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Angela Hutchings
Chief Executive

AGENDA

Committee: LICENSING SUB-COMMITTEE

Date and Time: Friday 1st September , at 10am

Venue: Council Offices, Council Chamber

Membership: Councillors Acott, Grieg* Jones* Walter
*To be confirmed

Officers attending: Jason Bishop - Legal Adviser
David Bland - Legal Adviser
Melanie Harris - Head of Licensing & Safer Communities

Committee Enquiries: Loretta Hill, Ext. No. 2427

PART I

(Business to be taken in public)

- 1. Appointment of Chairman**
- 2. Procedure for the Sub-Committee**
- 3. Appeal against Revocation of Private Hire Licences**
The report of the Head of Licensing and Safer Communities is attached.
- 4. Decision**

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PROCEDURE FOR HEARING

1. Introductions

- a. Chairman introduces Panel Members to the applicant.
- b. Chairman identifies officers and their roles.
- c. Applicant identifies themselves, any representative and any accompanying persons. They also identify who intends to present the case.
- d. Objector(s) to be identified.

2. Case Summary by the Head of Licensing and Safer Communities

As shown at Agenda Item 3.

3. Objector(s) presents objection(s)

4. The Applicant's Submission

The applicant or their representative will submit their case

5. Questions from Panel

Opportunity for any questions from Panel to either side.

6. Adjournment

Proceedings will be adjourned while the Panel withdraw to consider its decision. During this time the Clerk will accompany the Panel to record the decision. The Committee may request the presence of the Legal Advisor to give them legal advice.

7. Decision

The Panel will reconvene, and the Chairman will announce the decision.

8. Conclusion

The Chairman will close the proceedings.

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LICENSING SUB COMMITTEE

01 September 2023

**Subject: Appeal against the revocation of Private Hire Licences
– Driver Y**

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

To consider an appeal against the revocation of a Private Hire Driver's Licence, Operators Licence and Private Hire Vehicle Licence.

2. Background

- 2.1 Driver Y has been licenced by Castle Point Borough Council as a Private Hire Driver, Operator and Private Hire Vehicle Licence holder since 4 January 2022.

As part of the application process Driver Y provided an enhanced DBS certificate showing no convictions in November 2021.

- 2.2 Following a routine check of Driver Y's DBS status by CPBC on 24 May 2023 it was noted that there had been a change and the current certificate held was no longer valid.

On request Driver Y provided an up to date basic DBS certificate which showed the following conviction gained in the period between applying and being licenced by CPBC:

Date of conviction: 14 December 2021

Offence: Battery on 03 June 2020 – Criminal Justice Act 1989 S.39

Disposal:

Conditional Discharge 12 months

Restraining Order – protection from harassment – for a period of 5 years

Victim Surcharge

Compensation

A copy of the DBS Certificate is attached at Appendix 1

3. Castle Point Hackney Carriage and Private Hire Licensing Policy

3.1 The Council's Hackney Carriage and Private Hire Licensing Policy states that:

Licence holders are required to notify the Licensing Unit in writing or by electronic means within 48 hours of an arrest and release, interview under caution, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. This will result in a review as to whether the licence holder is fit to continue to do so. A licensed Driver may be subject to their licence being suspended or revoked.

Other convictions, cautions, penalty points and driving offences recorded since the completion of the application form for a licence must be reported to the Licensing Team at the Council in writing or by electronic means within 7 days of the event.

The Council has no record of receiving a notification from Driver Y.

The extract from the Hackney Carriage and Private Hire Licensing Policy is attached at APPENDIX 2 of the report.

3.2 Assessment of Previous Convictions

Guidance on assessment of previous convictions was contained within the Department for Transport's (DfT) Statutory Taxi and Private Hire Vehicle Standards released in July 2020. These standards were adopted by the Council in November 2020 following a period of consultation and include the following:

Offence	Elapsed period before licence should be issued
Offences involving violence against the person Conviction for an offence of violence against the person, or connected with any offence of violence	At least 10 years since completion of sentence imposed

The full Assessment of Convictions is attached at Appendix 3.

3.3 The Hackney Carriage and Private Hire Policy was adopted to maintain the safety of public transport vehicles, drivers and paying customers. Failure to abide with the requirements of the Policy puts the safety of drivers and passengers at risk.

The legislation relating to the suspension of a licence falls under Section 61(1) (b) Local Government (Miscellaneous Provisions) Act 1976 (LGMPA). Under

this Section a licensing authority can suspend, revoke or refuse to renew a driver's hackney carriage or private hire licence on any of the following grounds:

1. That he has since the grant of the licence—

been convicted of an offence involving dishonesty, indecency or violence; or
been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;

2. that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or

3. any other reasonable cause.

Under section 61(2B) a licensing authority has the power to revoke or suspend a hackney carriage or private hire driver's licence with immediate effect.

