

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7.30pm on 12  
OCTOBER 2011**

Present: Councillor E Hicks – Chairman.  
Councillors H Asker, J Davey, J Loughlin, M Lemon, V Ranger,  
J Salmon and A Walters.

Officers in attendance: M Hardy (Licensing Officer), A Lee-Moore (Principal  
Environmental Health Officer), M Perry (Assistant Chief Executive-  
Legal) and R Procter (Democratic Services Officer).

**LEH17 PUBLIC QUESTION AND ANSWER SESSION**

A statement was made by Barry Drinkwater, president of the Uttlesford  
Licensed Operators and Drivers Association.

Mr Drinkwater said regarding the annual review of the table of fares, that  
consultation had taken place and that Cabinet had raised no objections to the  
proposals, which had come into effect on 1 October.

The Association's annual budget for 2011/12 had been set and discussions  
were taking place with the Assistant Chief Executive-Legal regarding the  
2012/13 budget.

Regarding the Quality Taxi Partnership, Mr Drinkwater said he wished to record  
his thanks to the Licensing Officer, Murray Hardy, for his work with the Steering  
Group on planned provision of CCTV in selected vehicles. The steering group  
would meet again on 21 October when it was hoped to finalise police and  
contract proposals prior to launch and equipment installation.

Mr Drinkwater said arrangements were being finalised for Members to  
participate in a tour of trade operations.

In reply to a question by Councillor Walters Mr Drinkwater confirmed the police  
had been actively involved in the consultation on CCTV installation and had  
participated in the work of the Steering Group on the proposals.

The Chairman thanked Mr Drinkwater for his statement.

**LEH18 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors D Morson and D Perry.

LEH19      **MINUTES**

The Minutes of the meeting held on 13 July 2011, and of the extraordinary meetings held on 22 August and 23 September 2011 were received, confirmed and signed by the Chairman as a correct record.

LEH20      **BUSINESS ARISING**

(i)      **LC13 – noise audibility conditions**

The Assistant Chief Executive-Legal said the Council had adopted the amendment to the licensing policy set out in the Minute.

(ii)      **LC14 – determination of a matter relating to a private hire driver's licence**

The Assistant Chief Executive-Legal said no appeal had been received from Mr Haynes.

(iii)      **LC16 – determination of a hackney carriage/private hire driver's licence**

The Assistant Chief Executive-Legal said the time for appeal had not elapsed but that indications were that Mr Walton would not be lodging an appeal.

LEH21      **CONSULTATION ON PROPOSAL FOR DEREGULATION OF SCHEDULE 1 OF THE LICENSING ACT 2003**

The Committee received a report on a consultation by the Department for Culture, Media and Sport on a proposal to remove licensing requirements in England and Wales for most activities currently defined as 'regulated entertainment' in Schedule 1 to the Licensing Act 2003. The Committee was requested to consider the consultation proposal and make a decision as to whether it wished formally to respond before the close of consultation on 3 December.

Members considered draft answers to questions posed in the consultation document. Members felt the proposals comprised a major change, and expressed concern that under the revised law an event such as a carnival could be held without a licence, which without regulation could result in significant problems.

The Assistant Chief Executive-Legal said the proposals would enable premises which were not licensed to stage an event. However, alcohol could be sold if Temporary Event Notices were served, which in the context of a large event could mean for example separate marquees having Temporary Event Notices.

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

In the Uttlesford area there were very few venues for large numbers of people, therefore there was the potential for open-air events to take place.

The Chairman summarised the discussion, saying that it was apparent Members wished to highlight their concerns regarding health and safety, and that officers should submit a response indicating that this Committee's view was that this was taking deregulation a step too far.

Councillor Asker asked about the impact of the proposals on funding. The Assistant Chief Executive-Legal said the difference in terms of income would be marginal because this licensing authority authorised very few licences for entertainment only. Where premises which were not licensed were being used, the licensing authority had less control.

The Assistant Chief Executive-Legal said costs of policing or enforcing environmental health implications arising from the proposed deregulation were difficult to estimate.

RESOLVED that the Committee instruct officers to respond to the Government's consultation in the terms suggested, whilst emphasising concern that the proposed changes would lead to increased difficulties and costs for licensing authorities, particularly those in rural areas such as Uttlesford.

