

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on
3 NOVEMBER 2011**

Present: Councillor E Hicks – Chairman.
Councillors M Lemon, V Ranger and J Salmon.

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

LEH30 EXEMPTION OF PUBLIC

RESOLVED that under section 100 I of the Local Government Act 1972 the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 1 of part 1 of schedule 12A of the Local Government Act 1972.

LEH31 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered the report of the Enforcement Officer regarding a complaint about an incident which was alleged to have taken place on 30 August 2011. Following notification of the complaint, the Assistant Chief Executive-Legal had suspended the driver's licence with immediate effect on 5 October 2011 in the interests of public safety; on 12 October the suspension had been extended until today's date, as the driver had indicated he required time to obtain legal advice.

There being no questions from Members or from the driver, the Chairman invited the complainant to give her account of the incident.

The complainant described the journey, which had been pre-booked with the firm which employed the driver, which was from Stansted Airport on 30 August 2011. She said this was a journey she had done many times and on this occasion the journey was neither safe nor comfortable; that the driver had immediately driven at speed and had continued to do so throughout the journey; and that she had expressed concern and asked three times to be returned to the Terminal building. She said the driver had responded that he 'was only nine miles above the limit' and that she had felt she was a hostage. She had considered, but decided against, getting out of the vehicle at speed, contacting the police or contacting the driver's headquarters whilst in the vehicle. She had decided against these courses of action as she was concerned for her safety. She had asked to be set down at some distance from her home as she did not want the driver to know where she lived. She subsequently complained to the firm which employed the driver.

There were no questions from Members or from the driver regarding the complainant's account.

The driver then gave his account. He disputed the version of events given by the complainant. He said he had met the complainant at the taxi desk at the Terminal and on commencing the journey had attempted to engage her in conversation. It was apparent to him that she did not wish to talk, and he did not try to converse further. He referred to the different speed limits for the stretches of road along which he had driven, which started at 20mph, then changed to 30mph and then 40mph, and on leaving Thremhall roundabout changed to the national speed limit. The driver said he had observed the speed limits and at one point had overtaken a slow-moving vehicle. He said the complainant had asked if he could take her back to the Terminal and he had wondered if she was unwell. She then said he was speeding, and as he had observed a police car he said he would have been stopped by the police if he had indeed been speeding.

The driver said he had been surprised by the complainant's attitude, and had told her that if she had been concerned about his speed then she had only to mention it; and he had continued the journey. She had then asked if the duty manager was at the taxi desk. He had replied that he was not. By that time, they were travelling on a stretch of road which in the driver's view meant they were committed to completing the journey.

The driver said he wished to challenge several points made by the complainant. He said it would not have been possible for the complainant to have seen his speedometer and he questioned her knowledge of the differing speed limits on the roads in question; and he disputed that she had any cause to be concerned for her safety, which he said was at no time compromised, as the safety of his passengers was paramount, and he had attempted to reassure the complainant that she need not be concerned.

The driver said he had been driving for this taxi firm for three years and had had no complaints. He had been surprised to be informed by the taxi firm that he was no longer employed and had requested a copy of the appeal procedure. On being informed that the firm had no appeal procedure he had appealed on 4 September and was still awaiting a response.

The driver said the complainant had described speeding as a feature of the drivers of the taxi firm, and he wondered whether she was taking out her frustration about this on him. He said he felt with hindsight that he should have taken the complainant back to the Terminal when she made that request, but at the time he thought he had reassured her.

Councillor Lemon referred to a letter from the taxi firm which employed the driver, in which it was stated that he had admitted to speeding.

The driver said he had made no such admission.

The complainant said in relation to the question of speeding that the driver had admitted to her during the journey that he was 'driving only 9 miles above the speed limit'. She said she did not see the speedometer but in her view he had been speeding.

The driver asked about the consequences of the sanction of revocation in terms of working in an area administered by another licensing authority. The Assistant Chief Executive-Legal said there were differing licensing standards, and therefore it was not possible fully to answer this question without knowing what the standards of the relevant licensing authority were.

The Assistant Chief Executive-Legal said the Committee had to consider whether the driver continued to be a fit and proper person to hold a driver's licence. If not, the only real option for the Committee would be to revoke the licence. If the Committee regarded the driver as fit and proper, then it could consider suspension.

Members withdrew at 2.30pm to determine the driver's licence; and at 3.10pm returned to give their decision.

DECISION

The driver appears before the Committee this afternoon following a complaint made by the witness concerning a journey she booked with Checker Cars to go from the terminal at Stansted Airport to Great Dunmow. The driver was the driver assigned. The witness says that from the start of the journey the driver was driving too fast. She says she felt unsafe and asked to be returned to the terminal building on 3 occasions. The driver did not comply with these requests but continued driving until they reached the destination.

The driver does not accept this account of events. He says that he was not speeding. He acknowledges that the witness did ask to be returned to the terminal and states he made a mistake in not complying with that request. He explains this by saying that it was a novel situation for him to be in after 3 years 9 months driving for the taxi firm and he did not know how to react.

