

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on MONDAY, 16 JULY 2018 at 10.00 am**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, J Davey and A Gerard

Officers in attendance: A Bochel (Democratic Services Officer), M Chamberlain (Enforcement Officer), J Jones (Licensing Officer), E Smith (Solicitor) and S Williams (Enforcement Officer).

Also present: The applicants in relation to Items 3, 4 and 5, the manager of the applicant in relation to Item 4, the driver in relation to Item 7, the witness in relation to Item 7 and the aunt of the witness in relation to Item 7.

**LIC16 EXCLUSION OF THE PUBLIC AND PRESS**

*RESOLVED that under section 100I of the Local Government Act 1972 the public be excluded for the following item 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.*

**LIC17 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

Because witnesses had agreed to be present for Item 7, the Chairman agreed to move the item forward in proceedings.

The procedure for determining a private hire/hackney carriage licence was read to those present.

The panel considered the Enforcement Officer's report.

The driver's private hire/hackney carriage driver's license was referred to members to consider whether or not he remained 'fit and proper'. There had been allegations by a customer about his poor behaviour during the course of their journey. Amongst other things, he had requested that she make payment for the journey by way of paying for fuel and had also repeatedly asked for her English telephone number, rather than him taking her to a cash point/ATM machine.

The aunt of the witness said her niece was staying with her over the summer. Her niece had recounted to her the information summarised in the report.

The witness said she had found the driver's behaviour to be very inappropriate. She had only found out how much the driver expected her to pay for fuel at the petrol station, and did not recall being asked about any refund.

The Solicitor said the witness' statement complied with the requirements of S9 of the Magistrates Courts Act 1980, and as such had full probative value.

The driver said the witness had said she would pay by card but he could not process this payment because he had forgotten his phone. He then said she could pay for fuel, because the cost of the fuel would be cheaper than the cost of the journey she was wanting to make. He realised after she had paid for fuel that she was unhappy and therefore stopped attempting to make conversation. He had not stopped far from the Post Office and had had to find a safe place to pull over. Neither of them had known where the nearest cash machine would be.

In response to a question from the Enforcement Officer, the driver said he had not known that he was required to keep the meter running throughout the duration of the journey, despite the fact he had negotiated an alternative price.

The driver said taxi work was his only profession and he was relying on the money he earned from it.

At 10:55, the Committee retired to make its decision.

At 11:30, the Committee returned.

The decision was read to those present.

### **Decision:**

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence number PH/HC0665 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The three year licence is due to expire on 31<sup>st</sup> May 2019. The driver is also the proprietor of a private hire vehicle and has been licensed by the Council since June 2016

We have had the opportunity of reading the officer's very detailed 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. They include:-

- a. Uttlesford District Council licensing standards for drivers.
- b. Uttlesford District Council conditions of licence for drivers.
- c. Notes of meeting between Sonia Williams and the customer.
- d. S.9 statement of the customer (the customer's name has been redacted).
- e. Email from the driver dated 07 June 2018.
- f. Notes of meeting with the driver dated 25 June 2018

We have also heard from the customer today, in the presence of the driver, and we thank her for agreeing to attend and tell her story to us. We note that the agreement between her and the driver had been in respect of a journey from Saffron Walden to Great Dunmow Post Office and then on to an address in Thaxted. At some point during this journey it is alleged that the driver stated he

would accept £35.00 worth of petrol as fare, and the customer has produced evidence of a payment in this sum to Cowell and Cooper of Thaxted.

At this point, we can conveniently deal with the question of whether the driver used his meter during the journey. A check of the driver's vehicle has confirmed there is one installed but the customer does not believe it was used. However, we note that both in interview and in an email to the Council dated 7<sup>th</sup> June 2018 said he agreed a price with her, namely the £35.00 of petrol referred to previously. If he failed to use the meter, then the driver may have potentially overcharged the customer which is an offence under Section 67(2) Local Government (Miscellaneous Provisions) Act 1976. Furthermore, agreeing to a payment over the metered fare within the Licensing District is an offence under Section 55 Town Police Clauses Act 1847. These are serious matters.

