

**LICENSING COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN on 11 NOVEMBER 2009**

Present: Councillor E W Hicks - Chairman
Councillors E L Bellingham-Smith, J E Hudson, R M Lemon,
J I Loughlin, H J Mason, D J Morson, D G Perry, J A Redfern
and A D Walters.

Officers
in attendance: M Hardy (Licensing Officer), M Perry (Assistant Chief
Executive) and R Procter (Democratic Services Officer).

LC28

PUBLIC QUESTION AND ANSWER SESSION

The Chairman welcomed everyone, and invited members of the taxi trade present to speak, in accordance with their notice of intention to do so.

Statements were then made by Mr B Drinkwater, Mr A Mahoney and Mr R Sinnott.

Mr Drinkwater said, with reference to the money claimed by taxi drivers, he had hoped the meeting with Mr Perry would move matters forward after the successful meeting with the Chief Executive, but unfortunately that meeting had not taken place.

The Assistant Chief Executive, spoke at this point to explain the reason for the deferral of the meeting. When the meeting had originally been arranged, his diary had been clear. However, at short notice, he had been informed that he was required in the High Court on that day, as the judgment in another case was to be handed down. Accordingly, he had re-scheduled the meeting for this coming Friday 13 November.

Mr Drinkwater said the question of the overpayment had been under discussion for a long time now. He expressed concern at this delay, which was causing frustration to the Trade. He looked forward to progress being made regarding the accounts.

With regard to the Quality Taxi Partnership, the Trade had been working with Essex County Council on this proposal. Whilst the Trade was not uniformly supportive of QTP, ULODA did support it. He would like to see solidarity of support from all partners. There was always room for improvement in aiming for best practice, and QTP would help to reinforce the message that local operators and drivers acknowledged this to be the case.

Mr Mahoney then made a statement. He said he wished to sound a cautious note regarding QTP. He felt he did not know enough about it, and could not see exactly how it would be relevant in a rural area. Further, his business was different to most others, as he did not offer a private hire service, but contracted operators. He asked that Members bear these points in mind.

Mr Sinnott made a statement. He said he did not know enough about QTP, and was very concerned about the impact on his workforce, which was made up of many part time workers, whether semi-retired or working parents. They were already very professional, and he was concerned at the prospect of overburdening them with additional requirements. He looked forward to hearing the report to be presented by the Licensing Officer.

The Assistant Chief Executive referred Mr Sinnott to paragraph 8 of the report, which stated that QTP membership would be voluntary.

Mr Drinkwater then gave a brief report on the recent meeting of the Uttlesford Taxi Drivers Association. Issues which had been raised included an announcement of the Trade's intention to apply for a modest increase in fares; and concerns over increased illegal touting in this area. Minutes of the meeting had been circulated to Members.

LC29 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies for absence were received from Councillors Artus and Perry (Councillor Perry later joined the meeting). There were no declarations of interest.

LC30 **MINUTES**

The Minutes of the extraordinary meeting of 16 September 2009 were received, confirmed and signed by the Chairman as a correct record.

The Minutes of the scheduled meeting of 16 September 2009 were received, and a number of amendments were made at the request of Members, as follows:

Minute LC20 page 175 paragraph 8:

The sentence was amended to read: 'Councillor Loughlin said she thought Mr Ford prevented occurrences by his pro-active stance.'

Minute LC20 page 176 top paragraph:

The first sentence was amended to read: 'Councillor Walters said it was very important to note that Members were very unhappy about the situation with regard to enforcement.'

As a matter arising from this Minute, Councillor Walters said he did not recall saying that the issue of Members' concerns regarding enforcement should be brought to Council. Councillor Lemon said he had asked a question at Council in Members' question time, and he hoped most Members had got the message. In reply to further comments regarding taking the matter to Council, the Assistant Chief Executive said it was open to Members to propose a motion on notice to the Chief Executive under rule 9, not later than 10 clear days before the date of the Council meeting.

Councillor Hicks said Councillor Perry (who had not arrived at this point) had given him a list of points he wished to raise regarding the Minutes. Whilst it was a little unusual procedurally, he could exercise Chairman's discretion to allow consideration of the comments in Councillor Perry's absence, if Members felt this was appropriate. Members agreed to this course of action.

