

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on TUESDAY, 31 JULY 2018 at 10.00 am**

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey and E Hicks

Officers in attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic Services Officer), J Jones (Licensing Officer), A Mawson (Democratic Services Officer) and E Smith (Solicitor)

LIC24 CHAIRMAN'S STATEMENT

The Chairman was informed that only one driver of six had arrived to the Committee hearing. He said this was unacceptable and requested that a letter be sent to all drivers informing them of the quasi-judicial nature of the Licensing and Environmental Health Committee and to stress the importance of attending when an individual's licence/application had been referred.

LIC25 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.

LIC26 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The Chairman moved item six forward in proceedings as the driver for this item was present.

The panel considered the Enforcement Officer's report.

Compliance checks being carried out by officers from Braintree District Council found the driver of a private hire vehicle to be 'plying for hire'. When asked if he was working, the driver confirmed he was working and accepted the request to transport them to Tesco in Princes Road, Chelmsford. At the end of the journey a fee of £5 was paid. The Enforcement Officer also reported in his statement that he could not see the driver's identification badge.

When the officers began writing in their pocket notebooks following the journey, the driver approached them and repeatedly asked what they were doing. The officers told the driver that they were checking for individuals 'plying for hire' and attempted to withdraw into the store but the driver followed and requested that the officers forget what had happened. The driver continued to confront the

officers and when they made their way to a colleague's vehicle and attempted to leave, the driver tried to grab the door/wing mirror.

Members were asked to consider whether the driver remained a fit and proper person as he had transported passengers in a licensed vehicle for hire and reward in a journey that was not pre-booked via an operator. Members were also advised that the failure to wear a private hire driver's badge was an offence under section 54(2) Local Government (Miscellaneous Provisions) Act 1976.

In response to a Member question regarding the statement of the Braintree District Council Officer, the Solicitor said the evidence could be relied upon and would stand up in a Magistrates court.

At the request of the Chairman, the driver gave his account of events on 23 May 2018.

The driver said he had been struggling with money and had much on his mind when he was approached by the two officers on Moulsham Street. He said he was not thinking straight and knew he had done something wrong as soon as the officers departed his vehicle. He said he had not tried to grab the wing mirror as the officers drove away, but instead was trying to give the money back. He had now been suspended for twelve weeks and had not driven for another operator.

In response to a Member question, the driver said he had his badge in the vehicle but he was not wearing it on his person at the time of the event.

The Enforcement Officer asked the driver what training had been provided by the Operator prior to taking the job.

The driver said he had a quick session at the Operator's office and he was given the 'green book of rules,' which he had read briefly. He said he had not fully realised the implications of collecting passengers that had not pre-booked via an operator.

At 10.35, the panel retired to make its decision.

At 11.10, the panel returned.

The Chairman read out the decision.

Decision:

The application before the Panel today is for the suspension or revocation of a joint private hire/hackney carriage licence 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 31st December 2020: it is the driver's first licence and was granted this January. He is currently suspended from his employment.

We have had the opportunity of reading the officer's very detailed report in this case, together with the statement of an Enforcement Officer with Braintree District Council, which was made pursuant to the provisions of S9 Magistrates Court Act 1980 and which may yet be used in Court proceedings. Copies of these, and the other documents listed below, have been served upon the driver. These are:-

- a. Uttlesford District Council licensing standards for drivers.
- b. Email and witness statement from the Enforcement Officer.
- c. Email with employer dated 29-31 May 2018.
- d. Notes of telephone interview with the driver dated 11 June 2018.
- e. Emails between the driver and employer dated 18-19 June 2018.

Briefly on 23 May 2018, Officers from Braintree District Council were working in partnership with Officers from Chelmsford City Council in Chelmsford for the purposes of carrying out compliance checks on licensed drivers and vehicles. At approximately 22.20 hours, two Braintree District Council officers were in Moulsham Street and approached an Uttlesford licensed private hire vehicle that was parked up, and the only person inside was the driver. The vehicle was a licensed private hire vehicle 1050, and the employer subsequently confirmed who the driver was.

The Environmental Health Manager at Braintree District Council knocked on the window and asked the driver if he was working. He said he was, whereupon a journey to Tesco in Princes Road, Chelmsford was requested, to which request the driver agreed. The Enforcement and a colleague were duly transported there at a cost of £5. The driver did not appear to be wearing an identification badge.

When the Officers exited the vehicle they started to complete their pocket notebooks, at which point the driver got out of the vehicle and repeatedly asked them what they were doing. He was told that they were checking for individuals plying for hire and he asked what that meant. He then asked the Officers to "forget" what happened and not to take any action, and subsequently attempted to impede their departure.

