

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2.30pm 28
AUGUST 2012**

Present: Councillor D Perry – (Chairman).
Councillors J Salmon and V Ranger.

Officers present: M Cox (Democratic Services Officer), M Perry (Assistant Chief Executive-Legal) and M Hardy (Licensing Officer).

LIC8

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed the Driver and his representative to the meeting.

The Licensing Officer took the Committee through his report which asked Members to consider revocation of the private hire driver's license. This situation had arisen following the events of 27th July 2012 when the driver had been stopped by the Police and failed a roadside site test when he had been carrying passengers from Bournemouth airport. The licensed vehicle had been impounded and the driver was issued with a £60 fixed penalty ticket. When the licensing authority was advised of this information the driver was requested to undertake a sight assessment.

In order to be granted a license the driver had to meet the fit and proper criteria, one of which was to meet the Group 2 standards of medical fitness to drive in accordance with the best practice guide for licensing as laid down by the Department of Transport.

It was explained that under the Highway Code any driver must be able to read a vehicle number plate in good daylight from a distance of 20 metres and any required glasses or contact lenses must be worn at all times when driving. At the test conducted by the Police the driver could only read the Police motor cycle number plate at 11.23 metres. He had admitted to the officer that he was not wearing any lenses at the time.

The report set out the driver's medical history. On two occasions in 2011 he had not met the standards due to problems with his eyesight and had been referred to Moorfields Eye Hospital for specialist advice. On 11th April 2012 the driver had been passed fit to drive having met the relevant eyesight standards wearing contact lenses. Following the incident, at the further examination on 31 July he had not met the Group 2 standard wearing a contact lens in his right eye only.

Following notification of the incident, the Council's Solicitor used delegated powers to suspend the Combined Private Hire/Hackney Carriage Driver's Licence with immediate effect in the interests of public safety pending the outcome of this meeting.

The Driver representative had no questions for the Licensing Officer at this time and would reserve her comments until she made her formal statement.

There were no questions from Members, and the Chairman invited the Driver to address the Committee.

The Driver's representative read a statement on behalf of the Driver. She said that he did not dispute the fact that he was not wearing his contact lenses at the time of the incident. This was poor judgement but had not been premeditated. He was now very aware of the consequences of his actions and would in future fully meet the licensing requirements.

She pointed out that as the Driver was not a native English speaker it was possible that some of the facts of the case had been misunderstood. For example there was no endorsement in the background papers for the statement in the report that at the sight test on 12 April the driver had worn 2 contact lenses. He had in fact only been wearing 1 in his right eye.

In respect of the incident, the Driver had appeared to driving erratically because he was correcting a decision as to where to turn off the motorway. An appeal had been lodged in respect of the penalty ticket. This was because the eye test had been conducted at 9pm when there had been poor light and the driver had been asked to read a motorbike plate that was considerably smaller than a car number plate. She said that the driver had previously met the DVLA eye site test.

The applicant then spoke to the Committee. He said because of his limited language skills he had found it difficult to put forward his case. The incident had been an unintentional lapse but felt it did not affect his ability to be a fit and proper person. He had never had an accident or a caution. The financial loss that he had suffered had far reaching consequences.

In answer to a question by the Chairman, the applicant confirmed that he had driven to the eye examination appointment on 31 July, and at the time had been wearing one contact lens. He stated that he had undertaken all eye tests wearing just one contact lens. His representative confirmed that the stipulation to wear both lenses had only occurred after the incident.

The Licensing Officer said to the driver that it was highly irresponsible to drive all the way to Bournemouth with fare paying passengers with out wearing his contact lenses and asked what assurances could be given that this would not happen in the future. The applicant's representative replied that the Driver had learnt a harsh lesson with the severe financial consequences of his actions.

The Assistant Chief Executive – Legal advised the Committee that the test of whether the driver was a fit and proper person placed the burden of proof on the driver, on the balance of probability. He also advised that the personal circumstances of the Driver were not relevant to the fit and proper test.

The Driver's representative on behalf of the Driver submitted that while his personal circumstances were not a relevant consideration on the issue as to whether the Driver remained a fit and proper person members were entitled to have regard to the effect of the financial hardship suffered in determining whether the Driver was likely to reoffend.

At 3.00 pm the Driver and his representative withdrew whilst the committee considered its decision.

The Committee reconvened at 3.10pm and asked the Licensing Officer to seek information from the Doctor as to whether the Driver had been wearing one contact lens for his eye test on 11 April 2012.

At 3.25pm the parties returned and the Licensing Officer reported that on 11 April the Driver had met group 2 standards wearing only one contact lens. On 31 July he had been retested on different equipment and deterioration had been found, the Driver had not met the group 2 standards and was advised to be referred for a DVLA driving assessment.

The Driver said that he had attended a subsequent sight assessment on 15 August 2012. The Chairman asked the Licensing Officer to obtain details of this examination.

The applicant and the representative withdrew from the meeting and then returned at 3.40pm to consider the information.

The doctor had faxed a letter dated 15 August which he had sent to the DVLA confirming that the driver met group 1 standards when wearing his contact lenses but recommended a driving skills test at a driving standards assessment office as a risk assessment and as a practical test. The test had been applied for but has yet there had been no response.

The applicant and his representative, having no further questions, then left the room. They returned at 4.35pm when the Committee announced the following decision.

Decision

The Driver has been licensed as a hackney carriage and private hire driver by this council since 9 May this year. Prior to being licensed The Driver was required to satisfy the council that he met the council's licensing standards and in particular that he met DVLA group 2 medical standards. Initially The Driver was not able to do this. It is apparent that The Driver suffers from a degree of visual impairment. He has had this problem for some 30 years and is under Moorefield's Eye Hospital. The committee understands from a letter of 1 August 2012 from Professor Orton that The Driver only passed the eyesight test for Group 2 medical standards on condition that he wore contact lenses.

