

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, CB11 4ER, on THURSDAY, 24 AUGUST 2023 at 1.00 pm**

Present: Councillor A Armstrong (Chair)
Councillors G Driscoll and J Moran

Officers in attendance: K James (Licensing Support Officer), J Jones (Licensing and Compliance Officer), S Mahoney (Licensing and Compliance Manager), S Nemeth (Licensing Support Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also present: E Smith (Legal Advisor - Birketts)

LIC24 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC25 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

Due to the absence of the driver, the Chair announced that Agenda Item 3 (Review of a Private Hire/Hackney Carriage Driver's Licence) would be heard last.

LIC26 REVIEW OF PRIVATE HIRE DRIVER LICENCE

The Licensing and Compliance Manager gave a summary of the report which requested that members determine whether the Driver was "Fit and Proper" to continue to hold a Private Hire and Hackney Carriage Driver's Licence.

In response to questions from the Panel, the officer confirmed that the Driver had returned their Private Hire Driver Licence to the Licensing Team, following the notice of suspension. The date of the offense was also confirmed.

The Driver addressed the Panel and provided an account around the circumstances in which they were charged with the assault of an emergency worker. They explained that the offence took place during a period of mental health crisis.

He had pled not guilty in court to the charge of assault, and it was subsequently downgraded to assault of an emergency worker. He was advised by his legal representation to pay the fine as the conviction would be spent after a year. He was also advised against appealing, as the legal costs would outweigh the cost of the fine.

In response to questions from the Panel, the Driver confirmed that the police had been called to his home as he had self-harmed. He was initially charged with Assault by Beating; however this was downgraded by the Magistrates Courts once the police body cam footage was reviewed.

After the trial, the Driver's solicitor had advised him that once the fine had been paid, the charge would not show up on anything after a year. He was not informed that it would still affect his DBS.

The Driver also confirmed that he did not have any orders against him under the Mental Health Act.

The Driver summarised that he wished that it hadn't happen and had since received help through the NHS Mental Health Services. He said that they had never had any complaints or problems in their driving job, and his operator was looking forward to having him back.

Meeting adjourned 13:23

The meeting reconvened at 13:48

DECISION NOTICE

The matter before the Panel today is for a review of HC/PHV driver's licence. The licence was administratively suspended in April 2023 and today we are required to decide whether that suspension should be lifted, enabling the Driver to return to driving or whether that licence should be revoked with immediate effect in the interests of public safety. Our choice is binary in this case and most important of all, we are charged with determining whether the Driver is considered 'fit and proper' to continue holding the licence.

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 record we have read with care the information supplied by the Driver's legal representation, though we note the offence took place in 2022 not 2023 as he states in his letter.

The facts of the matter are as follows:-

The Council requires all existing licensed drivers to have an active subscription to the Disclosure and Barring Service Update Service, meaning that the Licensing Team are notified of any addition of new information on a driver's criminal record. Following such notification being received against the Driver's record, Licensing Officers issued a suspension of his Private Hire Driver's Licence effective from April 2023, due to the unknown circumstances at that time of the reason for the information being recorded. A copy of that letter is before us and upon receipt thereof, the Driver contacted the Licensing Team to discuss the circumstances. He was advised to provide correspondence from the Court together with anything else that might assist the Council. The Driver had been represented by solicitors and Counsel in the Court proceedings. We are advised, however, that Taxi and Private Hire driving is a profession exempted under the Rehabilitation of Offenders Act 1974, meaning that 'spent' offences can still be considered in decision making.

The DBS certificate was issued in July 2023 and is before us. It states that the Driver was convicted of 'common assault of an emergency worker' and issued a fine of £1,500. This largely corresponds with the detail given in the email from his legal team and the account given by the Driver to Licensing Officers in which he said he had 'bitten' a Police Officer.

The Uttlesford Driver Suitability Policy references that *"Where an applicant has a conviction of 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."* Though this specifically addresses new applicants, our duty to ensure drivers remain fit and proper persons is ongoing, and we may regard it as being guidance in making our decision on this matter. Existing drivers are expected to conform to high personal and professional standards and a conviction for assault, particularly one upon an emergency worker, naturally raises a question as to whether the Driver remains a 'fit and proper' person to retain his licence. We note that the identity of the victim is considered to be an aggravating factor that justifies an increased sentence and

we note the penalties to which the Driver was subjected are entirely punitive in nature.