LEH22

## **POLICE REFORM AND SOCIAL RESPONSIBILITY BILL**

The committee received a report on amendments to the licensing legislation arising from the Police Reform and Social Responsibility Bill. The Assistant Chief Executive-Legal said the bill had now received royal assent and the statutory instrument would come into effect in November 2011. The report set out the main areas of reform, notably the extension of the definition of responsible authorities and interested parties to make representations in relation to a review of a licence. Responsible authorities would include primary care trusts and local health boards. More controversially the licensing authority itself would become a responsible authority. In the consultation on the bill, this provision had been the subject of the committee's disapproval as Members considered it desirable that the licensing committee should remain independent. In any event as all councillors were now interested parties in their own right, a member of the licensing committee could therefore make representations or apply for a review, the only restriction in those cases then being that such a member would not be able to take part in the decision making process when the matter came to be considered by the committee. *\* Please refer to post-meeting note below.*

Members expressed concern that in future a person from outside the district would be able to apply for a review or make representations (although such applications could be rejected if such an application was vexatious or frivolous), but noted that this provision was now law.

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

The Assistant Chief Executive-Legal drew to Members' attention a further provision which in his view was helpful, a change to the law relating to Temporary Event Notices. Where a TEN was served in respect of premises which had the benefit of a premises licence or club premises certificate, the licensing authority would have power to transpose conditions attached to such licence or certificate to the TEN if it considered it appropriate to do so. However, it should also be noted that the bill introduced provisions for extending the number of hours over which a TEN could be conducted and the number of days in a calendar year for which TENs could be held.

RESOLVED that the Committee note the report.

*\*[Post meeting note – it has now been ascertained that the legislation is unlikely to be effective until April 2012.]*

LEH23

### **POSSIBLE REFORM OF THE LAW RELATING TO HACKNEY CARRIAGES/PRIVATE HIRE VEHICLES**

The committee received a report informing members of the Commons Select Transport Committee on possible reforms to the law relating to taxis and private hire vehicles. The report concluded that there should be a thorough overhaul of the relevant legislation and recommended that government should provide a timetable for such reform before the end of 2011, although nothing had been published to date. The Select Committee had recommended that the government should commit to reform the law within the lifetime of this parliament.

The Assistant Chief Executive-Legal said that at present local authorities adopted different standards with regard to licensing, but that the Select Committee had indicated its view was that issues regarding public safety should be dealt with in future by way of national standards. This authority had very high standards regarding safety, and the Assistant Chief Executive-Legal said he had concerns regarding the removal of local discretion. However in areas not relating to public safety the Select Committee appeared to have favoured a degree of local discretion.

Councillor Loughlin questioned what would happen where the authorities in another European Union country confiscated a driver's licence for speeding. The Assistant Chief Executive-Legal said he was not specifically aware of whether other countries' police would have the power to endorse a UK driving licence, but that it was certainly likely there were cross-country powers.

RESOLVED that the Committee note the report.

LEH24

### **EXERCISE OF DELEGATED POWERS**

The committee received the report of the Assistant Chief Executive-Legal on the exercise of his delegated powers since the committee had last met.

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

He said that since the report had been written, he had interviewed a further two drivers for breaches of conditions attached to their licence, both of whom had been suspended for 2 days.

RESOLVED to note the report.

## LEH25 **APPEALS**

The committee received a report setting out the outcome of appeals dealt with since the last meeting.

In relation to the appeal of the review of the premises licence for Costcutters in Saffron Walden, the Assistant Chief Executive-Legal said the matter had been delayed due to the timing of a hearing listed by the court, but that following a period of compliance with conditions put in place, the appeal had eventually been dealt with by consent with the conditions remaining and the period of suspension being reduced to 1 week.

Regarding the matter of Mr Burgon, the court had upheld the committee's decision and ordered Mr Burgon to pay the Council's costs in the sum of £1,750. Mr Burgon had not appealed against that decision.

## LEH26 **ANY OTHER BUSINESS**

### **Date of extraordinary meeting**

The Chairman said a panel of Members would be required to attend an extraordinary meeting of the Committee on Thursday 3 November at 2pm and it was agreed that the following Members would form the panel: Councillors Hicks, Lemon, Ranger and Salmon.

## LEH27 **EXCLUSION OF PUBLIC**

The Chairman asked all those present to depart other than those who were involved in the hearing of the following business. Councillors Hicks, Ranger and Salmon remained. The driver was present, and was represented by Mr Barry Drinkwater.

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.

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

Members considered the report of the Licensing Officer regarding an application to renew a private hire driver's licence.