4. 'Fit and Proper'

4.1 The definition of what is a fit and proper person is not defined in law however the generally accepted test is:

- Would you allow your son, daughter, mother, spouse or other person you care about to get into a vehicle with this person alone?

This definition was supported in the judgement by HHJ Silber in the case of Leeds City Council v Hussain which surrounds the suspension of a driver:

...'the purpose of the power of suspension is to protect the users of licensed vehicles and those who are driven by them and members of the public. Its purpose is to prevent licences being given or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty and that they are people who would not take advantage of their employment to abuse or assault people.'

Driver Y's Private Hire Driver's Licence was revoked on 21 June 2023 as he no longer met the Council's Conditions of licence and is not considered a fit and proper person to hold a private hire licence.

4.2 An appeal from Driver Y was received on 8 August 2023
A copy of the appeal is attached at APPENDIX 4 of the report

5. Legal implications

Decisions in relation to the grant of a licence give rise to the obligations under the Human Rights Act 1998. The Council will therefore ensure that there is a

review hearing before the Licensing Sub-Committee. It should be noted that Driver Y has the right to appeal the decision made by the Council to the Magistrates Court if he is aggrieved by the decision of the Sub-Committee.

6. Options

The Sub-Committee is advised that it has the following options when determining this application:

- (i) Uphold the Council's decision to revoke the Private Hire Licences.
- (ii) Reinstate the Private Hire Licences.

Recommendation

The decision of the Sub Committee is required following proper consideration of the application and any representations made to the Sub Committee.

Appendices

Appendix 1 – DBS Certificate

Appendix 2 - Extract of the Hackney Carriage and Private Hire Licensing Policy

Appendix 3 – Assessment of Previous Convictions

Appendix 4 – Appeal letter

Background Papers:

CPBC Hackney Carriage and Private Hire Licensing Policy
Local Government (Miscellaneous Provisions) Act 1976

Basic Certificate

Page 1 of 2

Discharge &
Warning Service

DBS fee charged

Certificate Number

DBS ID Number: P00040462W

Date of Issue:

09 JANUARY 2023

Applicant Personal Details

Surname

Forename(s)

Other Names: NONE DECLARED

Date of Birth

Place of Birth: LONDON UNITED KINGDOM

Gender: MALE

Police Records of Convictions, Cautions, Reprimands and Warnings

PNC ID(1)

Surname

Alias Name(s)

NONE RECORDED

Forename(s)

Alias Date of Birth

NONE RECORDED

Gender

MALE

Birth Details

Conviction Details

Conviction

Date of Conviction
14 DECEMBER 2021

Court

WOOD GREEN CROWN

Offence

BATTERY

ON 03 JUNE 2020

CRIMINAL JUSTICE ACT 1906 S.39

Disposal

CONDITIONAL DISCHARGE 12 MTHS - T20200714-1/1

VICTIM SURCHARGE 21.00

COMPENSATION 250.00

RESTRAINING ORDER - PROTECTION FROM

HARASSMENT - FOR A PERIOD OF FIVE (5) YEARS

Basic Certificate

This document is a basic certificate within the meaning of section 112 of the Police Act 1997.

1. Criminal Offences

Licence holders are required to notify the Licensing Unit in writing or by electronic means within 48 hours of an arrest and release, interview under caution, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. This will result in a review as to whether the licence holder is fit to continue to do so. A licensed driver may be subject to their licence being suspended or revoked.

A decision to refuse, suspend or revoke a licence will be referred to the Disclosure and Barring Service, if it is thought that the individual could present a risk of harm to a child or vulnerable adult.

Other convictions, cautions, penalty points and driving offences recorded since the completion of the application form for a licence must be reported to the licensing unit at the Council in writing or by electronic means within seven days of the event.

Licence holders must continuously maintain their DBS certificate through the DBS Update Service, costs associated with maintaining this subscription must be met by the licence holder. The council will use the update service to check the DBS status of drivers every 6 months. If the DBS update service membership is not maintained drivers will be required to submit a new enhanced DBS application every 6 months at their own expense.

2. Appeals

An appeal may be brought to the Head of Licensing against the licensing conditions within twenty one days from the date on which notice of the condition is served on the applicant to the Licensing Sub Committee.

An applicant disagreeing with the decision of the Licensing Sub Committee in respect of an application also has the right of appeal to the Magistrates Court.

Assessment of Previous Convictions

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is fit and proper. The following reflects this.

Each case will be considered on its own merits and applicants / licensees are entitled to a fair and impartial consideration of their application.

Where a period is given below it will be taken to be a **minimum** in considering whether a licence should be granted or renewed in most cases. This puts passenger safety first while enabling past offenders to sufficiently evidence that they have rehabilitated.