There is currently an indefinite suspension of the Driver's licence in place until our determination is made. Whilst the issuing of a further suspension would in theory be an option, it would not be a pragmatic in this case and instead the Panel are guided to consider either the lifting of the current suspension thus allowing the Driver to return to work, or the revocation of the licence with immediate effect. On that basis he would not be allowed to resume driving. We repeat, our decision must be made on the basis of whether we consider him to be a 'fit and proper' person to hold the licence based on the information presented before us.

Furthermore, in reference to existing licence holders, point 2.41 of the policy further states:-

*'As public trust and confidence in the overall safety and integrity of the system of taxi licensing is vital, where a licence holder has received a conviction for any category of offences detailed above, their licence(s) **will be revoked**'.*

The Driver has been convicted of such an offence and the DBS certificate records that there were aggravating features.

We have read all the papers before us most carefully and we have listened to what the Driver has told us. We limit the details in order to protect his privacy given the circumstances. The offence took place in April of last year during a period of mental health crisis. He had the benefit of legal representation in Court on his not guilty plea, though sadly he was wrongly advised regarding the bringing of an appeal. For the purposes of the HC/PHV driver regime a conviction is never spent.

However, we are charged with the protection of the public, and this was an aggravated offence. We do not recite the details but this was an offence that Parliament considered should attract an enhanced penalty given the aggravating features surrounding it. The Driver did not plead guilty to a lesser charge, one charge was substituted for another given certain elements of the original charge could not be satisfied, but he proceeded with a contested trial and was duly convicted.

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 carefully considered whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence and sadly we have been driven to conclude that he is not. We have heard what he has told us but this was an offence of violence in circumstances Parliament considered merit an increased penalty. He has produced no correspondence from his operator, we have seen no medical evidence, and he did not report the fact of the charge to the Licensing Team. We are aware of the backlogs in the Court system and make no comment. In all the circumstances we regard ourselves as having no alternative but to revoke his licence. We regard what he did as being so serious that revocation must be with immediate effect on the grounds of public safety.

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. During that period and until the determination of an appeal he would normally be allowed to continue driving. However, in this case his licence has been revoked with immediate effect on the grounds of public safety and this period of grace does not apply.

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

LIC27

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Licensing Support Officer gave a summary of their report which requested that members determine an application for a Private Hire Drivers Licence.

In response to questions from the Panel, it was confirmed that there were no active points on the applicant's DVLA Drivers Licence as these had now expired. However, the previous points would be retained on the Licence for period of 4 years.

The applicant addressed the Panel and said that he had never been dishonest and did not intend to deceive on his application form. He confirmed that both he and his potential employer had checked the DVLA website at the time of submitting the application and there were no points displayed.

He explained that the points were as a result of a problem with his previous employer. He had notified the company of a change of address but the letters informing him of speeding offenses in vehicles in his name were sent to the wrong address. He attended court with the driver who had been driving at the time of the offences, but as it had been 6 months since the offence, the points were given to him.

He said that he had never committed any other offences before or after the ones disclosed and that he wasn't his intention to mislead. He was sorry for any offence caused and, if a licence was granted, he would never be seen before the Panel again.

In response to questions from the Panel, the applicant clarified the following:

- There were two separate MS90 offenses disclosed, along with an SP10. The Driver confirmed that the MS90s were both separate vehicles which were both driven by different drivers. The SP10 was due to driving at 71mph, in a 60mph limit.
- After moving from the previous address, the Driver had done a one-month redirection with the Post Office and informed relevant parties, including his employer of the change of address. However, his employer did not update his file and continued to forward the fines to the old address. They had only found out about the point on the licence when they were unable to rent a minibus.
- The Driver leased a number of vehicles from his previous employer, and he employed the drivers directly. Letters regarding any fines or offenses committed in the vehicles were sent to Head Office, who then forwarded them to him to deal with. As he had not received the letters, he was unable to inform the DVLA that he was not driving the vehicle and the points were added to his licence, as the registered owner.

