

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE HELD AT 10AM AT THE COUNCIL OFFICES SAFFRON WALDEN ON 23 SEPTEMBER 2011**

Present: Councillor D Perry – Chairman.

Councillors R Lemon, V Ranger and J Salmon.

Officers in attendance: M Perry (Assistant Chief Executive-Legal), R Procter (Democratic Services Officer) and D Scales (Enforcement Officer).

Also present: Mr Walton (the Driver) and Mr Wilson, (Mr Walton's representative).

LC16

**DETERMINATION OF A HACKNEY CARRIAGE/ PRIVATE HIRE DRIVER'S LICENCE**

The Enforcement Officer presented a report for the Committee to consider suspending or revoking the licence of the Driver in accordance with section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 under the heading 'for any other reasonable cause'. The report set out the circumstances of an incident which was alleged to have taken place on 8 July 2011, and which was the subject of a complaint received on 21 July 2011.

The complainant alleged that in the village of Stansted Mountfitchet the Driver, whose registration and Hackney Carriage details she had reported, had attempted to undercut her to the left, but was not able to do so as other vehicles were blocking the path of the road. The complainant further stated that whilst she was looking at him in the rear view mirror she observed him give an obscene hand gesture. The complainant also alleged that the Driver had continued to follow in very close proximity, and had followed her onto the main road, pulling out although traffic was coming from either direction. The complainant also stated that the Driver continued to follow her through the village of Quendon, and had overtaken her there despite the 30mph speed limit, at which point she had sounded her horn. She alleged that in Newport she had observed him overtake stationary vehicles and cause other drivers approaching from the opposite direction to swerve.

The report also referred to the suspension for four days of the Driver's licence on 28 February 2008 in relation to an incident that occurred on 1 November 2007, when the Driver was alleged to have acted in a manner similar to that which was now alleged.

The report referred to the interview conducted by the Enforcement Officer, and set out a summary of the Driver's response to the allegations, which he denied.

The Chairman asked why the complainant was not present. The Enforcement Officer referred the Committee to an email from the complainant, Mrs C Reynolds, which had been circulated to Members, in which she confirmed she stood by her allegations.

The Driver said the interview did not reflect the facts in relation to the point at which certain army vehicles, which had been on the road out of Quendon at the time of the alleged incident, had turned off the main road. He said they had turned off in the direction of Widdington. The Enforcement Officer agreed this particular point might have been recorded wrongly in the record of the interview.

Mr Wilson asked whether the complainant had referred to the colour of the vehicle which had overtaken her. The Enforcement Officer said no such reference had been made.

Mr Wilson referred the Committee to a letter circulated from his client's solicitor, and suggested the Driver give his own account of what had happened.

The Driver produced a number of photographs in support of his account. He said he had overtaken a vehicle in Quendon on the date concerned. There had been army vehicles in front, and the driver immediately in front of him had kept braking, which had given him the impression the driver was either looking for something or was lost. He took the decision to overtake her, then followed the army vehicles. He denied hearing any horn. He said that in Newport, along the stretch where cars were usually parked along the left hand side, he drove through, and he said his photographs showed that as long as there was no oncoming lorry or coach, it was normally possible to pass in this way with no trouble. He had turned off at the station.

The Driver then referred Members to his diary which recorded a pick up at Saffron Walden at 3.55pm to take passengers to Stansted Airport. He would probably have arrived at the Airport at around 4.30pm, and he assumed that he would therefore have been coming back at 4.45pm approximately. He said he was not in Stansted at the time of 3.30pm as alleged.

The Chairman asked the Driver various questions about how close to the car in front he had driven; whether he had put up his hand or done anything which might have been misconstrued as an obscene gesture.

The Driver said he had a health condition which affected his ear; that he was always moving his hands up; that he would not have gestured in such a way to a lady, and that he usually had the radio on and would not have heard the horn.

In reply to a question from Members he said he had received a penalty for speeding some 20 years previously.

Members asked further questions regarding the time of the alleged incident; whether the fares on this date were private hire vehicle or hackney carriage fares; and what records the Driver kept of his work. The Driver denied that on the occasion in question he was hurrying between fares to get back to Newport for a booking at 4pm.

Members asked about the Driver's views on overtaking in Quendon, which was a 30mph area. The Driver said it was unusual, but that the braking of the car in front had made him decide it would be better to overtake, and he had done so on the long strait. Members asked detailed questions about the presence on the road at this point of the army vehicles which had been referred to. The Driver said he had overtaken near the pump in Quendon, and that he had judged it safe to do so. Members asked about the location of the change in speed signs in Quendon.

The Chairman asked the Driver to respond to the allegation that he had caused other cars to swerve in Newport. The Driver said it would be upsetting to him to learn he had caused others to swerve, and that in his view that stretch of road in Newport should be marked with double yellow lines. He used his judgment in overtaking parked cars along this strait, and always gave oncoming cars plenty of room.

Members questioned the Driver about the suspension in February 2008 of his licence. The Driver said that he could not recall the incident for which that penalty had been imposed. He denied that on the earlier occasion he had made a hand gesture.