Mr Drinkwater addressed questions to the Licensing Officer, following which the Chairman invited him to make representations on behalf of the driver. Mr Drinkwater addressed a number of aspects, and asked the driver to clarify several points for members.

The Licensing Officer then put questions to the driver. There were no questions from Members.

The Assistant Chief Executive-Legal advised that a licensing committee could not look behind a caution and that the driver met the committee's standards, but that the committee had to consider on a factual basis whether he was a fit and proper person. The issue was a failure to declare a caution within 7 days. The driver confirmed he had not driven since 30 September 2011, when his licence had been due for renewal.

At 9.25pm the committee withdrew to consider its decision, and at 9.33pm gave its decision as follows:

**DECISION**

Having heard the evidence the committee are satisfied that the driver remains a fit and proper person and the licence will therefore be renewed.

The committee would have suspended the licence for breach of the conditions requiring cautions to be notified within 7 days but in view of the fact that the driver has not driven since his licence expired have decided that no further action is required.

**URGENT BUSINESS – DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Assistant Chief Executive-Legal referred the committee to the report. The driver had asked that consideration of the report be deferred as he wished to obtain legal advice. The Assistant Chief Executive-Legal explained that the reason why the driver had been suspended with immediate effect was that he had declined to attend an interview and in the light of the allegation he felt he had no choice other than to issue such a suspension. The suspension was due to expire at midnight, If members were minded to defer consideration of the report it could extend the suspension with immediate effect in the interests of public safety until after the meeting to consider whether or not to revoke the licence.

RESOLVED to suspend the licence with immediate effect in the interests of public safety until midnight on 3 November 2011.

The meeting ended at 9.40pm.

**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



Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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,

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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.

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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

Present: Councillor E Hicks – Chairman.  
Councillors J Davey, D Perry and V Ranger.

Officers in attendance: M Chamberlain (Enforcement Officer), M Hardy  
(Licensing Officer), M Perry (Assistant Chief Executive-Legal),  
and P Snow (Democratic and Electoral Services Manager).

Also present: Mr B Drinkwater (representing Mr Harvey), Mr M Harvey (driver –  
item 2) and Mr J Hooker (driver – item 3),

LEH34

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

The Assistant Chief Executive-Legal clarified that both this and the final item were not part 2 items and would be considered in public session.

The Committee considered the report of the Licensing Officer regarding an application from Mr J Hooker for the grant of a Private Hire Driver's Licence. The Council's licensing standards stated that not more than three minor motoring offences should appear on a DVLA driver's licence during the three previous years. The first of these convictions had lapsed and on the face of it Mr Hooker appeared to meet the licensing standards.

However, Mr Hooker did face a disqualification for exceeding 12 points on his licence within a three year period. There were only limited grounds for not disqualifying a driver in these circumstances, none of which were relevant to the question of whether the driver was considered a fit and proper person to hold a licence.

Had Mr Hooker been disqualified for the standard period he would not have met the Council's licensing standards for three years after the disqualification expired or 12 months after the licence was reissued whichever was later. Thus the earliest that Mr Hooker would have met the licensing standards would have been July 2013.

The report referred to the interview conducted by the Licensing Officer where he gave an explanation for the circumstances that had led to the endorsements.

The Licensing Officer asked Mr Hooker to confirm that he had received the amended report issued for this meeting and he confirmed that he had.

It was noted that Mr Hooker was licensed and working as a Hackney Carriage Driver by Broxbourne Borough Council. He now wished to transfer from that area to Uttlesford to operate a new Private Hire Company with his partner in Great Dunmow.

Members asked various questions of the Licensing Officer and Mr Hooker confirmed that he had no questions.

Mr Hooker then gave his account. He said that the report was self-explanatory and that he should not have committed the offences that had led to the endorsements. He now wished to open a new company in Great Dunmow operating a 24 hour service and he believed there was a strong public demand for the service he would provide.

Members then asked Mr Hooker a number of questions about his application. In response to the first question, Mr Hooker said that three points had now been removed from his licence and that he should not have been caught doing the things that had led to the convictions.

The chairman emphasised that the Council's policy was intended to produce high standards operated by drivers complying with the law. Mr Hooker gave an assurance that the offences he had committed would not happen again. He had now obtained a hands free kit for his mobile telephone and his behaviour would be up to scratch.