Meeting adjourned at 14:20

The meeting reconvened at 14:50

DECISION NOTICE

The matter before the Panel today is an application for a new HC/PHV driver's licence. If he is successful today he has an offer of engagement.

This application is made 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

(b) Unless they are satisfied

(ii) 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 DVLA check which revealed a number of matters. None of these were listed in his application and we are reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving.

Put very briefly, applicants to the Council must complete an application form. It should be done by them personally and it contains a declaration of truth. On the Driver's application form the answer given to question 4, namely 'Do you have any endorsements on your DVLA?' had been 'NO'

However, on checking the Driver's driving licence details the DVLA record showed:

(c) SP10 (Exceeding goods vehicle speed limit) - received 3 driving points.

(d) MS90 (Failing to give information as to identity of driver etc.) - received 6 points.

(e) MS90 (Failing to give information as to identity of driver etc.) - received another 6 points.

The Licensing Support Officer had a telephone conversation with the Driver where he was asked why he had not declared the points. He advised officers that the application form had been completed by the operator and that he thought the points had dropped off his licence. He said that the two sets of six points were from few years ago when he had a franchise, had had people working for him, and using his vans leased in his name. He explained that one of his drivers had got caught speeding a few times and because the company he worked for hadn't updated the system with his new address, he did not receive any paperwork regarding the offences which meant he could not pass the drivers details over to the police.

Nevertheless UDC driver conditions policy states:

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.

Other motoring offences

2.28 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed or the date on which the number of points on the DVLA licence dropped below 7.

We have also had the opportunity of hearing from the Driver and from the Case Officer and have read the papers before us most carefully. The Driver gave us a lengthy account of his problems over the last few years, but apparently he had had a delivery franchise involving fifteen vans, and he had employed a number of others. However, he did not keep proper records, did not promptly notify DVLA or the company of his change of address and did not arrange for the Royal Mail to re-direct his post. He should have done, and he should have kept proper records and followed the company's internal procedures. He did not. Further, in completing his application to the Council he relied totally on his potential operator. The picture he has painted today is one of chaos and that is not acceptable. He was evasive in answering our questions and emphasised the financial hardship he faces if his application was unsuccessful. That is not something we may take into consideration.

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.

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 and we have read the papers before us. He told us that at some point he attended Court and the court Legal Adviser had stated

that he should be disqualified under the totting up provisions: we can only assume the Bench accepted a severe hardship plea, but that is not something we may do. As an employer he was responsible for those working for him in 2020 and he signally failed in meeting his responsibilities in this respect. Even this month, he essentially delegated making his application to the Council to his potential operator. He does not meet the Council's standards and he has told us nothing that would make us decide to exercise our discretion to depart from them.

We therefore have to consider whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and we have to conclude that he does not. It is not the points themselves that are in issue, since they have fallen away, but the fact that he failed to disclose their existence. He also failed to carefully read and check a document that he allowed a third party to complete on his behalf. That document contained a statement of truth, and sadly his application was therefore made dishonestly. We therefore refuse this application.

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. He will receive a letter/email from the Licensing Department explaining this but he should be aware the Court does not have the power to grant a licence: only this Council can.

LIC28

DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE

The Licensing Support Officer gave a summary of their report which requested that members determine an application for a Private Hire Drivers Licence.

The applicant addressed the Panel and provided a detailed account of the circumstances around the matters which had been disclosed by the police on his DBS, including a serious allegation of sexual misconduct made against him, a custodial sentence under the Misuse of Drugs Act and a caution for Common Assault.

In response to questions from the Panel, the applicant confirmed that he had previously been convicted for the possession of cannabis and served a short jail sentence for this. He explained that the Common Assault charge related to swearing in a heated argument.

Further questions were asked in regards to the events surrounding the serious allegation of sexual misconduct made against him and the Driver responded with his version of events.

Meeting adjourned at 15:18

The meeting reconvened at 15:34

DECISION NOTICE

The matter before the Panel today is an application for a new HC/PHV driver's licence. If he is successful today he has an offer of engagement.

