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**Angela Hutchings**  
**Chief Executive**

## **AGENDA**

<b>Committee:</b>	<b>LICENSING SUB-COMMITTEE</b>
<b>Date and Time:</b>	<b>Thursday, 20<sup>th</sup> April, at 11:00am</b>
<b>Venue:</b>	<b>Council Offices, Council Chamber</b>
<b>Membership:</b>	<b>Councillors Acott, Anderson, C. Mumford</b>
<b>Officers attending:</b>	<b>Benjamin Badura - Legal Adviser Melanie Harris - Head of Licensing &amp; Safer Communities</b>
<b>Committee Enquiries:</b>	<b>Loretta Hill, Ext. No. 2427</b>

### **PART I** **(Business to be taken in public)**

- 1. Appointment of Chairman**
- 2. Procedure for the Sub-Committee**
- 3. Appeal against refusal to grant a Private Hire Driver's Licence – Applicant H**

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**

**21 April 2023**

**Subject: Appeal against refusal to grant a Private Hire Driver's Licence – Applicant H**

**Report of: Head of Licensing and Safer Communities**

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**1. Purpose of Report**

To consider the appeal made by Applicant H against the refusal by the Council to grant a Private Hire Driver's Licence.

**2. Background**

Applicant H applied for a Private Hire Driver's Licence in December 2022. The Council refused to progress the application on receipt of his Disclosure and Barring Service (DBS) certificate because Applicant H has the following conviction:

Date of conviction: 29 April 2012

Offence: Common Assault

Disposal: Costs £100

Community Order Activity Requirement 60 Days

Supervision Requirement 18 months

A copy of the DBS certificate is attached at Appendix 1.

There were no convictions declared on the application form initially submitted by Applicant H.

A copy of the application form is attached at Appendix 2

The legislation relating to the refusal to grant a driver's licence is contained under the provisions of the LG(MP)A 1976, section 51, whereby at 51.(1) subject to the provisions of this part of this Act, a district council shall, on receipt of an application from any person for the grant 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 that the applicant is a fit and proper person to hold a driver's licence; or
- (b) to any person who has not for at least twelve months been and is not at the date of the application for a driver's licence, the holder of a licence granted under Part III of the Act of 1972 (not being a provisional licence) authorising him to drive a motor car.

(2) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.

(3) It shall be the duty of a council by which licences are granted in pursuance of this section to enter, in a register maintained by the council for the purpose, the following particulars of each such licence, namely-

- (a) the name of the person to whom it is granted;
- (b) the date on which and the period for which granted; and
- (c) if the licence has a serial number, that number, and to keep the register available at its principal offices for inspection by members of the public during office hours free of charge.

Under S52. Any person aggrieved by –

- (1) the refusal of the district council to grant a driver's licence under section 51 of this Act; or
- (2) any conditions attached to the grant of a driver's licence;

may appeal to a magistrate's court.

### 3. CPBC Policy – Assessment of Previous Convictions

Guidance on assessment of previous convictions was contained within the Department of 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.

The conviction listed above means that Applicant H does not meet the Council's pre licensing requirements.

<p><b>Offences involving violence against the person</b></p> <p>Conviction for an offence of violence against the person, or connected with any offence of violence</p>	<p>At least 10 years <b>since completion of sentence imposed</b></p>
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The Full Assessment of Previous Convictions is attached at Appendix 3.

#### **4. 'Fit and Proper'**

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.'

As Applicant H has been convicted of the above offence and failed to declare the conviction on application he is not regarded as a fit and proper person to hold a driver's licence and the Council made the decision to refuse to progress the application.

Applicant H submitted a written appeal against this decision to the Council by email on 22 March 2023. A copy is attached at Appendix 4.

#### **4. 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 Applicant H 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.

#### **5. Options**

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

- (i) Uphold the decision to refuse to progress the Private Hire Driver's Licence application
- (ii) Allow the Private Hire Driver's Licence application to progress.

### **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 – Application Form

Appendix 3 - Taxi Licensing Policy Extract "Assessment of Previous Convictions"

Appendix 4 – Appeal request

### **Background Papers:**

Local Government (Miscellaneous Provisions) Act

1976 [http://www.legislation.gov.uk/ukpga/1976/57/pdfs/ukpga\\_19760057\\_en.pdf](http://www.legislation.gov.uk/ukpga/1976/57/pdfs/ukpga_19760057_en.pdf)

Department for Transport Statutory Taxi and Private Hire Vehicle Standards 2020

[Statutory taxi and private hire vehicle standards - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/854412/statutory-taxi-and-private-hire-vehicle-standards-2020.pdf)