Faced with this conflict of evidence the first function for the Committee to perform was to make findings of fact. On the balance of probabilities the Committee preferred the evidence of the witness for three reasons. Firstly she says that on one occasion when she remonstrated with the driver he said that he was "only doing 9 mph over the speed limit". Secondly the letter the Council received from the taxi firm stated that the driver had admitted to his employers that he had been speeding. The driver denies making such an admission but did not advance any reason why the taxi firm representative would have said that that was the case if it were not so. Finally an examination of the driver's driving licence shows that he has a habit of exceeding the speed limit having acquired 4 fixed penalty notices for excess speed since January 2008. Indeed he narrowly avoided being disqualified under the totting up provisions upon his most recent offence in January this year,

Although the excess speed is a factor the Committee's overriding concern is that the driver failed to return the witness to the terminal building when she requested him to do so. The passenger has an absolute right to decide whether or not she wishes to continue a journey. The Committee regard the driver's failure to comply with her request as inexcusable and unacceptable.

It is the view of the Committee that the driver's conduct on this occasion was such that he can no longer be regarded as being a fit and proper person. Although the driver has asked us to take into account that a suspension would make it easier for him to obtain a licence elsewhere this is not a relevant consideration. Having concluded that he is not a fit and proper person to hold a licence revocation is the only realistic option open to the Committee.

The licence will therefore be revoked under s.61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause namely that by virtue of his conduct on 30 August the Committee is no longer satisfied that he is a fit and proper person to hold a private hire driver's licence. The Committee are also of the view that in the interests of public safety the revocation should take immediate effect because the driver has shown a propensity to drive in excess of the speed limit and his failure to return passengers to base when asked to do so is a danger to the safety of those passengers.

The Assistant Chief Executive-Legal advised the driver that he had a right of appeal.

LEH32 **DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Committee considered a report relating to a failure by a driver to produce the DVLA counterpart to her licence despite repeated requests. The Committee noted that the driver had still not complied with this condition and that although she had been informed that the matter would be determined at today's meeting she was not in attendance.

DECISION

That the driver's licence be suspended with immediate effect in the interests of public safety as the Committee could not be satisfied in the circumstances that the driver continued to hold a driving licence and met the Council's licensing standards. The suspension is to last until such time as the driver produces an acceptable driving licence to the Assistant Chief Executive - Legal.

LEH33 **DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Chairman welcomed Barry Drinkwater to the meeting, as the representative of a driver in relation to a breach of his private hire licence following the issue of a caution to him on 16 March 2011.

Mr Drinkwater asked the Committee for an adjournment, as he had been instructed by the driver only the previous evening, and neither he nor the driver had received background papers. Bearing in mind the serious nature of this matter, Mr Drinkwater said a short adjournment was appropriate.

At 3.25pm Members withdrew to consider this request; and at 3.40pm returned to the meeting.

RESOLVED to adjourn the meeting to 7 November 2011 at 3pm.

The meeting was adjourned at 3.45pm.

The meeting was reconvened at 3.00pm on 7 November 2011.

The Committee considered the report of the Enforcement officer. He explained that the driver had held a private hire licence since 1999. In 2007 he had appeared before the Licensing Committee for a breach of his licence in that he had failed to notify the Council of a caution within the 7 day period, and he had been suspended from driving for 1 day. In August 2011 his vehicle had been involved in an accident which he had failed to disclose within the required time period. He had been suspended under delegated powers for a period of three days.

A letter had then been received from Essex Police vetting unit which outlined that the driver had been involved in a verbal argument at his workplace in February 2011, and had accepted a Police caution on 16 March 2011 for the offence of using threatening abusive words/ behaviour or disorderly behaviour to cause harassment/alarm/distress. The driver had attended a meeting with enforcement officers in September 2011 where he admitted receiving a Caution but claimed that the Police Officer said he did not need to inform the Council.

Members of the Committee had no questions for the driver. The driver's representative asked the enforcement officer to state the reasons for the caution and to confirm that the driver had thought that he did not need to inform the Council of the caution.

The driver's representative then spoke in support of the driver. He said that the previous offences had been minor and had been dealt with proportionally at the time. The incident which was the subject of the most recent allegation had been exaggerated. It had been investigated internally by his employer and no action had been taken. It had only been referred to the Police by the other party, the driver had been the victim and not the instigator and the Police had been sympathetic to his situation. He asked the driver to read a letter from Essex Witness Care which thanked him for his input to the case.

The driver admitted that he should have reported the incident to the Council and he said that he would ensure that he reported everything in the future. Councillor Lemon asked if the driver had read the conditions on his licence, in particular the first condition "to behave politely and orderly" and he said that he had.

The Assistant Chief Executive – Legal informed the Committee that the breach of condition being considered today was technically the second such incident, as it occurred in March 2011, before the breach in August 2011 for which the driver was awarded a suspension of 3 days.