This application is made 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
(c) Unless they are satisfied
(iii) 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. These reveal a number of very serious matters, including a serious allegation of sexual misconduct made against him, a custodial sentence under the Misuse of Drugs Act and a caution for common assault. He also held a licence issued by Transport for London which was revoked by them because of the indecent assault allegation we have previously referred to, plus non-compliance matters. None of these were listed in his application and we are specifically reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving.

In considering this application, we are 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.

A history of dishonesty, indecency or violence is regarded by this Council as being a very serious matter and it is to the question of honesty that we now turn.

Put very briefly, applicants to the Council must complete an application form. It should be done by them personally and it contains a declaration of truth. On the Driver's application form the answer given to question 5, namely 'Have you ever had a licence to drive a hackney carriage and/or private hire vehicle refused, revoked or suspended?' had been 'NO'

However, on checking the NR3 database, details of the revocation referred to above were revealed and TfL provided further information in response to a request. All of this information is before us and has been served upon the Driver. Nevertheless UDC driver conditions policy states:

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.

We have also had the opportunity of hearing from the Driver and from the Case Officer and have read the papers before us most carefully. The Driver gave us a detailed account of the events surrounding the allegation of sexual misconduct. That account does not correspond adequately with the facts set out in the police information set out in the DBS certificate, and in response to our questioning further extremely disturbing discrepancies came to light. The same evasiveness surrounded his replies to our questions regarding the other matters set out in the DBS certificate, namely the Misuse of Drugs Act conviction and the common assault caution. If events had been as stated by the Driver then those would not have been the charges brought and he would not have received a custodial sentence. These matters worry us greatly, and unlike the criminal courts, if we have any doubts about the safety and suitability of a licence applicant then the answer is clear.

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.

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 and we have read the papers carefully. There are too many unanswered or inadequately answered questions and we cannot trust what the Driver has told us. We prefer the police information. We also remember that the Rehabilitation of Offenders Act does not apply to matters before us, and in short, we are not prepared to take the risk of licensing the Driver. We have therefore had to consider whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and we have to conclude that he is not. There is a history of offending that troubles us greatly, the revocation of a previous licence and the failure to carefully read a document containing a statement of truth; he was untruthful about an matter that went to the root of his application, hence that application was made dishonestly. We therefore refuse this application.

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. He will receive a letter/email from the Licensing Department explaining this but he should be aware the Court does not have the power to grant a licence: only the Council can.

LIC29

DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE

The Licensing Support Officer gave a summary of their report which requested that members determine an application for a Private Hire Drivers Licence

The applicant addressed the Panel and provided them with an account regarding a number of serious allegations of sexual misconduct which had been disclosed on his DBS.

He explained that since the year of the first two entries on the DBS, he had applied for a number of jobs and has been refused because of those entries. These applications had included roles in the NHS, schools and taxi licences from other authorities.

He stated that in the case of all the allegations made against him, there had been no convictions. In the first two instances, the complaints were dropped and in the last one he was found not guilty in court.

In response to questions from the Panel, the applicant clarified the following:

- The first two allegations made against him were colleagues at his work. They were investigated both by the police and the employer, but he was not convicted.
- The third complaint was at a separate workplace, but the allegations were of a similar nature. Following an internal investigation which cleared him of misconduct, the complainant went to the police and the case went to court. He was acquitted following the inability of a jury to decide on a verdict.

The Driver said that he had not received a letter from the DBS to invite him to provide representations prior to disclosure of the allegations to the Council and he was not asked for evidence by officers in advance of the hearing. He produced a certificate of acquittal before the Panel which was the first time it had been seen by the Council.

Meeting adjourned at 16:05

The meeting reconvened at 16:18

DECISION NOTICE

The matter before the Panel today is an application for a new PHV driver's licence. No information has been provided regarding the operator for whom he intends to drive and this of itself is somewhat worrying in the light of what the Driver said to us today.