The Driver's representative said that nearly four years had passed since the earlier incident and it was not realistic for the Driver to recall an incident which took place in 2007. He drew to Members' attention character references which the Driver had circulated, and spoke at length about the Driver's reliability and gentlemanlike character, as shown by the references. Regarding timing of the alleged incident, Mr Wilson referred to the fact that the complaint had been submitted to the licensing authority 13 days after the date of the alleged incident, and whilst he did not wish to make great play of this fact, there was the possibility that the complainant's recollection was not entirely accurate. He said it would have been preferable if the complainant had been present so as to be able to question her about her recollection of timing, and that therefore this issue must be in doubt to some extent.

Mr Wilson said the circumstances of the allegations seemed to indicate that there was simply a difference in perception of each driver about the other's actions. Regarding the allegation that the Driver had made an obscene hand gesture, he submitted that such behaviour was not within the Driver's character, as he was an 'old-school' gentleman, although perhaps a rough diamond. He referred to the character references

which had been supplied. He concluded the Committee should take no action.

The Assistant Chief Executive – Legal advised on the standard of proof, which was the balance of probabilities, and the fact that the burden of proof was dependent on how seriously the Committee regarded the allegations.

Mr Wilson made submissions regarding what action would be appropriate if the Committee decided the allegations were founded. He referred to equivalent penalties which might in such circumstances be imposed by a court, and submitted that any offence would be unlikely to result in the Driver being found not to be a 'fit and proper person', but more likely to amount to a breach of conditions of his licence. In that case, he submitted such a finding would amount to inconsiderate or careless driving, which was a minor offence. He therefore said revocation of the licence was not appropriate and that a suitable action would be to give a final warning should there be any recurrence of such behaviour.

The Committee withdrew to consider the matter at 10.55am and returned at 11.45am to give its decision.

### **Decision**

Mr Walton appears before the Committee this morning to answer allegations that he drove in a manner which was careless and that he made an obscene gesture to another motorist. The facts of the allegation are set out in the officer's report. Unfortunately for understandable reasons the complainant is unable to be present today. Mr Walton has some recollection of events. He recalls overtaking a car in Quendon which he says was going slowly. He says that this was in the vicinity of the water pump. He denies making any obscene gestures.

The versions of events given by the complainant and Mr Walton differ. Mr Wilson on behalf of Mr Walton submits that the complainant's evidence should not be relied upon as he says there is a discrepancy with regard to times. However there can be no doubt that the complainant correctly identified Mr Walton's vehicle both by its registration number and the licence plate. The Committee found the complainant's evidence more reliable. Mr Walton's evidence in contrast was inconsistent in particular with regard to the presence of army vehicles on the road which were not mentioned in the submissions made on his behalf by his solicitor and the position of which varied during the course of his evidence to the Committee.

On the balance of probabilities the Committee find that Mr Walton's driving on the day in question fell short of the standard required. In particular the overtaking of the complainant's vehicle in a 30 mile an hour limit in the location described by Mr Walton is a dangerous manoeuvre.

The Committee also accept that Mr Walton did make an obscene gesture to the complainant as he was following her car as the complainant alleges. The Committee have regard to the previous incident which led to Mr Walton being suspended on very similar facts as supporting that it was more likely than not that he behaved as alleged on this occasion.

The Committee has to determine its actions in relation to its findings of fact. It was submitted on Mr Walton's behalf that if he had been prosecuted he would have received an endorsement which would have left him eligible to drive. However being fit and proper goes beyond merely meeting the Council's licensing standards. These are guidelines only and the Committee must be prepared to depart from them in appropriate cases. Making obscene gestures to other road users has the effect of bringing the licensing authority into disrepute and for that reason cannot be tolerated.

In the light of his driving record and the testimonials supplied the Committee are satisfied on this occasion that Mr Walton remains a fit and proper person to hold a licence. The issue of revocation does not therefore arise. However the Committee must have regard to the fact that had Mr Walton been prosecuted for his manner of driving that day he would have been fined and his licence endorsed. He has not been subject to that punishment. Further by making an obscene gesture to another road user Mr Walton has breached condition 1(a) of his licence which requires him to behave in a polite and orderly manner at all times.

In the light of the Committee's findings the Committee have determined that Mr Walton's licence should be suspended under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause for driving in a manner which was careless and inconsiderate to the public and for the breach of the condition on his licence. In considering the length of the suspension the Committee had regard to fact that a previous suspension of 4 days for very similar matters had not proved effective and therefore determined that the appropriate length of the suspension should be 7 days.

The Committee stress to Mr Walton that it does expect high standards of driving and courtesy from licensed drivers and should similar allegations be proved in the future it would need to give serious consideration as to whether he did remain a fit and proper person to hold a licence and on a future occasion his licence may well be revoked.

The Chief Executive – Legal said the suspension would not be effective until 21 days after he had been deemed to have received notice of the decision, during which period he could appeal.

The meeting ended at 12.50pm.