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

## **AGENDA**

<b>Committee:</b>	<b>LICENSING SUB-COMMITTEE</b>
<b>Date and Time:</b>	<b>Tuesday, 9<sup>th</sup> May, at 11:00am</b>
<b>Venue:</b>	<b>Council Offices, Council Chamber</b>
<b>Membership:</b>	<b>Councillors Palmer, Savage and Walter</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 M**

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

9 May 2023

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

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

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**1. Purpose of Report**

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

**2. Background**

Applicant M applied for a Private Hire Driver's Licence in March 2023. The Council refused to progress the application on receipt of his Disclosure and Barring Service (DBS) certificate because Applicant M has the following convictions:

Date of conviction: 28 March 2013

Offence:

1. Possession of extreme pornographic images - of intercourse / oral sex with dead / alive animal  
On 15 February 2011  
Disposal: Community Order, unpaid work requirement 180 hrs
2. Possession of extreme pornographic images – of intercourse / oral sex with dead / alive animal  
On 15 February 2011  
Disposal: Community Order, unpaid work requirement 180 hrs, victim surcharge £60.00, Costs £85.00

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

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 in full by The Council in November 2020 following a period of consultation.

The conviction listed on the DBS means that Applicant M does not meet the Council's pre licensing requirements.

The Assessment of Previous Convictions is attached at Appendix 2.

### **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 M has been convicted of the above offences he is not regarded as a fit and proper person to hold private hire licences and the Council made the decision to refuse to progress the application.

A written appeal against this decision was submitted to the Council on behalf of Applicant M on 19 April 2023. A copy is attached at Appendix 3

## **5. Licences Held with Other Authorities**

Applicant M declared he had previously been licenced by another authority. As part of standard enquiries a request for information from Transport for London has been submitted and anything returned on this will need to be considered. At time of writing a response had not been returned.

## **6. 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 M 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.

## **7. 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 Licence application
- (ii) Allow the 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 – Taxi Licensing Policy Extract "Assessment of Previous Convictions"

Appendix 3 – 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/publications/statutory-taxi-and-private-hire-vehicle-standards-2020)



## Enhanced Certificate

Page 1 of 4

Disclosure &  
Barring Service

## DBS Fee Charged

## Certificate Number

## Date of Issue:

09 FEBRUARY 2023

## Applicant Personal Details

Surname:

Forename(s):

Other Names: NONE DECLARED

Date of Birth:

Place of Birth: LONDON HAMMERSMITH AND  
FULHAM

Gender: MALE

## Employment Details

Position applied for:

OTHER WORKFORCE

PRIVATE HIRE DRIVER

Name of Employer:

TPH PRIVATE HIRE DRIVER - RENEWAL

## Countersignatory Details

Registered Person/Body:

FIRST ADVANTAGE EUROPE LTD (NOTTINGHAM)

Countersignatory:

YOLANDA LANCASTER

## Police Records of Convictions, Cautions, Reprimands and Warnings

Surname:

Forename(s):

Gender:

MALE

Birth Details:

Last known occupation:

CHAUFFEUR

Alias Name(s):

NONE RECORDED

Alias Date of Birth:

NONE RECORDED

## Conviction Details

Conviction:

1

Date of Conviction:

28 MARCH 2013

Court:

CENTRAL LONDON MAGISTRATES

1

Offence:

POSSESSION OF EXTREME  
PORNOGRAPHIC IMAGES - OF  
INTERCOURSE/ORAL SEX WITH DEAD  
/ALIVE ANIMAL

ON 15 FEBRUARY 2011

CRIMINAL JUSTICE AND IMMIGRATION  
ACT 2008 S.63(1)(7)(D)

2

POSSESSION OF EXTREME  
PORNOGRAPHIC IMAGES - OF  
INTERCOURSE/ORAL SEX WITH DEAD  
/ALIVE ANIMAL

ON 15 FEBRUARY 2011

CRIMINAL JUSTICE AND IMMIGRATION  
ACT 2008 S.63(1)(7)(D)