This application is made 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

(d) Unless they are satisfied

(iv) 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. The enhanced DBS Certificate reveals

a number of very serious matters, including several serious allegations of sexual misconduct made against him which were not proceeded with but nevertheless concerned Essex Police enough to keep them on record. Two date back to 2008 and one to 2013. There are also two entries against him listed on the NR3 database of revocations and refusals, available to licensing authorities: as at the date of the report only Harlow Council has responded to the Council's enquiries. We have not heard from Wolverhampton. We are specifically reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving, that we must be satisfied on the balance of probabilities whether the Driver is a safe and suitable person to hold an Uttlesford licence, and, unlike in other forums, the applicant is not entitled to the benefit of any doubt.

In considering this application, we are 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.

A history of indecency is regarded by this Council as being a very serious matter and even though these matters are not convictions but allegations which were not proceeded with the DBS certificate does not say why the CPS did not see fit to proceed.

We have also had the opportunity of hearing from the Driver and from the Case Officer and have read the papers before us most carefully. The Driver told us that since the date of the first two entries on the DBS, he has applied for a number of jobs and has been refused because of those entries. These applications have been for roles in the NHS, schools, this is his third HC/PHV licence application, and van driving. Many of these applications have been, did he but know it, to organisations to which the Rehabilitation of Offenders Act does not apply, and further we note the complainants were workplace colleagues, one considerably younger than him. We are aware that English is not the Driver's first language but he was unable to answer many of our questions and showed a tendency to blame the complainants for his troubles. He did however produce a certificate of acquittal this afternoon. This is the first time this has been seen by the Council and we also note he had the opportunity to correct his records last

December. He did not take it up, and our understanding is that the acquittal was a directed one following the inability of a jury to decide on a verdict.

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.

Though in this case we are dealing with allegations rather than convictions, there appears to be some similarity and the behaviour concerned continued over a number of years. Over the years the Driver has shown no insight into his history and has made applications for various roles that would involve contact with vulnerable people and been rejected. He admits those rejections were because of the DBS. We agree with those refusals. 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 must make this determination ourselves but though not being in any way “bound” by the decisions of Harlow and Wolverhampton Councils we cannot but take note of the fact of those determinations.

We have listened to the Driver and we have read his DBS certificate, the transcript and the certificate he produced today most carefully. He is applying for a licence from us today because he needs to work around school times and because he has been told Uttlesford grants licences very readily. That is no longer the case, and his personal circumstances are not something we may take into account. The pattern of allegations against him is clear and consistent. We do not believe he should be placed in a position of trust where he will be with vulnerable people and over the years several schools and NHS Trusts have clearly thought the same thing. The jobs he has secured, night cleaning and the like, show the concerns of prospective employers, and we share them.

We therefore have to consider whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and we have to conclude that he is not. There is a history of offending that troubles us greatly, the two NR3 entries – and our

decision today will make a third – and if we are in *any* doubt about an applicant's suitability our duty is clear. We therefore refuse this application.

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. He will receive a letter/email from the Licensing Department explaining this but he should be aware the Court does not have the power to grant a licence: only the Council can.

LIC30 **REVIEW OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

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

The officer confirmed that the Private Hire/Hackney Carriage Driver's Licence was still in place and the Driver continued to work for their operator.

The Driver addressed the Panel and provided an account surrounding her recent conviction of criminal damage. She maintains that she was wrongly convicted and was pursuing an appeal. In addition, the Criminal Cases Review Commission has accepted the referral of her case.

In response to questions from the Panel, the Driver clarified that the flag in question was an A4 piece of paper with a depiction of a gay pride flag. She was unsure how long the poster had been put up for, however she believed that it was the same day, and her actions were in response to the dog getting agitated.

She highlighted that she had a difficult relationship with the neighbour in question, so did not ask them to remove it at the time.

Meeting adjourned at 16:49

Meeting reconvened at 17:10

DECISION NOTICE

The matter before the Panel today is for a review of HC/PHV driver's licence. This hearing was adjourned from 7th August to enable her to attend. She duly did so and without hearing from her we would not have been able to arrive at a fair determination of this matter.

