

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 11am on 5
JANUARY 2012**

Present: Councillor D Perry – (Vice Chairman).
Councillors J Loughlin, D Morson and V Ranger.

Officers in attendance: M Chamberlain (Enforcement Officer), R Dobson
(Democratic Services Officer), M Hardy (Licensing Officer) and M
Perry (Assistant Chief Executive-Legal).

LIC38 EXCLUSION OF THE PUBLIC

RESOLVED that, under section 100I 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 Act.

LIC39 DETERMINATION OF A PRIVATE HIRE VEHICLE OPERATOR'S LICENCE

Councillor Perry welcomed those present to the meeting, introducing all members of the Committee and explaining that he would be acting as Chairman for the meeting. As the driver for the second item on the agenda was not present, the Committee would move straight to item three so as not to keep waiting the driver who was in attendance.

The Committee considered the report of the Licensing Officer. The driver had applied for a private hire driver's licence. Together with an enhanced Criminal Records Bureau check, the application had disclosed previous convictions. Although these convictions had been spent in accordance with the Rehabilitation of Offenders Act 1974, officers had considered it appropriate to refer the application to the Committee, rather than to use delegated powers. Under the Council's licensing standards, spent convictions would not prevent a driver from holding a licence; however, legislation and case law (*Adamson v Waveney District Council*) permitted the Committee to admit spent convictions in certain circumstances.

The report set out the driver's spent convictions history up to the last conviction in 1991: all related to drugs offences or were offences to obtain money to buy drugs. After attending a rehabilitation programme whilst in prison the driver had converted to Christianity and had reformed his lifestyle, now being married and working for a local employer in his home county of Suffolk. If successful in his application for a private hire driver's licence, he would be offered employment by 24/7, the main taxi firm operator in Uttlesford.

The Chairman invited the driver to speak. The Driver said his previous life seemed to belong to another person; there had been a dramatic change in his life; he was now a church-goer and a family man; and it was intention to continue to take an active and proper role in society, as he had done since turning his back on his drug dependent past.

Councillor Morson asked questions regarding when the driver had come off drugs and the duration of his rehabilitation whilst in prison. The driver said he had been on a methadone reduction programme and since leaving prison had remained drug-free.

In response to further questions from Councillor Loughlin, he said he now attended neither a rehabilitation programme nor any type of self-help rehabilitation group. In response to a question about his reasons for changing employment, the driver explained he was not leaving his job, but that as a consequence of a reduction in his hours due to the economic situation, he wished to combine his current employment with work as a driver. His employer was happy for him to do so.

In reply to a question by Councillor Ranger regarding where he would be working, he said he would not be working within Uttlesford, but in Suffolk, but that he understood he was required to apply for a licence to the operator's licensing authority.

The Assistant Chief Executive-Legal said that the driver met this authority's licensing standards, but that if Members were minded to depart from those standards he would wish to give further advice regarding the Rehabilitation of Offenders Act 1974.

The Committee withdrew to consider its decision at 11.15am, and returned at 11.20am.

Decision

The Committee found that the driver met the licensing standards and that there was no reason to refuse the grant of a private hire driver's licence.

LIC40

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered the matter adjourned to this date from the meeting on 21 December 2011, and listed as item 2 on today's agenda. No communication had been received from the driver, and she was not in attendance.

Decision

The Committee suspended the driver's licence until such time as it was due to expire and agreed that the Assistant Chief Executive-Legal should have power in consultation with the Vice Chairman (as chairman of today's meeting) or the Chairman of the Licensing and Environmental Health Committee to remove the suspension if considered appropriate.

LIC41

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered the report of the Licensing Officer asking the Committee to consider suspension or revocation of a private hire driver's licence. The driver was in attendance, accompanied by his wife.

The Licensing Officer highlighted the main provisions of his report, and drew to Members' attention the fact that the driver had acknowledged receipt of a copy of his licence which included the conditions of licence. On 11 July 2011 the driver had been cautioned by police for assault. Notice of this caution had been given to the licensing authority only on 5 December 2011, by the operator employing the driver. On 14 December 2011 the licence had been suspended by the Assistant Chief Executive - Legal under delegated powers pending today's hearing.

Members considered the circumstances of the assault for which the caution had been given, as set out in detail in the report.

In reply to a question by members, the Assistant Chief Executive-Legal confirmed that a notice displayed by the driver in the window of his house asking people not to park immediately in front of his house had no legal status. The street in front of the house was a public highway and anyone could park there.

In reply to a question by Councillor Morson, the driver confirmed the sequence of verbal threats made by both parties; in particular that the threat made by the owner of the parked car to put a brick through the house window had been made subsequently to the driver's threat to puncture the tyres of the parked vehicle.

The Chairman invited the driver to speak. The driver said he admitted he should have notified the licensing authority of the caution he had received, but due to an oversight had not done so. It was only upon receiving his employer's newsletter which reminded all drivers of the obligation in the conditions of licence to notify the authority of any caution or conviction that he then told his operator about the caution. The operator informed the Council.

The driver said that there was limited parking on the streets around his house, which had been a longstanding problem both for residents and for through-traffic. Since the incident in question the local authority had installed bollards.

In reply to a question from Councillor Perry, the driver said he admitted that he had lost his cool and hit the individual who had parked outside his house. In response to a request by Members to describe the distance from his house to the road where the car had been parked, the driver gave a brief explanation. A photograph was produced on which the driver marked the situation of his house and the section of road.

Members asked further questions regarding parking. The driver confirmed there were no parking restrictions near his house.

The Assistant Chief Executive-Legal advised members that the breach of condition of the licence in relation to failure to notify the licensing authority of receipt of a caution was not relevant, as that would have been dealt with under delegated powers by means of a period of suspension. The driver had already had a suspension which had taken effect in the interests of public safety.