Where Councillor Perry's notes related to matters arising, the Assistant Chief Executive suggested that Members proceed on the basis that they had looked at such points and were aware of his concerns. He said regarding points of accuracy raised in Councillor Perry's note, that only where Members could recall the suggested amendments could such amendments be made. Members considered the points raised by Councillor Perry in his absence and made an amendment as follows:

Minute LC20 page 175 first paragraph:

The word 'licensing' was inserted so that the final phrase of the paragraph read: '. . . Mr Ford who was a fully trained licensing enforcement officer'.

Councillor Hicks then signed the amended Minutes.

LC31

MATTERS ARISING

(i) Minute LC4 – money claimed by taxi drivers

Councillor Lemon said he was appalled that this matter had taken so long, (although he appreciated there was a good reason for re-arranging the meeting which was to have taken place earlier this week). He was glad the meeting was scheduled for this Friday, and asked for some indication of when the matter would be concluded. The Assistant Chief Executive replied that the outcome of the meeting would determine the conclusion of the issue. Councillor Loughlin said she too was appalled that this matter kept returning to Committee, and that procrastination was damaging to the Council's reputation. The Chairman said all heartily agreed, and all would be happy to see this matter concluded.

(ii) Minute LC26 – Budget

Councillor Loughlin asked about the issues regarding the Licensing Department. The Assistant Chief Executive said these issues were the subject of the Part II report to be considered later in the meeting.

LC32

GAMBLING ACT POLICY

Members considered the report of the Assistant Chief Executive on revision of the Gambling Act 2005 policy. The Assistant Chief Executive reported that since the report had been prepared he had received one response to the consultation from Great Dunmow Town Council which welcomed the changes and asked to be informed of any applications for premises licences within its area.

RESOLVED that Members recommend that Full Council approve the revised Gambling Policy to take effect from 31 January 2010.

LC33

QUALITY TAXI PARTNERSHIP

Members considered the report of the Licensing Officer. The Licensing Officer reminded Members of the presentation they had received on this subject at an earlier meeting. He took Members through the report, and concluded by inviting them to decide whether a Quality Taxi Partnership should be established in Uttlesford.

The Chairman thanked the Licensing Officer for his report.

Councillor Walters said this was an excellent report, and was a step forward in giving better service. He proposed the motion.

The Chairman asked whether there were any costs implications for the Council arising from the proposal to establish a QTP. The Licensing Officer said such costs would be minimal, arising from his time which he envisaged being 2 to 3 hours per month. He would also suggest that the existing Task Force should continue to meet and report to this Committee.

Councillor Perry arrived at this point.

Councillor Lemon said most districts were entering into QTPs. He seconded the proposal.

In reply to a question from Councillor Hudson, officers confirmed the matter would be publicised if the Council joined the scheme.

The Chairman welcomed Councillor Perry and invited him to put forward any comments.

Councillor Perry declared an interest as a member of the QTP Task Group. He said he fully supported the QTP as a good way to ensure a high standard of service.

Councillor Redfern noted there had been an element of apprehension about QTP expressed by Mr Sinnott during the public question and answer session. Councillor Lemon said he presumed that if members voted to join, it would be up to the Licensing Officer to persuade the Trade of the great benefits the scheme would bring.

RESOLVED to establish a Quality Taxi Partnership in Uttlesford.

The Licensing Officer said in view of this decision that he was now able to disclose the publicity arrangements for the launch of the QTP. A formal launch would take place on Friday 4 December in the Council Chamber at 11 am, to which Members were invited. Representatives of ECC, the Fire Service, ULODA and the press were also to be invited.

It was agreed that the Chairman of this Committee should sign the QTP agreement at the launch.

LC34 EXERCISE OF DELEGATED POWERS

The Assistant Chief Executive gave a brief verbal report on a recent instance where he had exercised delegated powers to refuse a licence. At the previous meeting Members had authorised the Assistant Chief Executive to deal with an application for a licence where a driver apparently met licensing standards but had admitted offences of driving without a PHV driver's licence and without insurance. It had transpired that the driver already had a conviction for driving without insurance and had six points on his licence, and therefore did not meet the Council's standards in any event.

LC35 OTHER URGENT ITEMS

Councillor Perry asked a question regarding the enforcement team. He wished to know how many cases relating solely to licenses had been solely dealt with by the enforcement team. The Assistant Chief Executive said he did not have that information to hand. Generally investigations were carried out by the enforcement team, but they relied on receiving intelligence, for example, reports of illegal touting.

Councillor Perry asked about means of investigating such reports, including night working. The Assistant Chief Executive said it would not be appropriate to state in a public meeting how investigations would be carried out, and that night working would be used if appropriate.