To resume, throughout the journey to Great Dunmow the customer claims the driver asked her a series of personal questions, in respect of her name, nationality, employment, residence, whether she lived alone, whether she had friends to go out with in the evening, whether she had a boyfriend. Full details are in her statement, and we note it complies with the requirements of S9 of the Magistrates Courts Act 1980. The customer also says that the driver repeatedly asked for her local telephone number and she refused to give this. She also told the Enforcement Officer that the driver told her several times that he wanted to take her out for lunch or dinner so that they could talk and became very insistent on this. She therefore felt very unsafe and afraid and she felt she had to accept to protect herself. As a result she terminated the contract in Dunmow and completed her journey by public transport. Since then she has given up her UK employment, is afraid to leave her home and has brought forward her return to Italy.

We have read the papers before us and we have heard from the customer, her aunt and the driver. We note that he contacted the Council on 7<sup>th</sup> June by email to self-report the incident, but having considered the complainant's statement made pursuant to S9 MCA 1980 she goes into considerably more detail as to the events of the journey. The driver, when speaking before us, concentrated upon the meter issue and the financial aspects of the transaction, which of themselves cause us some concern- a licensed driver should at all times be prepared for the taking of card payments, or otherwise be in a position to take a customer to the nearest ATM – rather than upon the other, seriously unprofessional, aspects of the transaction.

We are not a court of law, but we nevertheless do have a quasi-judicial function. We have weighed up with care what the customer and her aunt have said, and we have listened to the driver. On a balance of probability, we find the two ladies to be more credible witnesses.

The allegations against the driver are very serious indeed. The primary function of this Committee is the protection of the public; the holder of a private hire/hackney carriage licence is in a position of great trust and we therefore have to be very sure that a driver is a safe and suitable person to be placed in this position and if we have any doubt then the protection of the public, some of whom may be very vulnerable, must come first. In this case we consider that we

have no alternative but to revoke the driver's licence under S61 (b) of the 1976 Act as he is no longer a fit and proper person to hold it and because of the risk we consider he poses to the safety of the public, that revocation takes effect immediately

There is a right of appeal against this decision which must be exercised within a period of 21 days. Normally, during this period the licence remains in force, but since we have revoked the driver's licence with immediate effect for the protection of the public this period of grace does not apply and he may not drive. The driver will receive a letter from the Legal Department explaining this.

## LIC18 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The procedure for determining a private hire/hackney carriage licence was read to the applicant.

The panel considered the Licensing Officer's report.

The applicant did not meet the Council's licensing standards as point 3 of the Licensing Standards – Drivers states that "where a driver has been disqualified from driving for any reason a licence will not normally be granted for 3 years after the disqualification has expired or 12 months after the date the driver's licence is re-issued whichever is the later".

The applicant said the judge had been sympathetic to his case as the speed restrictions were not well sign-posted. He had informed the insurance company immediately and received a two week ban.

At 12:05, the Committee retired to make its decision.

At 12:15, the Committee returned.

The decision was read to the applicant.

### **Decision:**

The applicant's application dated 6<sup>th</sup> March 2018 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of part-time employment from CSL Ltd at Takeley, driving a Mercedes Vito car for VIP clients. He would undertake this alongside working in his own business as a security consultant.

Question 10 on the Council's application form asks whether applicants have been disqualified from driving or had their licence revoked. The applicant answered 'yes' to this question. Question 11 asks applicants whether their licence has been endorsed for a fixed penalty offence within the last 4 years. The applicant answered 'yes' to this question, but clarified that he was convicted of an SP30 offence and had his licence endorsed with 6 points. He had then applied for a review of his case under S142 MCA 1980 and had agreed to take a

14 day suspension instead and have the points removed from his licence. The Council's Drivercheck dated 7 March 2018 confirmed a SP30 offence on 12 January 2016 with a conviction date of 17 August 2016 and no points.

The applicant does not meet the Council's licensing standards as paragraph 3 of Appendix A to the Licensing Standards states that:-

"Where a driver has been disqualified from driving for any reason a licence will not normally be granted for 3 years after the disqualification has expired or 12 months after the date the driver's licence is re-issued whichever is the later". The applicant attended the Council offices on Friday 4 May 2018 for an interview with the Licensing Officer to discuss his application. He brought with him his notice of Appeal to the Crown Court from the Magistrates and a copy of the covering letter setting out his grounds for the appeal/review. Those documents are in our papers and we have read them carefully as they set out in detail the circumstances surrounding the offence.