Councillor Perry referred to the case for exceptional hardship he had made at Harlow Magistrates Court and asked whether Mr Hooker was still dependent upon driving to make his living. Mr Hooker confirmed that the exceptional hardship case he had made was still applicable. It would take time to build up his new business in Dunmow and he would need to be a driver himself to help the business to become established.

In response to further questions, Mr Hooker said that his partner also had a driver's licence and that he had dependent children he was required to transport by minibus.

The Assistant Chief Executive-Legal clarified a number of points regarding Mr Hooker's convictions and said that the fit and proper person test was not affected by the decision of the magistrates' court not to disqualify Mr Hooker upon exceptional hardship grounds. He said that the determination of the fit and proper person test was a matter for members to determine and could not be influenced by what the court had decided.

Mr Hooker and the licensing and enforcement officers then withdrew to enable the Committee to determine the driver's licence application. After a period of consideration they invited the driver and the officers to return to give their decision.

## **DECISION**

Mr Hooker applied to the council for a joint hackney carriage/private hire driver's licence on 1/11/11. He had not been licensed by this council previously. The legislation provides that subject to an applicant meeting certain criteria (which are met in Mr Hooker's case) a local authority shall grant a licence but that it shall not grant a licence unless it is satisfied that the applicant is a fit and proper



person. In deciding whether applicants are fit and proper local authorities are entitled to have policies and Uttlesford has such a policy in the form of its licensing standards. So far as an applicant's driving record is concerned the relevant standards are as follows:-

1. "Not more than 3 minor motoring offences during the last 3 years. For this purpose a minor motoring offence is defined as one where 5 or less penalty points have been endorsed on the driver's licence
2. No serious motoring offences in the last 3 years. For this purpose a serious motoring offence is defined as one where 6 or more penalty points have been endorsed on the driver's licence
3. Where a driver has been disqualified from driving for any reason an application for a licence will normally not be considered for 3 years from the date that the disqualification expires or twelve months from the licence being re-issued if this period is greater"

Mr Hooker's driving licence reveals a number of motoring offences. There was a fixed penalty imposed for a traffic signal violation said to have occurred on 1 June 2008. There were 2 offences of using a mobile phone on 20 May 2009 and 18 June 2009. Each of these offences attracted 3 penalty points. On 25 January 2010 Mr Hooker was stopped for an offence of excess speed. This would have given Mr Hooker at least 12 points on his licence within a 3 year period and under the totting up provisions Mr Hooker faced an automatic 6 month disqualification. He was therefore obliged to appear before the magistrates' court. Mr Hooker was legally represented and the magistrates were persuaded to exercise their discretion not to disqualify on the basis that a disqualification would cause Mr Hooker exceptional hardship as it would deprive him of his living as a private hire driver. The magistrates imposed a fine of £167 and ordered Mr Hooker's licence to be endorsed with 4 penalty points.

At the time of his application for a licence Mr Hooker did meet the council's licensing standards as the first conviction disclosed by his licence was then more than 3 years old leaving him with 3 minor motoring offences within the last 3 years. However the object of the licensing standards is to ensure the safety of the public. Those with bad driving records would not be licensed to drive. In the normal course of events a person who gets 12 points on their licence is disqualified from driving. The reason behind the licensing standard which provides that an application would not normally be considered within 3 years of the expiration of a period of disqualification is to demonstrate that the driver has modified his approach to driving so as not to break the law.

The Committee are aware that there are circumstances in which magistrates do have a discretion not to disqualify a driver with 12 points on his licence. However none of those circumstances go to the issue as to whether the driver is a fit and proper person. That is a decision for the Licensing Committee to take in each case. In determining whether an applicant is fit and proper the Committee are aware that the courts have held that the personal circumstances of a driver are not relevant save for in exceptional circumstances to explain the conduct of a driver in the commission of an offence. Thus the very matters which give magistrates a discretion not to disqualify are matters the courts have said should not be taken into consideration by the Committee on an application for a licence.

The fact that Mr Hooker now meets the council's licensing standards does not entitle him to a licence. The committee may have regard to the fact that had the magistrates not exercised their discretion Mr Hooker would have been disqualified for 6 months from 20 April 2010, that is to say until 20 October 2010. If that had been the case Mr Hooker would not have met the Council's licensing standards until 21 October 2013.

In light of this and in the light of Mr Hooker's driving record the Committee is not satisfied that he is a fit and proper person to hold a private hire drivers licence and the application is therefore refused.