Councillor Perry then asked the Chairman if he stood by the comments he had made at Full Council regarding the licensing trade and taxi money. Councillor Hicks replied that his comments reflected his understanding of the position.

LC36 EXCLUSION OF THE PUBLIC

RESOLVED that, under Section 100(I) of the Local Government Act 1972, the public be excluded for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraphs 2, 3 and 5 of Part 1 of Schedule 12A of the Act.

LC37 LICENSING DEPARTMENT

Members considered the report of the Assistant Chief Executive.

Following discussion, the Chairman gave an undertaking to address the concerns expressed by Members with the Chief Executive.

Councillors Mason and Redfern left the meeting at 9.30 pm and 9.35 pm, respectively.

The meeting ended at 9.55 pm.

**EXTRAORDINARY LICENSING COMMITTEE held at COUNCIL OFFICES
LONDON ROAD SAFFRON WALDEN at 7.30pm on 21 DECEMBER 2009**

Present: Councillor D G Perry – Vice Chairman in the chair.
Councillors J E Hudson and A D Walters.

Officers in attendance: M Perry (Assistant Chief Executive) and P Snow
(Committee and Electoral Services Manager).

LC41 PUBLIC QUESTION AND ANSWER SESSION

Prior to the meeting a statement was made by Mr A Mahoney, a member of the taxi trade. Mr Mahoney said that driver licence fees had risen by 30% two years ago and he had raised at that time the poor accounting procedures which had resulted in the wrong cost base being applied.

There had been a great deal of time and effort in getting to the point reached at this meeting where fees could be reduced. He felt it had been worth the effort as it was now possible to understand the rationale behind the fees being suggested.

In each of the years 2006/07, 2007/08 and 2008/09 a surplus had arisen on the licensing service and this was still growing. Agreement had been reached to reduce fees now and to reconsider the position in June 2010 when the end of year figures would be available. The trade was in agreement with that position.

Mr Mahoney felt that any remaining surplus funds should remain within the licensing department and that lower fees should apply in the future, rather than arranging refunds as this would be expensive to administer. He thanked all of those concerned in reaching agreement for their hard work.

LC42 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors E Bellingham–Smith, E W Hicks, R M Lemon, J I Loughlin, H J Mason, D J Morson and J A Redfern.

LC43 LICENCE FEES

The Assistant Chief Executive outlined the history of this issue. At the meeting on 5 March 2009 Members had resolved to increase the license fees for drivers of private hire vehicles to £105 and for Hackney carriages and joint license holders to £115. These increases were advertised but in the light of objections received the Committee had decided not to increase the fees and they remained at £170 per annum for a vehicle and £80 for operators.

Following prolonged discussion on this issue a meeting had been held on 13 November 2009 between the Assistant Chief Executive, the Council's Accountant and representatives of the Trade to clarify the financial situation and to agree a level of fees. The following points had been agreed

- The base line cost to the Council of administering licenses to hackney carriage and private vehicles.
- To avoid costs of advertising the reduction in fees should be targeted to the drivers and not vehicle operators.
- With the current level of licensed vehicles and operators and the income produced from the licenses there was a shortfall of £37,736 to be recovered from drivers.
- To divide that sum by the current number of drivers would produce an annual fee of £60.
- There should be no distinction in fees between hackney carriages or joint licenses and those for private hire vehicles.

The Assistant Chief Executive concluded that he was reluctant to reduce the fees further until the outcome of the financial year 2009/10 was known. He confirmed that the level of fees would be reviewed in June 2010. If agreed by Members, the reduction in fees to £60 could take effect immediately.

Councillor Perry took the view that it should be possible to do more to reduce fees now given the level of surplus of £130k. He suggested that the fee incurred by drivers for obtaining a CRB check should be incorporated into the revised £60 fee.

The Assistant Chief Executive felt that this suggestion would be unfair given that some drivers were licensed for only one year and that CRB checks had to be renewed every three years.

There was further discussion on the merits of agreeing the recommendation to reduce the fee to £60 now as against the suggestion made by Councillor Perry. The discussion incorporated reference to the subject matter of the discussion of the Part 2 report at the meeting on 11 November 2009.

The Assistant Chief Executive explained why it had not been possible to arrange this meeting on an earlier date. This had followed discussions with Mr Drinkwater of ULODA.