On 27 July 2012 The Driver had taken a customer from Stansted to a location in Hertfordshire. Having completed that journey he was directed by his operator to proceed to Bournemouth Airport to collect 2 passengers and take them to Stansted Airport. The Driver collected the passengers as asked. On the return journey it was alleged that a police motorcyclist had to take evasive action to avoid being in a collision with The Driver's vehicle. As a result The Driver was stopped and required to take a roadside eyesight test which he failed. Arising from this the vehicle was impounded and The Driver was issued with a fixed penalty notice. The standard for passing a roadside eyesight test is the ability to read a number plate at a distance of 20 metres. The Driver could not read a

number plate further away than 11.23 metres. The Driver admitted that he was not wearing his contact lenses at the time.

The circumstances of the offence were reported to the council by The Driver's operator. As a result Mrs Oliva, one of the council's solicitors, suspended The Driver's licence with immediate effect in the interests of public safety.

The Driver was examined by Professor Orton again on 31 July 2012. On the occasion of that examination The Driver was only wearing 1 contact lens and he had not taken the other lens with him. Professor Orton records that The Driver admitted that he often did not use his contact lenses. Wearing only the 1 contact lens (for his right eye) The Driver did not meet Group 2 standards for eyesight.

Professor Orton has written to The Driver's specialist at Moorefield's requesting a medical report and details of The Driver's visual acuities and visual fields. He says that before he can certify that The Driver meets Group 2 standards he will need to carry out a re-test. The Driver may also be required to undergo a driving assessment test at an approved DVLA centre.

The Driver's representative on behalf of The Driver acknowledges that he was not wearing either contact lens when he was stopped on 27 July and suggests that this was poor judgement on his part. She stated that The Driver had not accepted the fixed penalty notice but was challenging this on grounds that the roadside sight test was not carried out in good daylight conditions but was done at about 9 pm in shady conditions and failing light. Further the test was performed using the police motorbike number plate which is smaller than a car number plate which is normally used. She also submitted that when he had been tested by Dr Dunn in April this year The Driver passed group 2 standards wearing only one contact lens. She also referred to a further examination by Professor Orton after the examination on 31 July. Finally The Driver's representative said that The Driver would suffer great financial hardship if he were prevented from earning a living if his licence were revoked. She acknowledged that this was not a factor in determining whether or not The Driver remained a fit and proper person but suggested that the financial loss The Driver had suffered to date by his suspension and subsequent dismissal was a factor the committee could take into account in determining whether he was likely to make the same error of judgement in the future.

In the light of what the committee heard regarding the assessment of The Driver's eyesight it reconvened from its deliberations on 2 occasions to request further enquiries be made. It was established that when The Driver was examined by Dr Dunn he did meet group 2 standards wearing his right contact lens only. In response to the committee's second request for information Professor Orton e-mailed a copy of a letter he had sent to the DVLA in which he expressed a view that The Driver met group 1 standards when wearing his contact lenses but recommended a driving skills test at a driving standards assessment office as a risk assessment and as a practical test. The committee were given to understand by The Driver's representative that The Driver has applied for such an assessment but has not as yet had a response.

As it stands the committee cannot be satisfied that The Driver meets group 2 licensing standards for eyesight on the evidence before it. There would therefore have been no question of the licence being reinstated today. If the committee were satisfied that The Driver remained a fit and proper person in all other respects it would have continued the suspension until such time as it could be satisfied that his eyesight was not an impediment to him driving. However the committee is not satisfied that The Driver is a fit and proper person.

The main aim of the licensing regime is to secure the safety of the public. The committee regard this as being of paramount importance. It is clear that The Driver has defective vision. That of itself is no bar to holding a licence when it can be corrected. It may well be that in The Driver's case the defects can be corrected by wearing both contact lenses. The issue which concerns the committee is whether The Driver can be relied upon to take such corrective measures. The committee are not satisfied that they can have confidence that The Driver would do so. The Driver is clearly aware of his visual limitations. Professor Orton's letter to the DVLA dated 15 August this year states that The Driver is known to have keratoconus since 1981, more than 30 years. The Driver is a patient at Moorefield's Eye Hospital. He was only passed fit to drive a private hire vehicle wearing a contact lens. Notwithstanding this he drove on 27 July 2012 not wearing any contact lenses. There is no explanation for this other than that it was an error of judgement on his part. When the safety of the public is concerned that is not an acceptable excuse to the committee. Further, in his letter to the council dated 1 August 2012 Professor Orton referred to the fact that when The Driver attended for examination on 31 July he was only wearing 1 contact lens and confirmed that he often did not use his contact lenses. The committee take a view that failing to attend with both lenses was perhaps excusable as The Driver had apparently passed group 2 standards with only 1 lens in April this year. However the committee viewed the admission that he often did not use his lenses with the greatest concern.

The burden of proof in satisfying the committee that a driver is a fit and proper person is on the driver on the balance of probabilities. Given the fact that The Driver was prepared to undertake a shift which as it turned out involved lengthy journeys without wearing a contact lens which he knew he ought to wear and that he admitted to Professor Orton that he often did not use his lenses the committee are not satisfied that The Driver would take corrective measures with regard to his eyesight at all times if he continued to be licensed by this council. The committee is not therefore satisfied on the evidence that Mr Akubardiya is a fit and proper person and therefore revokes his licence under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause.

Driving with defective eyesight is clearly a danger to the public. The committee are satisfied that it is therefore necessary in the interests of public safety for the revocation to have immediate effect and hereby gives notice under s.61 (2B) of the Act to that effect.

The meeting ended at 4.50pm.