

**LICENSING PANEL held at COUNCIL CHAMBER - COUNCIL OFFICES,
LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY, 13 JUNE
2023 at 1.00 pm**

Present: Councillor G Driscoll
Councillors S Barker and A Reeve

Officers in attendance: S Bartram (Licensing Support Officer), D Cole ((Licensing and Compliance Officer), S Mahoney (Licensing and Compliance Manager), C Shanley-Grozavu (Democratic Services Officer) and P Wright (Licensing and Compliance Officer)

Also Present: Drivers for Agenda Item 3 and 5
E Smith (Legal Representative, Birketts)

Observers: A Chapman (Licensing Support Officer), K Clifford (Assistant Director - Housing, Health and Communities) and T Cobden (Environmental Health Manager - Commercial)

LIC3 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

Councillor Reeve declared that he was a Saffron Walden Town Councillor.

Introductions were made by all.

LIC4 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.

LIC5 DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE

The Licensing Support Officer gave a summary of her report which requested that Members determine whether the applicant was suitable to hold a Private Hire Driver's Licence.

The driver addressed the Panel and said that the criminal convictions outlined within the Officer's report were from 10 years ago when they were going through a hard time. They were a single parent of twins, however since getting full custody of their children, they had not committed any further offenses. They had applied for a Private Hire licence in order to obtain work which was more flexible around their childcare requirements.

For transparency, Councillor Barker declared that she was an Essex County Councillor for the area where the applicant resided.

In response to questions, the applicant clarified the following:

- They were currently working at the Airport around their children's school hours. By acquiring a taxi licence, they felt that they would then be able to obtain more work and to work longer hours when the children start secondary school in September.
- They had previously worked for 10 years as a buyer in a restaurant; however they had to give this up when they became a single parent as the hours were unsociable and not working around their childcare.
- A CS Gas canister and Class A drugs were found in a work van that they were driving, but the items did not belong to them. However, as they were in control of the vehicle, they were charged with possession of both.

Meeting adjourned at 13:10 for the Panel to retire to make their decision.

The meeting was reconvened at 13:29

DECISION NOTICE

The matter before the Panel today is an application for a new HC/PHV driver's licence. He is employed by a company who run a Park and Ride service for the benefit of travellers out of Stansted Airport, but they have not attended before us today or otherwise actively supported him.

This hearing is called under Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states :

51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence

(a) Unless they are satisfied

(i) That the applicant is a fit and proper person to hold a driver's licence.

It is this we must decide today.

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. Most important is his enhanced DBS certificate and we note that he has declared the matters set out therein in his application form. There are no new matters postdating this certificate and nor are there any entries pertaining to him on the NR3 licensing database. He also holds a clean DVLA licence.

However, the DBS certificate reveals a number of serious historic convictions.

The Driver was convicted upon a count of possessing a prohibited weapon under S5(1) Firearms Act 1968 and another of possession of a Class A drug, namely cocaine, contrary to S5(2) Misuse of Drugs Act 1971. For these offences he received a) custodial sentences of 4 months and 1 month to run concurrently, suspended for 12 months, b) he was also made subject to forfeiture orders and c) ordered to pay a victim surcharge of £80.00 and prosecution costs of £200.

Sadly he also appeared on charges of shoplifting, contrary to S1 Theft Act 1968 and resisting/obstructing a constable under S89(2) Police Act 1996. He was fined £233 and ordered to pay a further £233 in prosecution costs: he was also charged with the commission of a further offence while subject to a suspended sentence, under Sch 12 Criminal Justice Act 2003, but he received no separate penalty for this.

We have also had the opportunity of hearing from him and from the Case Officer and have read the papers before us most carefully.

The Driver told us that the offences took place at a very difficult time in his life. His ex partner had mental health problems and when the relationship ended he was left as sole carer for two young children and he needed work to fit around them.

The gas canister and drugs found in his possession and in respect of which he was convicted did not belong to him. They were in a work van and he was

convicted because he had been control of the vehicle at the material time and for that reason he was deemed to be in possession of them.

He has not been in trouble since assuming sole care of his children and hopes to work longer hours when they start secondary school in September as there is a bus they will be able to catch.

In considering this application, we are also mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. Appendix A contains the relevant details, and we quote them here:

2.5 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.

2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

2.10 As stated above, 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.

2.15 Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

2.18 Dishonesty

Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

2.20 Drugs

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

All of these matters are regarded as serious and though more than seven years have passed since the date of the last conviction. The Driver has convictions in respect of offensive weapons, controlled drugs and dishonesty. There is also the incident with the Police Constable.

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. Our role is to determine whether or not an applicant is 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 refuse the application.

We have listened to the Driver, however, and we are satisfied that he has kept out of trouble since 2014 and that he is determined to be a good father to his children

The decision we must make is whether he is a fit and proper person to hold an HC/PHV driver's licence and we have decided that on balance, he is. His application is granted and he will receive the necessary paperwork from the Licensing Department in due course.

