

**EXTRAORDINARY LICENSING COMMITTEE held at 10.30 am at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 30 MARCH
2011**

Present: Councillor E W Hicks – Chairman.
Councillors J E Hudson, D J Morson, and A D Walters.

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

LC76 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no declarations of interest.

**LC77 DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE
DRIVER'S LICENCE**

The Chairman welcomed all parties to the meeting and introduced the
Members of the Panel to the Driver Mr Timothy Dodds.

The Licensing Officer obtained confirmation from the Driver that he had
received copies of all relevant papers in the case.

He then presented his report which invited the Panel to consider whether or
not the licence should be revoked or suspended

The report explained that on 3rd February 2011 a report appeared in the Herts
and Essex News regarding a road traffic accident in which a taxi driver failed
to stop after being involved in an accident. The newspaper named the driver
as Timothy Dodds of Stoneyfield Drive, Stansted. A check of the Council's
current records showed a Timothy Dodds 18 Stoneyfield Drive, Stansted as
being licensed with this authority working on behalf of Stansted Airport Cars.
The licence was due to expire on 30th June 2011.

On 8th March 2011 Mr Dodds was interviewed by the Licensing Officer in the
Council Offices, Saffron Walden as a result of a report appearing in the
newspaper where he gave an account that led to his conviction. Mr Dodds
admitted that the report did relate to him.

The report explained that during the evening of 31st July 2010 he was working
on behalf of Stansted Airport Cars and found himself parked up in the
overflow car park of the Hilton Hotel, Stansted Airport. He admitted in
interview that he was parked up out of the way reading a book waiting for the
next job to come in. He did receive a booking via a mobile phone from his
operator and then commenced to leave the car park at the hotel.

As he was leaving the car park he was confronted by another vehicle which
did not leave him enough room to turn right to get by this vehicle. He said that
he made three or four manoeuvres **Page 1** back and forth even on one

occasion winding down his driver's window asking the driver of the other vehicle to move, which request was refused. He did finally manage to get past this vehicle and then drove off leaving the hotel premises. He finished his shift at about 3am the following day and then had three days leave.

On his return to duty a director of Stansted Airport Cars informed him that he was required to attend Stansted Airport Police Station where enquiries were being made about an allegation of a failure to stop road traffic accident at The Hilton Hotel in which he was believed to be a party involved. He duly attended the Police Station and admitted being the other driver involved. He was shown photographs by the Police of the damage sustained to the other vehicle which the repairs amounted to £1500. After interview he was reported for the offence of failing to stop after a road accident and advised that a summons would be sought.

It appeared that a court summons was sent to his home address by post which Mr Dodds stated he never received. Following his non-appearance at Court the Essex Police called at his home address arrested him for failing to appear and gave him what is commonly referred to as doorstep bail to appear before Harlow Magistrates Court.

On 18th January 2011 Mr Dodds had appeared before the court with the intention of pleading not guilty and was told that the case would be adjourned for trial at Epping but the cost of the case could amount to about £600, money which Mr Dodds did not have, so he changed his plea to one of guilty. Whilst at Court he did not seek any legal representation and could not afford to engage a lawyer to act on his behalf.

Following his change of plea the Court imposed a fine of £50 with five penalty points on his DVLA driving licence.

Following the discovery of the newspaper report Mr Dodds did breach the conditions of his licence by failing to notify details of his conviction to this authority in writing within 7 days of the conviction being imposed.

Letters were sent by the Licensing Officer and the Assistant Chief Executive Legal to the home address of Mr Dodds asking him to make contact for interview which went unanswered and contact was finally made through a director of Stansted Airport Cars. Mr Dodds remained resident at his current address but he said that his mail was very problematical in that he did not receive all that was addressed to him.

The Licensing Officer then invited questions about his report but there were none.

The Assistant Chief Executive-Legal referred to Paragraph 7 of the report and advised the Panel about the nature and purpose of the proceedings when a case first comes before the magistrate's court. He made the point that he had never heard of a magistrate's court clerk giving an estimate of costs during a discussion about the plea. Costs applied for by the prosecution were generally very modest. He felt the figure of £650 costs would be more appropriate for a half day's trial. Page 2

He also explained the possible legal steps which could be taken if no communication could be made with a driver.

Mr Dodds the driver was invited to ask questions. He gave his account stressing the absence of damage to his car, his belief that there had not been an accident, his ineligibility for benefits and inability to afford the costs consequential on pleading not guilty. He said he apologised wholeheartedly for failing to report the conviction within seven days and had not realised he needed to report it as he was not employed as a mini-cab driver at the time, just taking what work he could get.

In answer to a question from Councillor Walters Mr Hardy said he had asked for photos of the damage or release of the vehicle and the Police had refused. Mr Dodds added that the driver who had obstructed his access to the car park didn't respond in the slightest to Mr Dodds request for him to move his car.

In answer to questions from Councillor Morson he said he did not believe there had been an accident, the first indication being when the employer had said the police had been. Mr Dodds had shown the unmarked car to the employer and had thought the whole thing would blow away. As regards the post it seemed there had been a spate of misdeliveries in Mr Dodds' area.