Although a longer period of suspension had been imposed than was usually the case for a breach of condition, the driver had in effect only lost approximately two days' work, as the driver usually undertook school contracts, and as the suspension had been imposed during school holidays.

The Assistant Chief Executive-Legal said the Committee had to consider today whether the driver was a fit and proper person to hold a licence. The standards had the status of guidance only, and were not binding if Members felt it was appropriate to make an exception.

Today's matter related to a caution received for an offence of violence. The Committee was a judicial authority for the purpose of considering the Rehabilitation of Offenders Act 1974 and under s.7 (3) could have regard to spent convictions if this was in the interests of justice being seen to be done. A caution was regarded as spent as soon as it was given but paragraph 6 of Schedule 2 of the Act applied s.7 to spent cautions.

The purpose of the licensing regime was protection of the public. The Committee had therefore to decide whether it should have regard to the caution issued to the driver. The driver had said he regretted his decision to accept the caution. However to have received a caution the driver would have had to admit the offence. The case of Nottingham –v- Hussain was authority for the proposition that a driver could not seek to go behind a conviction and on the same basis the Assistant Chief Executive – Legal suggested the Committee should not look behind the caution. However, it was hard to see how the driver would have escaped a conviction if the matter had been prosecuted, as he had freely admitted the assault. It was therefore for the Committee to decide whether to revoke the licence, and if so, whether revocation should be immediate in the interests of public safety.

The Committee withdrew to consider its decision at 11.45am and returned at 12.15pm.

Decision

The driver appears before the committee following a suspension of his licence by Mr Perry, the Assistant Chief Executive – Legal, under his delegated powers. The suspension was expressed to take immediate effect in the interests of public safety. The circumstances leading to that suspension were that the Licensing department were informed by the driver's operator that the driver had been given a police caution in July 2010. The driver failed to notify the council of that caution within 7 days as required by the conditions on his licence. That failure is a matter which Mr Perry could have dealt with by a short suspension using his delegated powers. However following an interview with Mr Hardy in which the reason for the caution was explained Mr Perry decided that an immediate suspension was called for and referred the matter to the committee for it to consider what further action (if any) would be appropriate.

The facts giving rise to the caution are set out in the officer's report. Briefly it appears that the driver was involved in an altercation with a third party over a parking space during the course of which he punched the third party in the face.

The driver was arrested and following interview was offered a formal caution which he accepted. He now regrets that decision and says that he would have preferred to have gone to court and entered a plea of not guilty.

Under the Local Government (Miscellaneous Provisions) Act 1976 councils must grant drivers licenses upon application but may not grant a licence unless they are satisfied that the applicant is a fit and proper person. The Act also provides that a licence may be suspended or revoked if a driver has been convicted of an offence of violence since the grant of the licence or for any other reasonable cause.

The council has a policy in the form of its licensing standards which act as a guide as to whether a driver may be considered a fit and proper person. However the standards are just that, a guide, and the committee may and should be prepared to depart from those standards where circumstances require it. Thus, exceptionally, the committee will grant licenses to drivers who do not meet the licensing standards or not revoke licenses in respect of drivers who cease to meet them. In other cases members will not be satisfied that a driver is a fit and proper person even though the licensing standards are met. On the face of it the driver meets the council's licensing standards. However he has been cautioned for an offence of violence.

The committee understands that a caution is deemed to be a spent caution at the time it is given. Usually spent convictions or cautions may not be referred to. However section 7(3) of the Rehabilitation of Offenders Act provides that if at any stage in any proceedings before a judicial authority the authority is satisfied in the light of any considerations that appear to it to be relevant that justice cannot be done in the case except by admitting evidence relating to a person's spent convictions or the circumstances ancillary thereto the authority may admit the evidence even though the convictions may be deemed spent under the Act. Paragraph 6 Schedule 2 of the Act extends this provision to spent cautions.

The courts have considered that licensing committees are judicial authorities for this purpose. The issue which the committee has to determine is whether the driver is a fit and proper person to hold a private hire driver's licence. The committee consider that justice cannot be done in this case without having regard to matters which are deemed spent under the Rehabilitation of Offenders Act and will therefore have regard to the driver's caution and the circumstances of it.

In order to receive a caution the driver had to admit the offence. Had he not accepted the caution he would have been prosecuted and on the basis of what the committee has heard there appears to be no likelihood that anything other than a conviction would have resulted. A conviction for an offence of violence is in itself a reason to revoke a licence. The committee accept that that ground does not apply in this case due to the absence of a conviction.

However the circumstances of the caution do cause the committee grave concern. The driver was engaged in an argument which arose because he objected to a motorist parking his vehicle on the road in a place where it was

entirely lawful for him to do so. In the course of that argument the driver lost his temper and struck the motorist in the face whilst the victim was sitting in his car.

The primary purpose of the licensing regime is to safeguard the public. The circumstances of the driver's caution display a shortness of temper and propensity to violence which are not acceptable. The committee believe that if the driver were to find himself in a situation where he became involved in an argument with another motorist (for example if there had been a near accident where both parties blamed the other) there is a significant risk that the driver would again resort to violence.

In the circumstances the committee is not satisfied that the driver is a fit and proper person to hold a private hire driver's licence and his licence is therefore revoked under s.61 (1) (b) of the 1976 Act for any other reasonable cause. Because of the committee's view of the driver's potential for violent behaviour the committee also consider that it is in the interests of public safety that the revocation should take immediate effect.

The Assistant Chief Executive-Legal informed the driver of his right of appeal.

The meeting ended at 12.25pm.