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

**LEH35 EXCLUSION OF 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.

**LEH36 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

It was agreed to adjourn until 5 January 2012, the consideration of a report concerning the possible suspension or revocation of a Private Hire Driver's Licence in the absence of the driver concerned. The driver's licence would be suspended until that meeting but it was not necessary for the suspension to take immediate effect in the interests of public safety.

The public was readmitted to the meeting for the consideration of the remaining business.

**LEH37 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Committee considered the report of the Licensing Officer regarding an application by Mr M Harvey for the grant of a Private Hire Driver's Licence. Mr Harvey was present and was represented by Mr B Drinkwater.

The Assistant Chief Executive Officer-Legal explained that the item would be taken as a part 1 item as the matter was in the public domain.

The Licensing Officer said that, following receipt of Mr Harvey's application, examination of the Enhanced Criminal Records Bureau Disclosure revealed a conviction which had not been spent in accordance with the Rehabilitation of Offenders Act 1974.

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

Whilst on holiday in Mexico in 2004, Mr Harvey had purchased and subsequently brought into the country what he had described as a zapper in a small box. In interview with the Licensing Officer, Mr Harvey had said that the item had been bought in a joke shop. The effect of firing the zapper was to emit an electrical discharge equivalent to that found in livestock fencing.

The Licensing Officer outlined the circumstances in which Mr Harvey had been arrested and then convicted of one offence of possessing a prohibited weapon contrary to Section 5 of the Firearms Act 1968.

Current licensing standards stated that an applicant shall not have any convictions not deemed spent within the meaning of the Rehabilitation of Offenders Act 1974.

Members then asked a number of questions of the Licensing Officer concerning the nature of the zapper device found in Mr Harvey's possession.

Mr Drinkwater presented his case on behalf of Mr Harvey for the grant of a licence. He referred to the report of the Licensing Officer and said that the lighter tone of the words used to describe the zapper in paragraph 4 of the report was more fitted to the circumstances of how the device had been purchased and brought into the UK. Mr Harvey said that the device had never been used.

In presenting his case, Mr Drinkwater said that the key issue was whether Mr Harvey was a fit and proper person. He believed that Mr Harvey deserved to be treated as an exception to the Council's policy. He had been open and honest with the Police and with the Licensing Officer and had dealt with the matter in a transparent and straightforward manner.

He asked Mr Harvey to agree with the Council's policy standards and Mr Harvey agreed that he did so. He then invited Mr Harvey to agree that he did not meet the standards in section 4 about criminal convictions and again Mr Harvey agreed this was the case. Mr Harvey said that he had been 25 years old at the time of his conviction. At the time of the purchase of the item concerned he had been enjoying a family holiday in Mexico. He had bought the item for approximately £15 in a joke shop as he thought it was funny and should be regarded as a toy and not as a weapon.

The box containing the device had been kept in various drawers and cupboards for about four years before he had inserted a battery and tried the zapper on himself. It had then ended up on the floor of his car after being placed in the side compartment during an office move.

He had been arrested in February 2009. This happened when his brother was arrested on a night out with friends. He had gone to the Police station with his brother and was then arrested. He was released within minutes and bailed.

Mr Harvey said that the police were friendly and had appeared amused rather than concerned by the nature of the device. He went again to the police station in April 2009. He was informed that the CPS had decided to charge him with an

offence. The police had been apologetic and said that they had wanted to caution him.

In response to a question about why he supposed the CPS had decided to prosecute him, Mr Harvey replied that they had looked at a bit of paper and seen it as a no lose case.

A further question was asked of Mr Harvey about how his legal adviser had dealt with the matter. Mr Harvey replied that the matter had been handled badly. He had paid for a barrister and had told him that he hoped to walk away with no penalty. His barrister had then told him that he would try to get him off with a fine.

Mr Harvey was then asked whether he had anything further to say to members. He replied that he had told the complete and utter truth and hoped that the Committee would be able to look beyond a bit of paper.

The Licensing Officer then asked Mr Harvey to comment on the Firearms Act which had created a number of serious offences. Mr Harvey agreed this was the case but said that had he for one moment thought the device would be classed as illegal he would not have bought it.

The Licensing Officer then asked why he thought the custody officer had viewed the matter as a potentially serious case and referred it to the CPS. Mr Harvey said that he thought that all matters were referred to the CPS.

The Chairman then invited members to ask questions of the applicant. Councillor Perry asked if the account he had given was the same as given to the court. Mr Harvey said that the account given was the same as in court.