Councillor Walters thought that a consensus view had now been reached, whereby a review of fees would take place once the agreed meeting with representatives of the trade had taken place in June next year, and proposed adoption of the recommendation in the report. The nature of those discussions would depend on the year end figures available at that time.

RESOLVED that the fee for licenses for drivers of hackney carriages and private hire vehicles be reduced to £60 per annum with immediate effect.

**EXTRAORDINARY LICENSING COMMITTEE held at 10.00 am at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 16
DECEMBER 2009**

Present:- Councillor E W Hicks – Chairman

Councillors E L Bellingham-Smith, J E Hudson and R M Lemon.

Officers in attendance:- M Hardy (Licensing Officer), M Perry (Assistant Chief Executive), C Roberts (Democratic Services Officer) and A Turner (Licensing Officer).

LC38

**DETERMINATION OF PRIVATE HIRE DRIVER'S
LICENCE**

The Chairman of the Committee opened the proceedings and introduced the Members of the Panel to the licensed driver who was present with his current employer.

The Committee considered the report presented by the Licensing Officer setting out the history of a matter which had been referred by him to the Committee in view of the possibility that the holder of a private hire licence might no longer be a fit and proper person to retain his licence.

The Assistant Chief Executive said that in fact the licence had been issued in error to a driver who did not meet the Council's licensing standards which was why the matter was before the Committee. He also drew to the attention of the Committee the contents of the background papers. They included the driver's driving licence and his application to the Council for renewal of his private driver's licence at the end of 2008. The Assistant Chief Executive informed Members of the Committee that the documents appeared to disclose an offence of making a false statement in addition to the breach of condition of failure to notify referred to in the Licensing Officer's report.

At the invitation of the Chairman the Licensing Officer addressed the Committee, having first ascertained that the private hire driver had received a copy of the report. He explained that in December 2007 although the private hire driver had disclosed a pending prosecution his licence was renewed due to an administrative error within the Licensing Department. In December 2008 when applying for renewal again he did not supply the licence with the application and the renewed licence was issued in error in as much as the endorsement on the licence for six penalty points was overlooked. The Licensing Officer informed the Committee that the driver was unsure how fast he had been driving when he was stopped, and that loss of his licence could mean loss of his employment. He also explained the Essex Police policy for prosecution in such cases.

There were no questions for the Licensing Officer.

The private hire driver then gave his account, stating that he remembered circling the answer about points or impending prosecution and had informed his then employer, Checker Cars. The person he told there said he should

write to the Council about this. The driver believed he had written to the Council about this. He was unable to produce a copy of the letter because it was stored on his computer which was in storage following a house move.

In answer to questions from Members as to why he had answered "No" on the 2008 renewal application to the question "Have you in the last year been convicted of any offence" the private hire driver replied that he thought he had adequately disclosed the conviction by notifying the Council of the pending prosecution in December 2007 and by sending the endorsed licence to the Council in 2008.

The Assistant Chief Executive said that as regards the notification of impending prosecution, it would have been unnecessary to tell the Council any more if he had been acquitted but that the Council needed to know about convictions as they might relate to licensing standards.

Councillor Lemon asked about the speed at the time of the offence, which police usually referred to when stopping a driver.

The private hire driver replied that he could not remember it; a lot had happened in his life since that time. Councillor Lemon suggested that the rehabilitation course considered by the driver as a possibility would only have been available for a speed of up to 42 mph. The private hire driver said that he did not know.

The Chairman of the Committee was concerned to establish the speed and the Assistant Chief Executive said that he would inform Members of the sentencing guidelines used in magistrates' courts in this context.

The Committee then heard from the current employer of the private hire driver who praised his honesty, efficiency and driving ability and added that he had had serious problems arising from a death in his family. He felt the driver should not be appearing in front of the Committee. The Chairman explained that the Council had to have and maintain a licensing policy and that it was very important that convictions were notified.

Members questioned the employer about the speeding and the employer made comments about the straightness of the road, clear vision and lack of pedestrians. The private hire driver gave details of the commencement and termination points of the 30 and 40 mph limits on the road in question.

The Chairman asked the private hire driver whether he wished to ask any further questions and he replied that he did not.

The Assistant Chief Executive then provided legal advice to the meeting in the presence of all parties, derived from the Guidelines on sentencing used by the Magistrates' Association and from the case of *Melton v Uttlesford District Council*.