LIC6 **REVIEW OF A PRIVATE HIRE DRIVER LICENCE**

The Licensing and Compliance Officer gave a summary of his report which requested that Members determine whether the driver was "Fit and Proper" to continue to hold a Private Hire Driver's Licence.

It was noted that the driver was not in attendance at the hearing, but a written statement had been submitted.

In response to questions, the Licensing and Compliance Officer clarified the following:

- The driver had not complied with Council policy twice since they received their Private Hire Driver's Licence in October 2022.
- The first incident occurred during a multiagency taxi check outside of a school when the vehicle was not displaying any council door signs. For this, and other issues, the vehicle was suspended.
- The second offence took place outside of an Adult Day Centre where the same vehicle was not displaying any door signs or their badge; however it was in the vehicle.
- The Driver was employed in by an operator licensed by Uttlesford which held a school contract with Hertfordshire County Council.

- The agencies involved during the initial spot check included the Police, several other Local Authorities and the DVSA.

Meeting adjourned at 13:39 for the Panel to retire to make their decision.

The meeting was reconvened at 13:56

DECISION NOTICE

The matter before the Panel today is for a review of HC/PHV driver's licence. He is employed by an operator licensed by the Council

We consider the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 61 thereof states :

A district council may suspend or revoke a driver's licence for:

(a) That since the grant of the licence he has-

(i) Been convicted of an offence involving dishonesty, indecency or violence: or

(ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of the Act: or

(b) Any other reasonable cause.

In the event of a licence being revoked or suspended a driver has the right of appeal to a Magistrates Court

The Driver has not attended before us today but has written into the Council. We have read that letter carefully. His licence is to be considered by us because of two identical breaches of condition taking place on 12th January 2023 and 25th April 2023. Both incidents were witnessed by Council officers.

The facts are as follows. On Thursday 12th January 2023 during a multiagency taxi check organised by Hertfordshire Police and attended by Mr Paul Wright an Uttlesford Licensing Compliance Officer. He was the driver of an Uttlesford licenced private hire vehicle), on which occasion the vehicle was not displaying any council door signs. For this and other issues the vehicle licence was suspended and the documentation is before us. The Driver has received copies.

On Wednesday 25th January 2023, email correspondence was received from his employer showing that door signs were now affixed to the vehicle. They included photographs and these are within our bundle.

On Tuesday 25th April 2023 Mr Wright saw the Driver again, who was driving the same Private Hire Vehicle. Once more, the vehicle was not displaying any door signs. Mr Wright issued a minor works form and advised that the signs needed to be on the vehicle at all times. Again, this document is before us.

On Friday 22nd May 2023 the Driver and Mr Wright met using Teams. The Driver said that he could not remember very much about the incident in January. He said that he remembered being spoken to in April, and that later the door signs were found in the rear of the vehicle. He also said that he kept the vehicle at his home address although it belonged to the operator, who lived nearby so was able to collect it at any time. He said that the door signs had been made magnetic, but he had not been involved in doing it.

The Driver was informed that his licence was being referred to the Licensing Committee for consideration of revocation or suspension. He was invited to add anything further to what he had already stated. Appendix J of the Council's Licensing Policy relating to the Hackney Carriage and Private Hire trades direct how proprietors/drivers will display the door signs. It is clearly illustrated and again, we have a copy before us. The requirement that licensed vehicles are clearly badged is a measure taken for the protection of the public. The Council licenses many vehicles that do not work within the geographical district of Uttlesford and it is regarded as very important that members of the public with concerns know who we are and who they should contact to report them.

Para 1.3 of this Council's Suitability policy is clear:

"If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so"

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.

The Council's Suitability Policy states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services. We agree. That is why we require licensed vehicles to be clearly badged and this is not an isolated occurrence.

We take this responsibility seriously. 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. Our role is to determine whether or not a person 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. If we do not think the failure serious enough to justify revocation, we do have power to suspend the licence.

We have read the Driver's letter, and we have read and considered the other material before us. We note he says that the door signs have now been permanently affixed to all vehicles operated by his employer and apologises for his absence: he states he has to collect disabled children from school and continuity of service is considered to be important for them. We do feel that he could have requested a deferral of this hearing and observe that generally the Council does try to accommodate such requests.

We are also mindful that this is not a single, isolated incident and that the first episode took place at a time when the Driver had only recently completed his mandatory driver training. He must have known what the Council required of him

We therefore have to consider whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence; and if we do, whether his failures merit a lesser sanction than revocation.

We have concluded, since this is a repeat offence, that the Driver's licence should be suspended for a period of 21 days. This suspension will commence on 22nd July 2023 and last until 13th August 2023. We are mindful of the appeal window and that the commencement of the suspension co-incides with the

beginning of the school holiday. Since the Driver is employed upon school contract work, the children he drives will not be affected by the suspension of his licence, only him. We also recommend, but without having any power of compulsion, that he repeats the Green Penny training course.

The Driver has a right of appeal to the Magistrates Court against this sanction and this right must be exercised within 21 days of the date of our decision. That is why the suspension does not begin for more than three weeks, that is until the expiry of those 21 days, and until the conclusion of any subsequent appeal.