The Assistant Chief Executive said that Mr Harvey had pleaded guilty and the fine should have been reduced by one third. He considered it a high punishment for a first offence. The burden of proof was on Mr Harvey to make a case for the Council to depart from the licensing standards.

In summing up on behalf of Mr Harvey, Mr Drinkwater agreed that the Council's duty was to licence only those applicants seen as fit and proper persons. Mr Harvey had an excellent driving record and had just one blot on his record which had resulted in one unspent conviction. This was the outcome of spending £15 on a toy at 25 years of age. The Police had been surprised the matter had not been dealt with by way of a simple caution. He felt that bad luck had led to the conviction and asked members of the Committee to treat Mr Harvey as an exception of the established policies.

The applicant and his representative and the Licensing Officer then withdrew to enable the Committee to determine the application. After a period of consideration, the applicant and his representative, and the Licensing Officer were invited to return to hear the decision.

### **Decision**

Mr Harvey applied to the council for a joint hackney carriage/private hire driver's licence on 22 November. He had not been licensed by this council before. On his application form he declared that he had a conviction on 14 May 2009 for possession of a prohibited weapon. Details of this conviction were confirmed in the CRB check carried out during the application process. As a result of this conviction Mr Harvey does not meet the council's licensing standards which provide that drivers should not have convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974. The rehabilitation period for Mr Harvey's offence is 5 years which will expire on 15 May 2014.

The legislation provides that subject to an applicant meeting certain criteria (which are met in Mr Harvey's case) a local authority shall grant a licence but that it shall not grant a licence unless it is satisfied that the applicant is a fit and proper person. In deciding whether applicants are fit and proper local authorities are entitled to have policies and Uttlesford has such a policy in the form of its licensing standards. Where an applicant fails to meet the council's policy the onus is upon him to show that there are grounds upon which an exception to policy should be made.

Mr Harvey has given details of the circumstances in which he acquired the offending item. He was on holiday in Mexico with the lady who is now his wife and relatives. He says that he saw the item in a mall. It was in a box with a picture on the front of an old lady zapping a burglar. He says that he bought it as a joke. In his evidence to the Committee he said that when he got home he put batteries in it and tried it. He said that the only person who had been zapped by it was himself.

When giving details of his arrest he sought to play down the seriousness of the offence by saying that the police were not overly concerned and that when he answered his police bail the officer he dealt with was surprised that the CPS wanted to charge him rather than administer a caution.

He ultimately appeared before the magistrates' court where he was represented by a barrister. He pleaded guilty and was fined £1200 and ordered to pay £87 costs. The maximum sentence the magistrates could have imposed was £5000 or 6 months imprisonment or both. Mr Harvey was critical of the quality of his legal representation. He said that his barrister asked him what outcome he wanted. Mr Harvey said that he hoped to walk away with nothing to which his barrister said he would try to get him a fine.

Despite the efforts of Mr Harvey and Mr Drinkwater on his behalf to play down the seriousness of the offence the Committee are not satisfied that it was a trivial matter. Mr Harvey had tested the weapon on himself. He was clearly aware of its potential and yet he retained it in his possession. There was no satisfactory explanation for this. The CPS (which would have had more information than was available to the Committee this afternoon) was clearly of the view that the matter was sufficiently serious to justify a prosecution in the public interest. The level of fine imposed by the magistrates for a first offence

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

with an early plea of guilty clearly shows that the magistrates considered the offence to be a serious one and if Mr Harvey's barrister was going to try to get a fine for him the implication is that the barrister considered the offence so serious that a custodial sentence was a possibility.

The council's licensing standards are there to provide guidance as to what the Committee will look for in determining whether an applicant is a fit and proper person to hold a private hire drivers licence. The object of the standards is to ensure the safety of the public. Where an applicant wishes the Committee to make an exception to policy and grant a licence when he does not meet the licensing standards the burden is upon him to show that there are grounds for doing so.

Having decided that the offence was a serious matter and not a trivial one as portrayed by Mr Harvey the Committee find that there are no grounds for it to depart from its policy. Accordingly the Committee are not satisfied that Mr Harvey is a fit and proper person to hold a hackney carriage or private hire licence and the application is therefore refused.

The Assistant Chief Executive-Legal advised the applicant of his right of appeal.

The meeting ended at 4.35pm.

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

**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

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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.



**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

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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

Minutes of previous meetings

Licensing and Environmental Health Committee, 18 January 2012, item 3

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.