The sentencing guidelines linked 6 points with a speed of 51-60 mph in a 30 mph area in the absence of any aggravating circumstances. The case of *Melton* made it clear that in the absence of extenuating circumstances the courts were bound to apply the licensing policy of a council as if the court stood in the council's shoes; the question what amounted to "fit and proper"

could be answered only in the light of the particular council's policy. Furthermore the case of Hussain had established that personal circumstances were relevant only in extremely rare cases to extenuate a driver's conduct.

The private hire driver was invited to make a closing statement . He apologised for the offence and said that he did not intend to speed or to mislead the Council. He understood that the effect on his livelihood was not relevant in the case but he asked the Committee to bear in mind that there had been no offences in the last year. His employer reiterated that in his experience of the past year the private hire driver was a commendable person and fit driver.

LC39 **EXCLUSION OF PRESS AND PUBLIC**

RESOLVED that the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that the consideration involved exempt information within the meaning of s.100 I and paragraph 6 of Schedule 12A Local Government Act 1972 and that it was in the public's interest so to do to permit a free and frank exchange of views between Members.

The Panel of Members retired to consider their decision at 10.57 am.

LC40 **DETERMINATION OF PRIVATE HIRE DRIVER'S LICENCE**

The Panel of Members returned to the meeting at 11.45 am and the Chairman announced that the Committee had reached the following decision which was read by the Assistant Chief Executive.

“RESOLVED

In this case the private hire driver was stopped for speeding on 7 December 2007. He applied to renew his licence with this Council and disclosed the fact that he had a possible pending prosecution. This meant that at that stage he did not meet licensing standards and officers did not have delegated authority to grant the licence. Regrettably the licence was issued in error. In reality had officers brought the matter to the Committee then the licence would have been granted but reviewed after the prosecution had been dealt with.

On 4 March 2008 the private hire driver appeared before Harlow Magistrates Court where he pleaded guilty to excess speed. He was fined £200 and his licence was endorsed with 6 points. The private hire driver has not given any details of the speed he was driving. Having regard to the Sentencing Guidelines to Magistrates and in the absence of evidence of any aggravating factors the Committee assume that the private hire driver was driving between 51-60 mph in a 30 mph limit.

Under his conditions of licence the private hire driver ought to have reported the conviction in writing to the Council within 7 days. The private hire driver said that he informed his then employer (Checker Cars) who advised him to inform the Council. He said that he thought he had sent a letter to the Council which was on his computer but he did not produce a copy. No such letter was received by the Council. The Committee find on the balance of probabilities no such letter was sent.

On 31 December 2008 the private hire driver again applied to renew his licence. On his application form he indicated that he had no convictions in the previous 12 months. He said that as he had disclosed the pending prosecution in 2007 the Council were aware of the position. The Committee did not find this explanation convincing. His driver's licence was not produced along with the application form. As the licence was due to expire a new licence was prepared to be issued once the driver's licence was produced. When the licence was produced it disclosed the endorsement. Under the Council's policy where a driver has a serious motoring conviction (defined as a conviction carrying 6 points or more for a single offence) they do not meet licensing standards. In such cases a licence cannot be granted under delegated powers. Regrettably the endorsement was overlooked and the licence issued in error.

Had the matter come before the Committee there are no exceptional circumstances which would have justified granting a licence contrary to policy. In the circumstances as the licence should not have been issued and following the guidance in *Melton v UDC* the Committee revokes the licence for "any other reasonable cause" namely that the licence was issued in error to a driver who is not a fit and proper person.

The purpose of the licensing regime is the protection of the public. When a driver is not a fit and proper person the safety of the public is at risk and in the interests of public safety the Committee directs that the revocation shall have immediate effect pursuant to s61 (2B) of the Local Government Miscellaneous Provisions Act 1976. In reaching this conclusion the Committee also has regard to the guidance in *Melton v UDC*.

The Committee takes a serious view of the fact that the private hire driver did not report the conviction within 7 days of it occurring as required by the conditions of the licence and that he made a false statement on his application for renewal in December 2008. However in the circumstances of the Committee decision no other sanction is appropriate.

The Committee also expressed its serious concern that on at least three occasions (one with Mr Melton and two with the private hire driver) licences have been purportedly issued under delegated powers to persons who do not meet licensing standards and requests the

Assistant Chief Executive to review the procedures for the issue of licences to prevent a repetition.

The private hire driver was advised of the right to appeal within three weeks to the appropriate magistrates' court and the fee for this. He was informed that he must not drive pending the termination of any appeal because the decision of the Committee was to revoke the licence with immediate effect."

The meeting ended at 11.50 am.