

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7pm on 28
JUNE 2012**

Present: Councillor D Perry – (Chairman).
Councillors J Davey, M Lemon, and J Salmon.

Also present:

Mr B Drinkwater, Chairman ULODA and the Operator (in relation to agenda item 2); the Driver (in relation to agenda item 4).

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

The Chairman suggested that the Committee deal with the matters listed on the agenda in the order of item 3 first, then item 4 and finally item 2.

LIC1 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 paragraphs 1 and 3 of part 1 of Schedule 12A of the Act.

LIC2 DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE

The Committee considered the report of the Enforcement Officer, which had been circulated to the Operator and her representative prior to the meeting. The Enforcement Officer took Members through the report, which set out the circumstances of the incident to which the determination of the operator's licence related, in that the Operator had accepted two bookings in July and August 2011, which had been carried out by a driver who was a private hire driver licensed by Transport For London, not licensed by this authority. The report referred to the legal requirement that where a private hire vehicle is provided the vehicle and the driver must both be licensed by the same authority as the operator. The report invited Members to determine whether the licence should be suspended or revoked.

Mr Drinkwater asked for confirmation that a further option open to the Committee was to take no action. The Assistant Chief Executive-Legal confirmed that this was the case.

Mr Drinkwater asked for details of the legal authority for the requirement that a private hire vehicle, driver and operator must be licensed by the same licensing authority. The Assistant Chief Executive-Legal said it was clear from both statutory interpretation and case law such as Birmingham v Dittah that all three licences must be issued by the same licensing authority. He said the Operator must have accepted this to be the case as she had accepted the caution

Mr Drinkwater asked further questions in particular with reference to the two bookings referred to in the report.

The Enforcement Officer replied that it had been his understanding from the interview with the Operator that she had not intended to drive the customer herself but to accept the booking on behalf of her company. He said he had understood the term 'given away the booking' to mean that the booking was subcontracted.

Regarding the reference in the report to the attendance at the Council's offices by the Operator when she was formally cautioned for the offence of operating a private hire vehicle not being driven by a licensed driver, Mr Drinkwater asked the Enforcement Officer whether he accepted the addition of the words 'not licensed by this authority'. The Enforcement Officer agreed that this was accepted.

In reply to a question from the Chairman, the Operator confirmed she had received the agenda papers before the meeting.

Mr Drinkwater then addressed the Committee on behalf of the Operator. He said the Operator was a fit and proper person to hold an operators' licence, and had done so since April 2010. Her licences had twice been renewed as a matter of course.

The Operator explained that due to having taken over from the business' previous owner she had re-branded the company. It was this change of details which had led to her not receiving a briefing note from the licensing authority. The briefing note had included information for operators about the requirement that where a private hire vehicle was provided the vehicle and the driver must both be licensed by the same authority as the operator. The Operator said she had had no idea that subcontracting to her preferred drivers was not permitted if they were not licensed by this authority. She had previously asked a member of the licensing team if subcontracting was permitted, and had been informed that she could do so if she gained no financial interest.

The Operator explained the circumstances of the booking stating that she had let a driver licensed by Transport for London take the job, and that he had kept all the payment. She said that now she was fully aware of the conditions relating to her operator's licence she believed she was fully compliant, that she was still a fit and proper person to run her business and that she had intended no wrong.

In reply to a question from the Chairman the Operator said she accepted that she was guilty of the offence of operating a private hire motor vehicle not being driven by a driver licensed by this authority.

Councillor Salmon asked whether the Operator had on previous occasions given away bookings to drivers not licensed by this authority. The Operator said she had not.

Mr Drinkwater then summed up on behalf of the Operator. He asked the Committee to exercise their judgment in favour of finding that the Operator continued to be a fit and proper person to continue holding an operator's licence.

At 7.30pm the Committee withdrew to consider the matter. At 7.35pm the Committee returned to give its decision.

DECISION

The Committee was satisfied that the Operator remained a fit and proper person to hold an operator's licence.

LIC2

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered a report by the Enforcement Officer regarding failure by the Driver to notify the licensing authority of two fixed penalty notices he had received on 9 October 2011 and 19 April 2012. The Driver had earlier today emailed details of the notices to the Council.

There being no questions from Members or from the Driver on the report, the Chairman invited the Driver to make a statement. The Driver said he admitted he was entirely at fault in failing to report to the licensing authority the two fixed penalty notices. In reply to questions, the Driver said he had not been carrying passengers at the time of the incident when he had been found to be speeding, nor when he had been driving whilst using a mobile telephone. In reply to questions about the operator for whom he worked, the Driver said he would not in future be driving for that operator, and he confirmed that his income did not depend on doing so.