**Keywords:** child sexual abuse; disclosure; disclosure strategies; disclosure barriers

Disclosure & Barring Service

24 JANUARY 2002

### Employment Details

Counting Off  
MELANIE HARRIS

### High Detail

## SUPERVISION REQUIREMENT 18 MONTHS

## NINE RECORDED

NONE RECORDED



## Application for the grant of a Private Hire Driver's Licence

Office use		
Date received 20/12	PHD number	
Name [redacted]		
Address [redacted] [redacted]		
Date of birth [redacted]	phone [redacted]	email [redacted]
Present occupation and employer		
Do you currently hold or have you previously held a licence with another authority? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>If yes you may need to provide an HMRC tax check code to us</i>		
Have you ever been refused a licence or had a licence revoked or suspended? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If yes please give details</i>		
Please tick to confirm you have held a full DVLA licence to drive a motor vehicle for 3 years or more <input checked="" type="checkbox"/>		
Have you spent a period of 3 continuous months or more, since the age of 18 years, living or working outside the United Kingdom.  Yes <input type="checkbox"/> - Please provide dates No <input checked="" type="checkbox"/>  If yes please provide evidence of a criminal record check or Certificate of Good Character from the country/countries covering the relevant period		
Is English your first language? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If no you will need to provide evidence of appropriate level or complete a test</i>		

Have you ever been convicted in court or received any fixed penalty notices?


Yes ☐ No ☒

If yes give details of all convictions, fixed penalty notices, current points on licence or any court or proceedings pending against you.

Offence	Court	Date	Penalty

Please continue on a separate sheet if required

If any person knowingly or recklessly makes a false statement or omits any material particularly when giving information under this section, they shall be guilty of an offence.

Signed	Date
 12	20/12/2022

The information provided by you will be held and processed by Castle Point Borough Council in accordance with the Data Protection Act 2018 and the General Data Protection Regulations. The Council will process your data in line with our privacy notices and our policies and procedures. Full details can be found on the Council's website at <https://www.castlepoint.gov.uk/info-governance> or by contacting us for further information.



## 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
<b>Crimes resulting in death</b>	Never licensed
<b>Exploitation</b>  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
<b>Sexual offences</b>  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
<b>Offences involving violence against the person</b>  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
<b>Possession of weapon</b>  Conviction of possession of a weapon or any	At least 7 years since completion

other weapon related offence	of sentence imposed
<b>Dishonesty</b>  Conviction for any offence where dishonesty is an element of the offence	At least 7 years since completion of sentence imposed
<b>Drugs</b>  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
<b>Discrimination</b>  Conviction involving or connected with discrimination in any form	At least 7 years since completion of sentence imposed
<b>Motoring Convictions</b>  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
<b>Drink driving / driving under the influence of drugs</b>  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

**From:** F  
**Sent:** 22 March 2023 14:30  
**To:** Licensing  
**Subject:** Appeal for private hire licence  
**Attachments:** Document (2).pdf; (1).pdf

Dear Sirs,

I acknowledge receipt of your letter dated 27th February 2023 confirming the refusal of the private hire licence.

I wish to appeal this decision on the basis as follows:

When i completed the original application there was an oversight and i mistakenly ticked that i did not have any convictions. Firstly i apologise for the mistake i made and i accept that i have been convicted in court before for a domestic assault matter between my partner and i. As a result of this conviction i was sentenced and completed a Community order. However this conviction was 10 years ago. Clearly, i had no intention of deceiving you by withholding this information as i am aware that the DBS checks would flag this up when you conducted your checks. In comparison i also hold a private hire licence with Transport For London (TFL) and they are aware of my conviction.

In terms of meeting the "Fit and Proper" standards to hold a private licence. I believe that fulfil this criteria as i have worked in this industry for a long period of time. In particular i have worked with clients ranging from the local community members to prestigious high valued clients such as celebrities and diplomats. Please find attached references for the company ( London Luxury Group) i work with and customer references which are self explanatory and meet your criteria.

I appreciate that when you considered my application clearly this raised concerns but to assure you i have maintained a good rating and standard of work with TFL and i would not want to jeopardise my private hire licence with TFL by giving misleading information at any costs.

Having a private hire licence in the Castel Point Borough Council will broaden the work as most of the prestigious clients (celebrities) live within your borough and i have worked with them on many occasions. Clearly your private licence will enable me to work in your area and i can assure you that the test set out by the council of allowing your son, daughter mother, spouse or any members in my vehicle alone can be justified.

I feel it is unfair and unjust to withhold my past against me having known the fact that this conviction was over 10yrs ago. As explained above this incident took place in a domestic context and not to any members of the public. I believe that the conviction is now spent as i was punished accordingly. In comparison often couples argue and fall into disagreement would that mean that all of the instigators are violent? that question cannot be answered when you hear both sides of the story. Therefore in my submissions i would urge for you to reconsider my application and grant the private hire licence.

If you wish to stand by your refusal decision then i would be grateful if you could explain to me in writing the way in which to lodge an appeal at the local magistrates' court.

Should you have any further enquiries please do not hesitate to contact me.

I look forward to hearing from you.

Yours sincerely,

Enc.