He further advised that the harassment allegation had already been dealt with through the criminal justice system. The Panel was to consider the breach of condition by failure to report an offence and in this context whether they felt that the driver continued to be a fit and proper person to hold a driver's licence. If

not, it could consider revocation; otherwise it could consider an appropriate suspension.

The driver's representative summed up by stating that between 1999 and 2007 the driver had an unblemished record and to the present day he continued to hold a clean driving licence. The incidents that had led to the suspension had been minor and the driver had mistakenly failed to inform the Council. He had made an assurance that he would do so in the future. He was very concerned about the hardship consequences if the ultimate sanction of revocation was imposed. He hoped that there would be an appropriate outcome to this case.

In answer to a question, the driver confirmed details of his weekly earnings since his meeting with the Assistant Chief Executive - Legal in August.

Members withdrew at 3.30pm to determine the driver's licence; and at 4.00pm returned to give their decision.

DECISION

The driver has held a private hire driver's licence since 1999. On the grant of his first licence and on each renewal since he has been given a copy of the Council's licensing conditions. He has on each occasion signed to acknowledge receipt of the conditions and to confirm that he will observe the same. The licensing conditions require the Council to be notified of certain events including convictions, formal cautions, accidents and fixed penalty notices. The requirement in each case is to give notice in writing within 72 hours in the case of an accident and within 7 days in any other circumstances.

In October 2006 the driver received a police caution for the offence of harassment. The facts surrounding that caution involved a situation between the driver and his ex-wife. The caution should have been reported to the Council by the driver within 7 days. However the Council was unaware of the caution until it received a letter from the police giving details in January 2007. As a result the driver appeared before the Licensing Committee for it to consider whether in the light of the facts underlying the caution the driver remained a fit and proper person to hold a licence. The Committee accepted the driver's explanation of events and was satisfied that he remained a fit and proper person. However it suspended his licence for one day for breach of the condition requiring him to notify the Council of the caution.

Earlier this year the driver was involved in a road traffic accident. He should have reported this to the Council within 72 hours. He did not do so. The Council discovered the fact of the accident from a third party. This breach of condition was dealt with by the Assistant Chief Executive – Legal under his delegated powers and the driver was suspended for 3 days. The Committee noted from The Assistant Chief Executive - Legal's letter to the driver that the Assistant Chief Executive - Legal felt that during the course of their meeting the driver had appeared ignorant of the condition on his licence.

Prior to this, in February this year the driver was arrested upon suspicion of an offence of using threatening/abusive words /behaviour or disorderly behaviour

to cause harassment/alarm/distress. The driver subsequently accepted a caution for that offence. Under the conditions of his licence he ought to have notified the Council of that caution within 7 days. He did not do so and the Council only became aware of the caution when it received a letter from the police in August this year giving details of the offence. When interviewed regarding this matter by an enforcement officer the driver maintained that the police officer who had administered the caution informed him that he would notify Mr Hardy, a licensing officer employed by the council, of the caution that day and that the driver would not therefore need to notify the Council. In the event no notification was received by the Council until it received a letter from the police some 5 months afterwards.

Regardless of the advice given by the police officer the wording of the condition is quite clear. The driver is required to notify the Assistant Chief Executive in writing of any cautions within 7 days of the caution being administered. The Committee would have expected the driver to be aware of the conditions attached to his licence and to have checked them if he had any doubts.

The Committee have heard details of the facts leading up to the caution. This was clearly a work-place related incident and it does not lead the Committee to the conclusion that it is not satisfied that the driver is a fit and proper person. However it is concerned that the driver appears to habitually ignore the condition on his licence requiring him to report events. As the Assistant Chief Executive - Legal pointed out to the Committee, although this is the third time the driver has been required to explain his failure to observe the conditions this event was the second in time. Had it been the third the Committee may well have drawn the conclusion that the driver could not be relied upon to observe the conditions on his licence and that for that reason he could not be considered a fit and proper person to hold a licence. The inevitable consequence of that conclusion would have been a revocation of the licence. However as this breach was the second in time and the driver has given assurances regarding his future conduct the Committee feel able to deal with this matter by way of suspension.

Any suspension must be proportionate. The driver was asked by Mr Drinkwater whether he felt that the previous breaches of condition had been dealt with proportionately and the driver said that he did. The Committee agrees with that view. When the driver was suspended by the Assistant Chief Executive - Legal for what the Assistant Chief Executive - Legal took to be a second breach of condition the suspension was for 3 days. Given the driver's then declared earnings of £80 -£100 per day that effectively amounted to a financial penalty of £300. The Committee accept that that was proportionate. It is now dealing with what is in fact the second breach. Unfortunately the driver's income has declined to £50 -£60 per day. In order to cause the same financial penalty the suspension therefore needs to be longer and the Committee have therefore decided to suspend the driver's licence for 5 days.

The decision of the Committee is therefore that the driver's licence should be suspended under s.61 (1) (b) for any other reasonable cause namely for a breach of condition on his licence for a period of 5 days.

The meeting ended at 4.20pm.