The Committee withdrew at 7.40pm to consider its decision.

The Committee returned at 7.55pm and the Chairman read out the Committee's decision as follows.

DECISION

"The Driver has been licensed by this council as a private hire and hackney carriage driver since 5 October 2011.

On 15 May 2012 Essex Police noticed a vehicle formerly licensed to Ardent Parking being driven with three passengers on board. They followed the vehicle and stopped it in the vicinity of the premises of Ardent Parking. The Driver was driving the vehicle and identified himself to the police officers by producing a fixed penalty notice which gave his details.

As a result of the police stop the Council learned of the fixed penalty notice which had been issued to the Driver.

The Driver belatedly wrote to the Council by email today to inform the Council of two fixed penalty notices he has received since the grant of his licence. The first of these was on 9 October 2011 – only four days after his licence was granted. This was for an offence of excess speed. The second was on 19 April this year for an offence of using a mobile phone whilst driving. Under the terms of his licence he should have notified the Council in writing of the issue of the

fixed penalty notices within 7 days. In breach of that condition no such notification was given before today.

On 5 September 2011 the Driver was stopped by the police whilst driving a licensed private hire vehicle without holding a driver's licence. As it appeared at that time that he was acting in ignorance at the behest of his employer and he made an immediate application for driver's licence he avoided prosecution on that occasion.

Under the Local Government (Miscellaneous Provisions) Act 1976 the Council has power to suspend or revoke or to refuse to renew a driver's licence on the grounds that since the grant of the licence the driver has been convicted of a specified offence or for any other reasonable cause.

In this case the Driver has breached a condition of his licence twice by failing to notify the Council of a fixed penalty notice within 7 days. The Driver admitted that he had read the conditions on his driver's licence but stated that he could not recall any of them. That situation is not acceptable to the Committee. The Committee expects all drivers to be aware of the conditions on their licence and to observe them at all times.

By his conduct the Driver has shown a complete disregard to the conditions on his licence. It is clear that the warning given by the enforcement team previously has not had a deterrent effect. In the circumstances the Committee take a view that a suspension of the licence is necessary to act as a deterrent both to the Driver and to others in the trade. The Committee therefore suspends the Driver's licence for any other reasonable cause namely the breach of condition on the licence. Given the previous offence of driving without a driver's licence and the fact that a suspension will not have an appreciable impact upon his income the Committee consider a suspension of two months to be an appropriate and proportionate sanction.

The Assistant Chief Executive-Legal informed the Driver of his right to appeal and that he had a right to continue driving pending the expiry of the appeal period of 21 days.

The Driver indicated he would not appeal against the suspension.

LIC3

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered the report of Mrs Scales, Enforcement Officer. The Driver was not present, but had received the papers for the meeting which had been handed to him.

The Committee having had the opportunity to read the papers in detail prior to the meeting, Members withdrew at 8pm to consider their decision. At 8.05pm the Chairman gave the Committee's decision as follows.

DECISION

The Driver has been licensed by this Council as a private hire and hackney carriage driver since 15 July 2010. He has worked throughout for a firm called Ardent Parking. This firm parks vehicles for persons using Stansted Airport and provides them with transport to and from the terminal. Although no fares are charged for this service it forms part of the business and the costs of transfer therefore form part of the charge for parking. This constitutes the operation of private hire vehicles under the Local Government (Miscellaneous Provisions) Act 1976 which requires the use of a licensed vehicle for the purpose of fulfilling the contract. It is a requirement of the Act that no licensed vehicle may be used as such unless the licence plate issued by the licensing authority is displayed. Using a licensed vehicle without displaying the plate and using an unlicensed vehicle are both offences under the Act. It is a further offence under the Act for a licensed driver to drive a private hire vehicle if he is not wearing his driver's badge issued by the licensing authority.

Ardent Parking's operator's licence expired on 31 March 2012. No application had been made by that time to renew it. When this was drawn to the attention of Ardent Parking instead of ceasing operations as it should it carried on business but removed the licence plate from its licensed vehicle, a VX LT 35 registration number X113 MGN. On 16 April 2012 the Driver was driving that vehicle with passengers on board when he was stopped at a random road check being carried out by Essex Police in conjunction with Uttlesford District Council enforcement officers. It was noted that the licence plate was not being displayed and the Driver was not at that time in possession of his driver's badge. He was cautioned for offences under the 1976 Act.

On 30 April 2012 the vehicle licence for the VW X113 MGN expired. Although an application for renewal had been made to the Council, the Assistant Chief Executive – Legal declined to renew it under delegated powers as at that time there was no operator licensed to operate the vehicle. He therefore referred the application to this Committee which ultimately refused the application to renew.