The Driver will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights.

LIC7 **REVIEW OF A PRIVATE HIRE DRIVER LICENCE**

The Licensing and Compliance Officer gave a summary of his report which requested that Members determine whether the applicant was suitable to hold a Private Hire Driver's Licence.

It was confirmed that the Driver had held a licence since 2017 and no previous incidents or complaints had been noted.

In response to questions, the Licensing and Compliance Officer clarified that the complaint before the Panel was based on an email and recordings which had been submitted by the partner of the passenger. Officers had not had any co-operation from the passenger, despite several attempts to make contact with them.

Having reviewed the recordings, the Officer felt that the passenger was offering non-committal answers but was unable to gauge how they were feeling.

The Driver addressed the Panel and said that they could not remember when the incident took place, nor who the passenger was. The first time that they were made aware of the events was when they were suspended by their company.

They said that they were not racist and got along with the other taxi drivers as well as their customers.

They concluded by saying that they were sorry for wasting the Panel's time.

In response to questions, the Driver clarified the following:

- They were suspended for two weeks and received a final written warning from their company over the incident.
- Moving forward, they were looking to install a camera in their taxi and to also moderate their language when speaking to passengers.
- They picked up hundreds of passengers each week, so were unable to recall the specific conversation and passenger.

- The Driver could not recall a time when any passenger of theirs had exited the taxi early. They always got on with people and had never had any complaints until now.

The Driver said that they were sorry for all the work that the complaint had caused and for the time wasted.

Meeting adjourned at 14:11 for the Panel to retire to make their decision.

The meeting was reconvened at 14:42

DECISION NOTICE

The matter before the Panel today is for a review of HC/PHV driver's licence. This matter was referred to Uttlesford by officers of Chelmsford City Council following an incident on 15th February 2023.

We first consider the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. S 51 thereof states :

51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

Provided that a district council shall not grant a licence

(a) Unless they are satisfied

- (i) That the applicant is a fit and proper person to hold a driver's licence.*

This responsibility is ongoing and whether the Driver remains a fit and proper person is what we must decide today

S61 goes on to state:

A district council may suspend or revoke a driver's licence for:

(a) That since the grant of the licence he has-

- (i) Been convicted of an offence involving dishonesty, indecency or violence: or*
- (ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of the Act: or*

(b) Any other reasonable cause.

In the event of a licence being revoked a driver has the right of appeal to a Magistrates Court

Para 1.3 of this Council's Suitability policy is clear:

"If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so"

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. We have listened to two recordings of the conversation between the Driver and the complainant, made by her at the time. However, the actual complaint was made by her partner, and she herself has chosen not to engage with officers regarding the matter despite the making of several approaches.

The facts of the matter are as follows. The Licensing Team received an email from Mr Daniel Winters of Chelmsford City Council on 16 February 2023, in which he explained that a complaint had been received regarding the conduct of the Driver during a journey with a fare paying female passenger on 15 February 2023. Mr Winters subsequently forwarded two voice recording attachments to Russell Way, Uttlesford District Council's former Licensing Manager. These were then passed to David Cole, Licensing and Compliance Officer at UDC.

These recordings contain a conversation between the complainant and the driver in his vehicle that she was travelling in on 15 February 2023. The Complainant began to record the conversation after the Driver used obscene language whilst speaking to her. It should be noted that the complainant is of mixed heritage herself and found the language used particularly upsetting.

The Driver can be heard during the first recording using further obscene language. During the second recording he used obscene language again when talking about his controller giving him an airport run. The complainant informed her partner, who emailed a complaint initially to Fairway taxis, who in turn informed Chelmsford City Council. The matter was then referred to UDC by Mr

Winters. We have read the emails and listened to the recordings. They are not pleasant.

We have also had the opportunity of hearing from the Driver and from the Case Officer.

The Driver told us that he did not really remember the incident and that his operator had subjected him to a two week disciplinary suspension at the end of which he was given a final written warning.

We have listened to the recordings and we find the language used unacceptable. We cannot let this pass; however, we note that the Driver has attended before us today, was apologetic and has a six year driving history with the Council. We also note that the complainant has not engaged with officers, despite a number of requests to do so.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.

2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....

2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may

also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

We take this responsibility seriously. 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. Our role is to determine whether or not a person 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.

We have listened to the Driver, and we have read and considered the other material before us. We also note that he was subject to a disciplinary procedure by his employer. This was a two week suspension and we gather he has suffered financial hardship as a result thereof. We consider, given his age, that this is punishment enough. He also received a final written warning which is a serious matter. He states he enjoys his work and gets on with customers.

He has suggested the installation of a camcorder in the car, and provided it is GDPR compliant we think this is an excellent idea. He must moderate his language in the future, and we suspect his employer have said the same thing

We have carefully considered whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence and by the slightest of margins we have decided he may retain his licence. However, we emphasise that behaviour of the kind which brought him before us today is never acceptable and we stress it must never occur again. The Driver must appreciate that as with his employer, he is on his final chance with the Council and we do not expect to see him before us ever again.

Meeting ended 14:53