Offence	Elapsed period before licence should be issued
Crimes resulting in death	Never licensed
Exploitation Convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children. Slavery, Child Sexual Abuse, Exploitation, Grooming, Psychological, Emotional or Financial Abuse. This is not an exhaustive list	Never licensed
Sexual offences Conviction for any offence involving or connected with illegal sexual activity Any applicant currently on the Sex Offenders Register or any barred list	Never licensed Never licensed
Offences involving violence against the person Conviction for an offence of violence against the person, or connected with any offence of violence	At least 10 years since completion of sentence imposed
Possession of weapon Conviction of possession of a weapon or any	At least 7 years since completion

other weapon related offence	of sentence imposed
Dishonesty Conviction for any offence where dishonesty is an element of the offence	At least 7 years since completion of sentence imposed
Drugs Conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply Conviction for possession of drugs, or related to the possession of drugs	At least 10 years since completion of sentence imposed At least 5 years since completion of sentence imposed An applicant may also have to undergo drugs testing for a period at their own expense to demonstrate they are not using controlled drugs
Discrimination Conviction involving or connected with discrimination in any form	At least 7 years since completion of sentence imposed
Motoring Convictions It is accepted that offences can be committed unintentionally, a single minor traffic offence would not prohibit granting a licence or revocation of an existing licence providing the authority considers that the licensee remains a fit and proper person Applicants with multiple motoring convictions	Indicates that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally
Drink driving / driving under the influence of drugs Conviction for drink driving Conviction for driving under the influence of drugs	At least 7 years since completion of sentence imposed At least 7 years since completion of sentence imposed. An applicant may also have to undergo drugs testing for a period at their own

	expense to demonstrate they are not using controlled drugs
Using a hand held device whilst driving Conviction for using a hand held mobile phone or device whilst driving	At least 5 years since completion of sentence imposed

08/08/23

Licensing Team
Castle Point Borough Council
Council Offices,
Kiln Road,
Thundersley, Benfleet, SS7 1TF

Dear Licensing Team:

Revocation of Private Hire Licences PHRD , RPHV), PHO

I am writing to appeal against the revocation of these private hire licences. I understand that following a recent telephone enquiry by one of your officers that a change in my DBS certificate had been noticed. It was at this point that I immediately offered a photograph of a current basic DBS certificate that I had. This happened in May of this year. I was totally unaware that the council had no information regarding this as I had already notified the council via telephone and in writing almost one year prior to this.

I had at that time explained that I had been in a marriage that had become extremely toxic from 2015 onwards; my wife had contracted cancer in 2004 and this had developed into a secondary cancer in 2011. This had placed tremendous pressure on our relationship with each other.

It was at this time that my wife and I decided to divorce all be it we had not started the process. Stupid pride on my behalf but I was willing to fight for the marriage. I had become a victim within the toxic marriage. It had become abusive; she would use constant "put down remarks" like "mummy's boy" and "pathetic." She would erode my self confidence and break down my relationship with my extended family; not even allowed to see my parents and sister. I was isolated but, at the same time I did have her and my children. I emotionally need her and my children which made it impossible to divorce her.

However, in 2019 my wife had my children attempt to talk to me about divorce; my sons were 19 and 21 at the time. I counselled them that this was not something that would affect

them and that they would have two homes. They said to me my wife wanted everything. She wanted to divorce, I would continue to pay the mortgage and the debts, but I would leave.

The reason I am telling you about this is because this was the starting point to what really happened. My youngest son's partner was a law student and her father had studied law.

It was during Covid that a situation arose where I was arguing with my wife. It was a heated argument but no more than a verbal argument. It was this argument that was later used by the police to remove me from the house and resulted in this court case where I felt isolated and defeated. The truth is that nobody was listening to me.

The recording was in Turkish. I complained about the translation and also the way the interrupter totally misrepresented the recording. There was a significant amount of pressure put on me to pled guilty to the low-level assault and that it would be dealt with by way of a "conditional discharge for 12 months." I was overwhelmed with the whole process, I was receiving legal aid funding which has left me with a £17k debt now. I was reassured, by the police officer of the case, that the low level assault would not impair my work as a private hire chauffeur. The judge commented on the chauffeur industry picking up post covid. My barrister said that this was a minor charge.

All I had done was argue with my wife, my 21-year-old son was present. They used this because they wanted everything; the house, all our possessions, everything.

I took a deep breath and admitted guilt to the assault with a view to end this mental torture.

Having done this I did notify your officers by telephone and was then directed to write in. I did this and awaited a response that never came. I would regularly monitor my DBS and noticed that your officers would view my DBS.

Joanne Wadeson checked twice on 17/05/22

Joanne Goodman checked on 05/12/22

Amy Ridington checked on 24/05/23

It was not until the last check that anything had been mentioned but this was not because you not been informed.

I am not a danger to society. I was a victim of a toxic and abusive marriage. I offence itself could be filtered from my DBS as it is a minor offence.

Licensing Team

08/08/23

Page 3

I would implore the licensing team to look closely at my case as I am of fine previous record. A school governor of 23 years and very much a pillar of the community. I was just in a toxic and abusive marriage.

I am happy to meet in person if this is needed to help with my case.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke that ends in a small upward curve.