On 2 May 2012 Uttlesford District Council enforcement officers were again carrying out spot checks with Essex Police. The Driver was stopped driving the VW X113 MGN. When questioned he admitted that he had just dropped some passengers off at Stansted Airport. Again the Driver was not wearing his driver's badge. On this occasion he was also seen to be smoking in the vehicle which is an offence as the vehicle is deemed to be a workplace.

On 23 May 2012 and again on 24 May 2012 the Driver was stopped during spot checks driving an unlicensed Ford Tourneo registration number SG54 BVM. On both occasions he had passengers on board on behalf of Ardent Parking and on neither occasion was he wearing his driver's badge. On the last occasion the Driver informed an enforcement officer that he was between addresses and asked that the Council should contact him at his workplace. It is a condition of a driver's licence that any change of address must be notified to the Council in writing within 7 days. On checking the records it was discovered that in breach of this condition no notification of change of address had been given.

The Driver was issued with a fixed penalty notice in respect of the offence of smoking in a workplace and was invited to attend the Council offices to be interviewed under caution for other offences. The Driver failed to pay the fixed penalty notice within the permitted time and failed to attend an interview under caution. The Committee understands that the Driver is now being prosecuted for a number of offences under the 1976 Act.

In the course of preparing for the prosecutions the enforcement team made a standard enquiry of Essex Police to ascertain whether the Driver had any previous convictions. Apart from a conviction for failing to stop and report an accident (of which the Council were aware and which I will refer to further later) Essex Police informed the Council that on 10 May 2012 the Driver was formally cautioned for an offence of possession of cannabis. It is a condition of a driver's licence that any police cautions must be notified to the Council in writing within 7 days. On checking the records it was discovered that in breach of this condition no notification of the caution had been given.

With regard to the Driver's offence of failing to stop and report an accident which I referred to earlier, the Driver should have notified the Council of this offence in writing within 7 days. He did not do so. He was invited to meet the Assistant Chief Executive – Legal on two occasions with a view to the Assistant Chief Executive exercising delegated powers to suspend the licence for a short period. The Driver failed to attend either appointment without giving any reason for doing so. The matter was therefore referred to this Committee who found that there were aggravating factors surrounding the breach of condition and suspended the Driver's licence for 28 days, a significantly longer suspension than is normally issued but one which the Committee were satisfied was appropriate and proportionate in that case. The Driver did not appeal.

Under the Local Government (Miscellaneous Provisions) Act 1976 the Council has power to suspend or revoke or to refuse to renew a driver's licence on the grounds that since the grant of the licence the driver has been convicted of an offence under the Act or for any other reasonable cause. The Committee acknowledge that although the Driver faces prosecutions he has not yet been convicted of any offence under the Act. However the Committee has been advised that a conviction is not necessary for it to take action for any other reasonable cause. The Act imposes a duty on local authorities not to licence a driver unless they are satisfied that the driver is a fit and proper person. It follows that if a local authority ceases to be satisfied that a driver is a fit and proper person that would be a reasonable cause to take action with regard to the licence.

The Committee has been further advised that in considering whether a driver is a fit and proper person to hold a licence it may take into account all relevant circumstances including evidence that offences may have been committed. It is not necessary as a matter of law to await the outcome of any prosecution before taking action.

In this case in the space of less than two months the Driver has committed one offence of using a vehicle which was not displaying its licence plate, two offences of driving an unlicensed vehicle, four offences of driving a private hire

vehicle without wearing his badge and one offence of smoking in a workplace. In addition he had breached two conditions on his licence by failing to notify the Council in writing of a change of address and the imposition of a caution within 7 days.

By his conduct the Driver has shown a complete disregard for the law and the conditions on his licence. It is clear that the 28 day suspension given by the Committee previously has not had a deterrent effect. The burden of proof is upon the driver to satisfy the Committee that he is a fit and proper person to hold a licence and if there is doubt the Committee should find against the driver. The Driver has demonstrated to the Committee that he is not a fit and proper person to hold a licence and the decision of the Committee is that his licence should be revoked.

It is understood by the Committee that the Driver's licence is due to expire on 30 June and that no application has as yet been made for its renewal. The Committee give the Assistant Chief Executive – Legal delegated authority to refuse any such application for renewal of the licence by the Driver on the basis that the Council is not satisfied that he is a fit and proper person for the reasons given in this decision.

The Committee expresses its concern that as the Driver has exhibited a determination to ignore the law relating to private hire drivers that he may continue to act as such without a licence. The Committee trusts that the enforcement team will be vigilant in ensuring that any future breaches of the legislation are detected and that prosecutions result to ensure that the Driver is ultimately deterred by the fines he will receive from breaking the law in future.

The meeting ended at 8.05pm.