He had applied for a review of the original penalty as he felt it too severe and that proper regard had not been given to the mitigating circumstances. The case was reconsidered on 16 December 2016, the applicant attended, the result being that the 6 points came off his licence and he consented to a 14 day driving ban to be served immediately (over the Christmas holiday period). The applicant is a very experienced driver and has a motor cycle licence, a full car licence, undertaken advanced driving courses and is applying for a race licence. This is his only motoring conviction. He has addressed us today and we are satisfied that he is a fit and proper person to hold a licence. Accordingly we grant this application, and he will receive the paperwork in due course.

## LIC19 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The procedure for determining a private hire/hackney carriage licence was read to the applicant.

The panel considered the Licensing Officer's report.

The applicant did not meet the Council's licensing standards because although his convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, point 5 of the Licensing Standards – Drivers states that an applicant must have "no criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed".

The applicant said he had been young and part of a bad crowd during the time he committed the offences. He had never stolen the mail-order catalogues for gain, but he did not deliver them as he was supposed to, and it was therefore classified as theft.

The boss of the applicant said he was pleased with the applicant's work as a passenger assistant and he was a valued member of the team.

At 12:25, the Committee retired to make its decision.

At 12:30, the Committee returned.

The decision was read to the applicant.

**Decision:**

The applicant's application dated 20<sup>th</sup> April 2018 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd. His manager from that company also attended today.

The applicant's application disclosed a historic conviction for GBH in 1975. However, an enhanced DBS check dated 1<sup>st</sup> May 2018 confirmed that he does not meet Point 5 of the Council's Licensing Standards, which state that a driver must have:-

"No criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed."

The applicant's Enhanced DBS Check revealed the following matters:-

1. 6<sup>th</sup> December 1971 – Drunk in Licensed Premises, Possession of Offensive Weapon x 3, ABH - Towcester JJ – 3 months Detention Centre per offence, to run concurrently.
2. 6<sup>th</sup> September 1977 – Theft – Northampton JJ – Fined £25.

Though he is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences.

In support of his application, the applicant says that all these offences took place many years ago and he was part of a group of people at the time. The last of these convictions was in 1977 and since then he has by and large, managed to remain in work, including as a CCTV engineer, which requires police clearance: he is currently working for 24 x 7 Ltd as a passenger assistant on school runs and they have encouraged him to apply for a driver's licence.

Unfortunately in aggregate, these are serious matters and although the overwhelming majority of them took place years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

However, we have listened to what the applicant has to say and note that he has the support of his employer. We are satisfied that he has turned his life around, and accordingly we grant this application, and he will receive the paperwork in due course.

## **LICENCE**

The procedure for determining a private hire/hackney carriage licence was read to the applicant.

The panel considered the Licensing Officer's report.

The applicant did not meet the Council's licensing standards as although his points expired on 17 March 2018 point 2 of the Licensing Standards-Drivers states that applicants must have "no convictions or fixed penalty notices endorsed on a drivers licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence. As the applicant's conviction was on 29 October 2015 he would not therefore meet our standards until 29 October 2018

The applicant confirmed that all the necessary information was provided in the report.

At 12:40, the Committee retired to make its decision.

At 12:50, the Committee returned.

The decision was read to the applicant.

### **Decision:**

The applicant's application dated 1<sup>st</sup> May 2018 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has applied for employment with 24 x 7 Ltd.

The application form asks for a list of all convictions (including motoring offences) both spent and unspent and any police cautions. The applicant declared 2 offences of drink driving: one in 1979 for which he received a 12 month ban and one in 1989 for which he received an 18 month ban. He also disclosed an offence of failing to give information as to the identity of a driver (MS90) for which he received a fine of £560 and a 6 point endorsement. This offence took place in March 2015 and the applicant provided a DVLA licence summary showing that he currently has no endorsements and the MS90 offence on 17 March 2015 with an expiry date of 17 March 2018. The Council's DriverCheck enquiry dated 15 May confirmed the MS90 offence on 17 March 2015, with a conviction date of 29 October 2015.