We are charged with determining whether she is considered 'fit and proper' to continue holding the licence, and depending on our determination upon that issue, we may impose any of the following sanctions:

- (e) No further action

(f) A suspension of the licence for a prescribed period

(g) Revocation of the licence

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

) *Unless they are satisfied*

(f) 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:

) *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

) *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 she, the background documents annexed thereto.

The facts of the matter are as follows, and it is fair to say the problem has its roots in what is a long-standing neighbour dispute, about which we have no view.

In March 2022 the Council received a complaint from the Driver's neighbour regarding parking issues. She does not reside in the District of Uttlesford. Her then operator advised this was a dispute with complaints from both parties that had been referred to the local council and police. We concluded that this was not a licensing issue and the complaint was closed. In December 2022 the Driver contacted the Licensing Department to advise that she had attended the Magistrates Court regarding a dispute with a neighbour and that a further court date had been set for April 2023. The Driver then rang to advise that she had been found guilty of criminal damage, she was appealing the verdict and that the neighbour dispute involved her removing a poster from a fence which was annoying her dog as it kept flapping. She said she returned the poster to her neighbour by posting it through his letterbox, and he contacted the police.

The Driver sent copies of a Restraining Order in respect of their neighbour, and a Community Order against her for 100 hours of unpaid work to be carried out. The next day, TaxiPlus advised that the Driver's DBS certificate was no longer current and their employer advised that they had submitted a new DBS application the result of which the Council would receive as soon as possible.

On 18 May the Senior Licensing and Compliance Officer, Jamie Livermore, sent a S115 data request form to Essex Police to enquire about the circumstances that led to the conviction. They responded to explain that the Driver had been arrested for racially aggravated criminal damage for cutting down her neighbour's gay pride flag with a pair of scissors, and that the victims felt that this was due to her being homophobic. The new DBS certificate showed a conviction for an offence of "Destroy or damage property (value of damage £5000 or less – offence against

Criminal Damage Act 1971 only). The disposal was a Community Order, costs of £620 and a Restraining Order - Protection from Harassment, and an unpaid work requirement. The Driver was therefore advised that her licence would be referred to the Licensing Panel for determination and she was asked for her comments. The Driver responded with the basic facts that she had been charged with criminal damage at Chelmsford Magistrates, had received a fine and restraining order and unpaid work hours.

The Driver has complied with the conditions of her driver's licence by informing us about the conviction, providing us with copies of the relevant documents and keeping us updated at all times. She maintains that she was wrongly convicted and is pursuing an appeal. The employer are happy for her to continue driving and do not consider her to be a danger to the public. The Licensing Officer has told us today that they had offered to attend today to support her but she had declined.

We have read all the papers before us most carefully and we have listened to what the Driver has said to us. She has given us a detailed account of the problems she has had with her neighbour since he moved in next door, and this includes parking issues, misuse of drugs, ASB and noise. Specifically, she told us he was served with a noise abatement notice by the relevant local authority.

She confirmed that the object which leads to her being before us today was a poster, not a physical flag, and that she had taken legal advice regarding the action she could take regarding affixing materials to her property. She further told us that the neighbour had admitted in cross examination that he knew he had affixed the poster to her property, and that the Criminal Cases Review Commission has accepted the referral of her case. We are advised they have to be satisfied of certain things before they accept a case and if they are satisfied there are defects in a conviction the conviction is quashed.

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 she 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. The Council takes its responsibilities under the Equality Act seriously, though on the other hand Kinect do not consider her to be in any way a risk to those passengers she carries, and in short that these convictions relate to a specific person and this behaviour is unlikely to be replicated as against anyone else.

We have carefully considered whether the Driver remains a fit and proper person to hold an HC/PHV driver's licence and on balance we have concluded that she is. If she had not attended today, we would not, perhaps, have been able to arrive at this view. We have noted what she has said about the CCRC and that she has the support of her employer. We note the admission apparently made by the neighbour in court regarding trespass to property and were told he had recently been fined for parking in a manner that obstructed her driveway. In short, the parties do not speak.

We do not think the Driver is a danger to the public and nor does her employer: she remains at work and they offered to accompany her today. We therefore will allow her to keep her licence but do not expect to see her before us again.

Meeting ended 17:15