In answer to a question from Councillor Hudson Mr Dodds confirmed that he had been driving a big silver coloured mini-bus with the cab firm's name written conspicuously on it but that seemingly the other car driver had thought he could wait.

The Assistant Chief Executive-Legal asked Mr Dodds what had been the basis of his mitigation in the magistrates' court and the Chairman asked if the Bench had examined why he wished to plead not guilty. Mr Dodds could not remember being asked this.

In answer to a question from Councillor Walters Mr Dodds confirmed that the taxi company owned the car he had been driving. It was a pool vehicle and had been examined by the police during the period when he had been on leave. He had not asked the directors of the firm to attend the hearing to confirm the lack of damage, as he knew they were not available then.

The Assistant Chief Executive-Legal gave the Panel advice in the presence of Mr Dodds concerning the case of Nottingham City Council v Farouk which was authority for the rule that the licensing tribunal was not entitled to question the court's conviction, they could consider mitigating circumstances but had to assume the conviction was valid.

LC78 **EXCLUSION OF THE PUBLIC**

RESOLVED that under Regulation 14(2) of the Licensing Act 2003 (Hearings Regulations) 2005 the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that it was in the public's interest so to do to permit a free and frank exchange of views between members.

The Licensing Officer and the Driver withdrew and the Panel began to deliberate on their decision at 11.05 am.

At 11.35 am the Driver was re-called briefly by the Panel to inform them about his financial circumstances so that a disproportionate penalty should not be imposed.

LC79 **DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE**

Members returned to announce their decision at 12.22 pm.

The Chairman made the following statement:-

“Mr Dodds appears before the committee today for consideration of a revocation or suspension of his licence. The initial reason he was asked to attend before the committee arises from the fact that in January this year Mr Dodds was convicted on his own admission of an offence of failing to stop and report an accident. He was fined £50 and his licence was endorsed with 5 penalty points. Under the conditions attached to his licence he should have notified the council of this conviction in writing within 7 days. This he acknowledges he failed to do.

The licensing committee expect the conditions attached to a licence to be observed. Where there is a breach the driver is invited to meet with the Assistant Chief Executive – Legal for him to consider a short suspension under delegated powers. That would have happened in this case as the points endorsed on the licence were not sufficient to require consideration of a revocation of the licence because of Mr Dodds' driving record. However other circumstances raised issues concerning Mr Dodds' honesty and therefore whether he remained a fit and proper person to hold a licence.

The first issue which gave rise to these concerns was Mr Dodds' attitude with regard to the offence. Mr Dodds denies that any accident occurred. He says that he attended court with the intention of pleading not guilty but was told by the clerk that if he did so the matter would be adjourned for a trial and that the costs of the case would amount to £600. Mr Dodds says he could not afford that sum and therefore changed his plea to guilty.

Members regard this account as being wholly implausible. The clerk could not know what level of costs would be applied for by the Crown Prosecution service in the event of their being a conviction. Whilst the Committee accept that Mr Dodds may not have been in a position to afford legal representation it is always open to defendants to represent themselves and indeed many do so. Further, had Mr Dodds been acquitted no costs could have been awarded against him. Mr Dodds was invited to address the Committee as to the mitigation he put forward to the magistrates as factors which amount to a defence cannot be taken in mitigation but he did not do so.

Members were also concerned that Mr Dodds failed to respond to the summons in the first instance (ultimately appearing at court under a warrant)

and failed to respond to 2 letters from the council inviting him to meet the Assistant Chief Executive – Legal who would consider suspending his licence under delegated powers. Mr Dodds' explanation for this was that he said he did not receive the letters concerned. On the balance of probabilities the Committee found that 3 letters correctly addressed to Mr Dodds sent on separate occasions did not go astray in the postal system notwithstanding what Mr Dodds told the committee regarding his alleged difficulties with the post.

In the view of the Committee Mr Dodds has been less than candid in dealing with both the circumstances of his conviction and his failure to deal with official correspondence. This shows a lack of honesty on his behalf which led members to consider whether they are satisfied that Mr Dodds is a fit and proper person to hold a licence. Had members concluded that he was not the licence would have been revoked and very serious consideration was given to taking that course.

However, members took note of the fact that its concerns regarding Mr Dodds' honesty did not arise from his dealings with members of the public but his dealings with the council and in the circumstances decided that a suspension of the licence would be sufficient.

In determining the length of suspension members heard from Mr Dodds that he works 6 days on and 3 days off and that his average income is £30 per shift, although this can be as low as £10- £15 on some days. Mr Dodds also told the Committee that at present driving is his only source of income and that he is in financial difficulties, not having paid any rent for 2 months.

The Committee did however consider Mr Dodds' breach of condition and failure to respond to the council's correspondence to be serious matters showing a disregard for the conditions of his licence and the need for the council to ensure compliance. In the circumstances the Committee determined that a suspension of Mr Dodds' licence for a period of 28 days would be a proportionate and appropriate sanction and the licence will therefore be suspended for that period. Mr Dodds should be aware that should concerns regarding his honesty be found in the future a revocation of his licence would be a real possibility."

Mr Dodds was informed as to the timing of operation of the suspension and advised, by the Assistant Chief Executive – Legal, about his right to appeal to the magistrate's court

The meeting ended at 12.30 pm.