All private hire work undertaken by licensed drivers in a licensed private hire vehicle must be booked through a licensed private hire operator. This "trinity" of authorisations must be in place, otherwise an individual may be committing an offence of plying for hire under section 54 Town Police Clauses Act 1847, which carries a maximum fine of up to £2500. Further, failure to wear a private hire driver's badge is an offence under section 54(2) Local Government (Miscellaneous Provisions) Act 1976, which carries a fine of up to £1000 upon conviction. These are not trivial offences.

Information was received from the employer on 29 May 2018, to report that the driver had admitted to him that on the early hours of 24 May 2018, he

transported passengers in a licensed private hire vehicle (PHV84) from Moulsham Street, Chelmsford to Tesco, Wood Street, Chelmsford and this was not pre-booked. The employer took a serious view of this and suspended the driver from his employment. It is not clear whether this is a different incident to the one reported by the Braintree Officers.

The Enforcement Officer interviewed the driver by telephone on 11 June 2018. The driver stated that he had started his shift about 6pm that night and it had been very quiet as he had only completed one or two jobs. The driver accepted that the journey in question had not been booked through his employer and he confirmed the details of the trip. He claimed that this was the first time that he had done this, he had only been licensed driver since February, that he had only had basic training and that he did not know the rules. He confirmed that he reported the matter to his employer at the first available opportunity, but in fact, he could have made this report by telephone or email rather than waiting to do so in person.

We have heard from the driver and have considered carefully the S9 statement of the Braintree District Council Enforcement Officer. In particular, we note that the latter states that the discussions between the parties took place within Tesco store, so therefore the driver must have followed the Braintree officers into the shop. He has skated over these aspects of the interaction between them all, but on a balance of probability, we prefer the statement of the Enforcement Officer.

We are also mindful that the two potential offences disclosed by our papers are serious ones. The fact that a private hire driver in a private hire car may not pick up a passenger in a street is fundamental, and ignorance of the law is no defence and all UDC licensed drivers receive a copy of the green booklet which explains the law and rules very clearly. The driver admits receiving a copy but says he did not read it properly: this is no excuse.

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. The S54 offence is absolutely fundamental and even the most inexperienced PHV driver should know that they may not pick up a passenger on the street. 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.

LICENCE

The driver had not arrived for the hearing. Under the advice of the Solicitor, the Panel deferred the case to allow the driver to make representations in person.

LIC28

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

The driver in relation to this item had not attended the hearing, although the case had already been deferred twice due to the driver's non-attendance on 4 June and 16 July.

The panel considered the Enforcement Officer's report.

Members discussed whether the driver no longer met the Council's licensing standards due to the six penalty points the driver had received for a single offence, and, subsequently, whether the driver remained a 'fit and proper' person to retain his licence. Members considered the driver's previous Council caution and appearance before the Committee in November 2013, as well as his failure to notify the Council of his conviction in June 2017.

At 11.30, the panel retired to make its decision.

At 11.50, the panel returned.

The Chairman read out the decision.

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/HC0748 dated autumn 2015, 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 31st October 2018. The driver is also the holder of the private hire operator licence for a chauffeur service and is the proprietor of a private hire vehicle. He has been licensed by the Council since 2012 and we note that he has appeared before us on a previous occasion.

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. They include:-

- a. Uttlesford District Council licensing standards for drivers.
- b. Email dated 17 May 2013 with a copy of "Taxichat" notifying changes to the Council's licensing policies.
- c. Certificate of caution for the driver dated 26 October 2013.
- d. Minutes of Licensing and Environmental Health Committee dated 19 November 2013.
- e. Emails between the driver and the licensing department on 16 May 2016.

- f. Drivercheck of the driver's DVLA records on 29 January 2018.
- g. Emails with the driver between 17-27 April 2018.

As part of the licensing department's due diligence procedures, a check on the driver's DVLA records on 29 January 2018 showed that he committed an SP50 offence (exceeding speed limit on a motorway) on 18 October 2015 for which he was convicted on 10 May 2016 receiving three penalty points. Further, he had again been convicted of an SP50 offence on 13 June 2017 occurring on 10 November 2016. For this latter offence his licence was endorsed with a further six penalty points which means he now has a total of nine penalty points on his licence. The maximum penalty points for this offence is six penalty points. As a result of receiving six penalty points for a single offence, the driver no longer meets the Council's Licensing Standards for drivers. Paragraph 2 of Appendix A thereof states:

"No convictions or fixed penalty notices endorsed on a driver's licence within the last three years where six or more points have been endorsed in respect of a single offence."

Additionally, licensed drivers are required by condition 18c of Appendix G of the Standards to notify UDC in writing of:-

"Any convictions, cautions or fixed penalty notices...within 7 days of the conviction, caution or the issue of a fixed penalty notice."

We note the driver had contacted a member of the licensing department to report his May 2016 conviction for which he had received three penalty points. However, there is no record of the driver submitting a written report of the more serious conviction in June 2017.

