to keep the change. The figures do not add up and we prefer the written evidence of the member of staff at TPT.

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. We are not entitled to take into account issues such as hardship to the driver in the exercise of our statutory function. Our role is to determine whether or not he 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.

In this case we do revoke the licence, and with immediate effect in the interests of public safety. The driver demonstrated by his actions that he was prepared to drive, and to carry members of the public for reward in a vehicle that he was aware was unsafe. Further, the driver has attempted, on two occasions, to dishonestly bribe a Department of Transport accredited vehicle tester, acting as such to certify an unsafe vehicle as being safe to carry members of the public for reward and on the first occasion he clearly knew that the vehicle he was presenting for testing was unsafe. Repeating the offer after the test had been failed merely compounds matters and we take the most serious possible view of this. At this point we pause to add that the operator for whom he drives, Happicabs, immediately directed that the vehicle be taken off the road and this remains the position.

These allegations amount to two counts of dishonesty, and further evince a cavalier attitude towards the safety of the travelling public. This is totally

unacceptable and makes it abundantly clear to us that he is not a fit and proper person to hold an Uttlesford licence. We therefore revoke the drivers' licence, with immediate effect, and understand officers have rightly referred the matter to the Police.

We now turn to consider whether any action should be taken against the Private Hire Vehicle licence PHV4109, of which the driver is the sole named proprietor, and since only a licenced driver may drive a licenced vehicle, we also revoke the vehicle licence, again with immediate effect, so it can be driven, assuming the defects in it have been rectified, for private purposes. We are, however, pleased to note that it has not been used to transport the public since the inspection but even so its condition suggests to us that it should not be on the road at all.

The driver does have a right of appeal against this decision to the Magistrates Court, which must be exercised within 21 days and he will receive a letter from the Legal Department explaining this. Since the licences have been revoked with immediate effect he may not drive for reward pending the determination of any such appeal.

The meeting was adjourned at 14.45 hrs for the Panel to consider both items.