Disposal:

COMMUNITY ORDER

UNPAID WORK REQUIREMENT 180 HRS

COMMUNITY ORDER

UNPAID WORK REQUIREMENT 180 HRS

VICTIM SURCHARGE 60.00

COSTS 85.00

## 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

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



Rec'd 19/4/23

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59-103 LONDOND GROVE, LONDON, SE5 7HN  
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APPENDIX 3  
39 WARREN STREET, LONDON W1T 6AF  
☎ 020 73883333 FAX: 0845 3307268  
REPLY TO ADDRESS  
TUCKERS SOLICITORS PO BOX 0603  
MANCHESTER, M81 0WA

OUR REF: MCK00260/00004/AUSTINS  
YOUR REF:

DATE: 19 April 2023  
REPLY TO: Manchester

**Private & Confidential**

Melanie Harris  
Head of Licensing and Safer Communities  
Castle Point Borough Council  
Licensing Department  
Council Offices  
Kiln Road  
Thundersley, Benfleet  
Essex SS7 1TF

By email: [licensing@castlepoint.gov.uk](mailto:licensing@castlepoint.gov.uk)

Dear Madam,

**Re: Application for a Private Hire Driver's Licence**

We represent the above named, \_\_\_\_\_ (hereinafter referred to as "the Applicant").

We refer to your letter of 24th March 2023 confirming an initial decision to refuse to grant the Applicant a licence. We respectfully confirm that the Applicant wishes to appeal against your initial decision to the Council's Licensing Sub-Committee in accordance with the advice contained in your letter.

We have set out below written representations in support of his Appeal. In the event that he is permitted to appear at and/or be represented at his appeal he would seek to exercise that right and we would be grateful if you could confirm the date/time when the appeal will be considered so that we can arrange for him to be so represented.

Whilst your letter refers to the refusal of a Private Hire Driver's Licence we would ask you to note that he also applied for the grant of a PH Vehicle Licence Plate and, on behalf of his company \_\_\_\_\_ or an Operator's Licence. Since neither of those applications were granted we assume that your letter refers to all three applications and we respectfully request that his appeal deals with them. Please confirm.

Your letter confirms your initial decision to refuse a licence and it does so by reference to the "fit and proper person" provision in section 51(a) of the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy upon the assessment of previous convictions and the comments of Silber J in Leeds City Council v Hussain [2002] EWHC 1145 (Admin).

Our first submission relates to the Council's policy with regard to the Assessment of Previous Convictions. There is an obvious tension between the policy's assertion that "each case will be considered on its own merits and applicants/licensees are entitled to a fair and impartial consideration of their application" whilst also declaring that those convicted under certain very

broad categories are never licensed. That, we submit, is clearly contradictory since applications falling within those broad categories cannot at the same time be considered fairly, impartially and on their own merits. Denying an application merely because it appears to fall within a "never licensed" category prevents such an application from being considered fairly, impartially and on its own merits and does not comply, in our submission, with the purpose of the legislation or the guidance given by Silber J in *Hussain* which emphasises (at paragraph 25, after the extract that you have quoted) that when considering whether to suspend, revoke or, as in this case grant, a licence **the Council's focus must be on "the impact of the licence holders vehicle and character on members of the public and in particular, but not exclusively on the potential users of those vehicles"**. In that regard, we submit, that the Council has erred in its initial decision by applying the minimum period guidance in its policy too rigidly when it must instead focus not on a broad categorisation of the Applicant's previous convictions but on the details of those convictions and, crucially, upon how that impacts or may in future impact upon members of the public.

