

Licensing Sub-Committee 10am 23 January 2019

Case 1/19

Decision: The Licensing Sub-Committee was asked to determine whether this applicant was a fit and proper person to hold a Hackney Carriage/Private Hire Dual Driver Swale Driver's Licence against a background of a previous revocation.

The Sub-Committee heard from the Licensing Officer that the applicant had applied for a new dual hackney carriage/private hire driver licence on 29th October 2018 having previously been licensed by Swale Borough Council as a dual hackney carriage/private hire driver (licence number 2082). However, on 23rd July 2018 this earlier licence was revoked by a Sub-Committee as a result of the applicant having carried out a Kent County Council school run contract using a car that was not licensed as either a hackney carriage or private hire vehicle with Swale BC and for failing to display their driver's badge. This revocation took effect on 14th August 2018 having not been appealed by the applicant.

On activation of the revocation, the Licensing Officer wrote to the applicant to require the return of the driver's badge and gave the driver 7 days to comply. There followed a protracted email exchange between the applicant and the Licensing Officer which culminated with the driver sending the Licensing Officer an email on 18 September 2018 which stated the following:

"Yes you can have your badge back if it means that much to you. But now I think you should know the truth I was not driving the car on the day of the incident I took the wrap for it because I didn't want to get my friend in trouble I was doing my own school run at the time but never had a driver to cover that day so my friend offered to help me out and gave my name. Means nothing now but as you have destroyed my business hope your happy. I will send it in the post. Thanks for all you have done for me in the past which was nothing when I needed help."

The Sub-Committee then heard from the applicant. The applicant stated that they had made a mistake in the past and that they apologised for it. The applicant indicated that at the time they were struggling with work and financial issues and that they had made a mistake. The applicant further indicated that this was one mistake in 32 years of hackney carriage driving and that with 32 years of experience they were fully versed in the rules that applied to them. The applicant indicated that they had been unable to work for 6 months and had been obliged to sell their house and some of their licensed vehicles in order to get by.

The Sub-Committee asked questions of the applicant. The Chairman asked the applicant if they were aware that in having facilitated an unlicensed driver taking children in the car with them, without that individual being DBS checked that there was a substantial

safeguarding risk. The applicant acknowledged that there had been a mistake. The applicant went on to suggest that they were unaware that the other individual was going to conduct the other school run and only came aware of it after they were contacted by KCC.

A Councillor asked the applicant if they worked outside the Borough. The applicant confirmed that they did not.

The Legal Officer asked the applicant if they were aware of the rules relating to being a licensed driver to which the applicant confirmed that they were. The Legal Officer pointed out that the rules require that the driver's badge is to be returned on demand, in this case, within 7 days. In response, the applicant admitted that they were not aware of the rules.

The Legal Officer advised the applicant that it was unlawful for a person to drive on a school contract without a licence, that it was unlawful for an unlicensed vehicle to be used for such a contract and that in both circumstances the vehicle would be uninsured, causing a risk to all road users. The applicant stated that this was a mistake. Further, it was important to honour the school contract as that was a necessary income for the business.

The Legal Officer suggested that the applicant's priorities with regard to retaining the school contract (financial reasons) and therefore transporting the children using an unlicensed driver and an unlicensed vehicle were inconsistent with the Licensing Authority's priority, which was the safety of the travelling public.

The Legal Officer asked the applicant whether the version of events given in the email chain was correct or whether the version articulated at the previous Sub-Committee was accurate. The applicant stated that the email version of events was accurate.

The Legal Officer asked the applicant why the Sub-Committee should accept that they were telling them the truth today when on the previous occasion everything said had been a lie. The applicant stated that they had no reason to lie today.

The Legal Officer asked the applicant why it was necessary to lie on the previous occasion, to which the applicant replied that they had acted to protect their friend.

The Sub-Committee had regard to the Hackney Carriage and Private Hire Policy and in particular:

- 3.1.3 The licensing authority will issue a licence to an applicant provided the applicant is assessed as fit and proper. In determining whether a driver is fit and proper the Authority will consider amongst other things; the applicant's relevant skills, knowledge, experience, qualifications, medical fitness, criminal records, prosecutions and previous history as a licence holder.

Chairman: 

Councillor Tina Booth

Date: 23 January 2019

The Sub-Committee made the following findings of fact in relation to the applicant's previous history as a licence holder:

- 1) In (date) 2018 the applicant permitted an unlicensed driver using an unlicensed vehicle to carry out a KCC school contract journey on their behalf.
- 2) In permitting the journey noted in 1) above, the applicant was party to a substantial failure in relation to child safeguarding and a breach of the Council's Code of Good Conduct for Licensed Drivers.
- 3) In permitting the journey noted in 1) above, the applicant was party to a number of potentially criminal licensing and motoring offences and a breach of the Council's Code of Good Conduct for Licensed Drivers.
- 4) In July 2018 the applicant deliberately misled a Licensing Sub-Committee in order that the offences noted in 3) above would not come to light.
- 5) Between 15th August and 17th September 2018 the applicant refused to return their driver's badge on demand.
- 6) In refusing to return the badge as noted in 5) above, the applicant potentially committed a further criminal licensing offence and a breach of the Council's Code of Good Conduct for Licensed Drivers.

The Sub-Committee determined, that based on the applicant's own admissions, the evidence of the email conversation with the Licensing Officer and the above findings of fact that the applicant was not fully conversant with responsibilities of a licensed driver and did not respect the Licensing Officer or the Licensing Authority.

Further, even after a period of time had elapsed following the previous revocation, the applicant remained focused on the impact of the revocation on themselves and their business, rather than the danger to the travelling public. The Sub-Committee were therefore not satisfied that this applicant would not make a similar decision in the future.

The Sub-Committee considered that the information provided by the applicant today, regarding being unaware of their friend's intention to carry out the other school contract was inconsistent with the version of events provided in the email chain of 18th September 2018 and were therefore unable to give the suggestion much weight.

Taking into account all of the above, the Sub-Committee determined that this applicant was not a fit and proper person to hold a Hackney Carriage/Private Hire Dual Driver Swale Driver's Licence and consequently, refuses the application.

A person aggrieved by the decision of the Licensing Sub-Committee has 21 days from the date of notification of the decision to appeal the decision by way of making a complaint to the Magistrates Court.