The driver was contacted on 17 April 2018 regarding the DVLA check and the consequences of the information contained therein, namely that he no longer met the licensing standards for drivers. He was also informed that he would need to appear before this Committee for consideration as to whether he remained a 'fit and proper' person. The driver responded by claiming that he had notified the Council of the penalty points but has not provided proof of this. The driver was invited to attend an informal meeting with the Enforcement Officer to discuss the matter. Instead, he sent in the following written submission:

I was traveling in a private capacity late one Sunday night on the M25. I allowed my speed to increase in excess of the 70 mph limit and activated a roadside camera. I received the letter requesting the details of the driver. I returned it. I then received the conditional offer to admit guilt. I signed it admitting guilt and sent it off. I received notification of the points and the fine. I duly paid the fine and notified the council of the conviction

We have read the papers before us and we have also read the statement and references the driver has put before us. This is the third time this matter has been in our list and after two deferrals to enable him to attend we are prepared to deal with this matter in his absence. Every deferral extends the time for which the driver can continue to drive.

The primary function of this Committee is the protection of the public and 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.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the licence remains in force. The driver will receive a letter from the Legal Department explaining this.

We also note that he is the proprietor of a licensed private hire vehicle, a BMW 730 licence number 491. The driver should bear in mind that once the revocation of his drivers' licence becomes operative he will no longer be permitted to drive this vehicle and he should contact the Enforcement Team regarding this without delay.

LIC29

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

The driver in relation to this item did not attend the meeting. The Chairman said the case needed to be heard in the driver's absence due to the primacy of public safety.

The panel considered the Enforcement Officer's report.

The Council had been notified by the driver's employer on 08 May 2018 that the driver had been dismissed due to allegations relating to the use of illegal drugs whilst driving a licensed vehicle; four complaints had been received from customers in over one week, and during an inspection of the vehicle, cannabis was found on the driver's seat by the employer. Members noted the driver's imprisonment for 21 months in 2011 for the supply of drugs.

In May 2018, a DVLA drivercheck also revealed the driver had received a SP30 offence in October 2017. The driver had not notified the Council of this fixed penalty notice which had led to him accruing 9 points on his licence, a clear breach of the conditions of his licence.

Members considered whether the driver remained a 'fit and proper' person to hold a licence, having been dismissed by his employer for allegedly possessing illegal drugs whilst driving a licensed vehicle, as well as breaching the conditions of his licence for which he had yet to be sanctioned. Members discussed the nature of the offence and revocation on the grounds of public safety.

At 11:55, the panel retired to make its decision.

At 12:05, the panel returned.

The Chairman read the decision to those present.

Decision:

The application before the Panel today is for the suspension or revocation of a joint private hire/hackney carriage licence number PH/HC2303 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 31st August 2020. The driver had been employed until his dismissal in May 2018. It was the employer who advised the Council of this.

The driver has not responded to correspondence from the Council's Licensing Dept and has not attended before us today. Given the potential risk he poses to the public we are dealing with this matter in his absence as we are satisfied he has been given every opportunity to attend.

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. The driver's application for a driver's licence dated 29 May 2017.
- d. Emails between the employer and the Enforcement Officer between 08-10 May 2018.
- e. DVLA driver check for the driver dated 11 May 2018.
- f. Email to The driver dated 06 June 2018.

On 08 May 2018 the employer notified the Council that they had dismissed the driver the previous weekend due to a number of allegations from customers relating to the use of illegal drugs. On inspection of the vehicle nothing was found save for smell of cannabis and the employer claimed to have found a small amount of cannabis on the driver's seat during a routine inspection of the vehicle the previous week. At this point we pause to note that the driver's application form for a driver's licence shows he served a custodial sentence in 2011 for the supply of drugs.

Contact was made with the driver, who claimed that he left his employer as he was not being paid enough money. An email was subsequently sent to him on 06 June 2018 giving him seven days to contact the Enforcement Officer to arrange a mutually convenient time to discuss the allegations. The driver did not respond.

In the meantime, the Council carried out a DVLA drivercheck on the driver's driving licence on 11 May 2018. This check revealed that he received three penalty points on his licence for an SP30 offence (speeding) on 11 October 2017. He now has a total of nine penalty points. He failed to notify the Council of this fixed penalty notice.

Condition 18c of Appendix G to the Council's Licensing Standards requires a driver to notify, in writing:-

“Any convictions, cautions or fixed penalty noticeswithin 7 days of the date of conviction, caution or the issue of a fixed penalty notice.”

In aggregate, the allegations against the driver are very serious indeed, particularly since he has already been given a chance by the Council in the granting of his licence. He has failed to engage with the Licensing Dept. 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. The driver has abused that trust. 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, in terms of the number and nature of the complaints made to his former employer, 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.

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

The Committee was informed that the driver in relation to item 7 had surrendered their licence and there was nothing for the panel to consider.

LIC31 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

Members were informed that the driver was unable to attend due to work-related reasons. Under the advice of the Solicitor, the panel deferred the case to allow the driver to make representations in person.

The meeting ended at 12.10pm.

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