Before addressing the real nature of the Applicant's convictions and their potential impact upon the public we would also stress that in the case of *Hussain*, Silber J was dealing with a licensee who had been charged with an offence of violent disorder under section 2 of the Public Order Act 1986. That was not merely an offence that self-evidently impacts upon the public but the underlying facts (set out at paragraph 2 of the judgement) confirmed that it directly related to Hussain's employment as a licensed private hire vehicle driver and concerned a violent disorder between a number of private hire drivers and their vehicles.

We submit that in order to ensure the fair and impartial assessment of the application on its merits in accordance with the Council's policy it is crucial that the Council recognises that the defendant's convictions were "non-contact" offences. That is, they did not concern contact between the defendant and others. The convictions, which were committed more than 12 years ago, on 11 February 2011, involved the defendant's possession of a very small number of extreme pornographic images. The offences related to images that were **cached** on two computers. That means that they were stored automatically by operation of the computer rather than having been deliberately saved onto the devices by the Applicant. That fact was apparent from the prosecution evidence and was accepted by the Central London Magistrates' Court. In short, the Applicant viewed the images privately over the internet out of a sense of morbid curiosity and the computer cached them.

The Applicant pleaded guilty to the offences at the first available opportunity. He did not seek to minimize his behaviour and took full responsibility for it. He expressed deep and genuine remorse for his brief lapse in otherwise exemplary character. He was assessed by an experienced Probation Officer who concluded that the Applicant had been "very naive" and was a low risk of committing further offences in the future and as a low risk of causing serious harm. That professional assessment of the Applicant has, of course, been fully vindicated over the last 10 years or more since he has not committed further offences.

The Applicant's prior offending, therefore, took place in private. It did not impact upon members of the public. It was a "non-contact" offence. It was not in any way connected with his work as a Private Hire driver. The Applicant has, of course, brought his prior offending to your attention (as he must do) thus demonstrating his honesty. None of the other characteristics (such as health, sobriety etc) listed by Silber J in *Hussain* appear to us to be in issue in this matter.

The Council should also note that, importantly, the details of the Applicant's convictions were notified to the Disclosure and Barring Service but it chose not to include the Applicant on either the Children's or Vulnerable Adults barring list.



The Council should also note that when the Applicant's convictions were notified to Transport for London ("TfL") it initially suspended and refused to renew his Private Hire Licence. The Applicant successfully appealed those decisions to a magistrates' court. On 1st April 2014 the District Judge at the City of London Magistrates' Court **determined that the Applicant did meet the fit and proper person test despite his convictions and directed TfL to renew the Applicant's Private Hire Licence.** He has held a Private Hire Licence with TfL since then.

The Council should also note that subsequently, in 2016, TfL also issued an Operator's Licence to the Applicant and his company. He continues to hold both a Private Hire Driver's Licence and an Operator's Licence with TfL.

The decisions of the District Judge in 2014 and TfL in 2016 focussed upon the impact of the Applicant's character on members of the public and both decided that the Applicant was a fit and proper person to hold a Private Hire Driver's Licence and an Operator's Licence. Both decisions have since been fully vindicated. There have been no subsequent convictions or adverse findings about the Applicant's character. Thus, we submit, that it would be irrational for the Council now to make a contrary finding that he is not a fit and proper person.

Given all of the above circumstances, and particularly since the Applicant has been deemed to meet the fit and proper person test by a District Judge at City of London Magistrates' Court and TfL despite the convictions disclosed by his DBS report we would urge the Council to grant the Applicant's appeal and agree to issue him the licences that he seeks.

In the event that the Council's Licensing Sub-Committee grants the Applicant's appeal he will happily re-submit his applications duly completed with the necessary additional enclosures required.

Any enquiries about this matter should be sent to Seamus Austin who can be contacted on 02073888333 (ask to be connected to Mr Austin) / mobile 07958300027 or at [austins@tuckerssolicitors.com](mailto:austins@tuckerssolicitors.com).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Seamus Austin', with a long horizontal line extending to the left and a flourish at the end.

Seamus Austin  
Tuckers Solicitors LLP