The applicant therefore does not meet the Council's licensing standards as although his points expired on 17 March 2018, paragraph 2 of Appendix A of the Licensing Standards-Drivers states that applicants must have "No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence".

As the applicant's conviction was on 29 October 2015 he would not therefore meet that standard until 29 October 2018.

A telephone interview took place between the Licensing Officer and the applicant on 25 May 2018. The applicant explained he had purchased a car for his

daughter and the finance company asked for his name on the log book. As his daughter was involved in an abusive relationship, she moved frequently on advice, and she changed her address on the registration document without the applicant's knowledge.

When she committed a speeding offence in Essex the Police sent the paperwork to her last known address in Broadstairs. The applicant was unaware of the speeding offence and did not receive any paperwork; the first he knew of the offence was when he went to hire a van from Enterprise, and they ran a check on his driver record which revealed 6 points and a large fine.

However, we have listened to what the applicant has to say and accept what he has had to say in mitigation. Accordingly we grant this application, and he will receive the paperwork in due course.

LIC21 **DETERMINATION OF PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The case relating to this item had been deferred. There was therefore no consideration of this item.

LIC22 **DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The driver in relation to this item was unable to attend for personal reasons. The Committee therefore agreed to defer this case.

LIC23 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The driver in relation to this item had given no indication that he intended to attend this meeting.

The panel considered the Enforcement Officer's report.

The Council requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check and group 2 medical when they apply for a licence and every three years after that. These checks assist the Council in establishing whether an individual is a 'fit and proper' person to hold a licence. The driver's last group 2 medical expired on 11 March 2018 and his DBS check expired on 31 March 2018 and he had failed to supply new ones to the Council.

At 1:15 the Committee retired to make its decision.

At 1:25 the Committee returned. The decision was read to those present.

**Decision:**

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence in accordance with S61 (1) (b)



Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He has been licenced in Uttlesford since 1<sup>st</sup> April 2016 and his current licence is due to expire on 31<sup>st</sup> March 2019. His last known driving role was with 24 x 7 Ltd.

The Council requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check and group 2 medical when they apply for a licence and every three years after that. These checks assist the Council in establishing whether an individual is a 'fit and proper' person to hold a licence. The driver last group 2 medical expired on 11 March 2018 and his DBS check expired on 31 March 2018.

Normal practice at UDC is to send out reminder letters to drivers for DBS checks that are due to expire on the first working day of the month which precedes the month when the check expires. The reminders for medicals are typically sent out on the 15<sup>th</sup> day of the month preceding the expiry of that check. Further, licensed drivers are also required to complete DVLA mandate forms for the Council every three years to enable the licensing department to carry out checks on DVLA records every year. The driver DVLA mandate expired on 02 March 2018 He has failed to respond to all of these reminders.

On 20 March 2018, the licensing team sent a letter to the driver with a reply form to determine whether he wanted to keep or surrender his licence. No response was received. The licensing team left two further phone messages for the driver on 10 and 17 April 2018 but received no response.

The Enforcement Officer followed this up on 24 April 2018 by letter explaining that medical, DBS and DVLA mandate had all expired and that if the driver wanted to remain licensed then he must provide these documents by 10 May 2018. He has not done so.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet "...Group 2 medical standards as published by the Dept of Transport."

Compliance with this standard is a legal requirement, and without a certificate we have no means of knowing whether this requirement is satisfied. This Committee considers that failure to provide an up to date medical or DBS check is a breach of Council policy; the checks are vital to establish that a driver is medically fit enough to drive, and has not received any criminal convictions in the period since their last DBS check. Lacking that information, and mindful of the paramount importance of public safety, we are not satisfied that the driver is a fit and proper person to hold hackney carriage and private hire licences and therefore revoke them, with immediate effect.

The driver has a right of appeal against this decision to the Magistrates Court, and that any such appeal must be lodged within 21 days. Normally, the revocation would come into effect following the end of the appeal period, but since the revocation is because of failure to supply a medical certificate in the interests of public safety, this period of grace will not apply. He will receive a letter from the Legal Department explaining this.

The meeting ended at 1.30pm.