

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 23
JANUARY 2013**

Present: Councillor D Perry - Chairman.
Councillors J Davey, J Loughlin, and A Walters.

Also present: the drivers in relation to items 2 and 3 on the Agenda.

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

LIC26 **WELCOME**

The Chairman said he would take item 3 on the Agenda first, followed by item 2. He reminded Members that the Committee had received notification that item 4 would be considered at the next extraordinary meeting on 30 January. This was in accordance with a request by the driver, as he could not attend today due to a family bereavement.

The Chairman welcomed the driver in relation to item 3 and introduced Committee members and officers.

LIC27 **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 2 part 1 of Schedule 12A of the Act.

LIC28 **DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Committee considered the report of the Licensing Officer regarding an application for a combined private hire/hackney carriage driver's licence.

The Licensing Officer asked the driver whether he had received a copy of the report. The driver confirmed that he had received it.

The Licensing Officer said the driver on his application form had indicated that he had no previous criminal convictions. However, this statement was contrary to the enhanced Disclosure and Barring Service (DBS) certificate which the authority had obtained. The DBS certificate showed the driver had received a caution for battery on 19 January 2008. The driver had failed to declare the existence of the caution on his application form. Under section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976 it was an offence to make a false statement to obtain a licence.

The Licensing Officer said that the caution had become spent on 20 January 2008. Under the Council's licensing standards spent convictions did not prevent a driver from holding a licence. However the Committee could take

into account spent convictions in determining whether the driver was a fit and proper person, but if they did so they needed to give reasons for departing from policy.

The Chairman thanked the Licensing Officer and asked the driver whether he had any questions. The driver said he had none as he had already discussed the matter with the Licensing Officer.

Councillor Loughlin asked for legal advice on whether a caution could be referred to as a conviction.

The Assistant Chief Executive-Legal said a caution was not a conviction but did involve admission of guilt, and the application form at paragraph 12 required details to be entered of any offence for which the driver had been convicted including any police caution received.

The Chairman invited the driver to make a statement.

The driver gave a detailed account of the circumstances leading up to his caution for battery. He explained that following the failure of his daughter's marriage, he had tried to maintain a good relationship with his ex son-in-law, partly out of a sense of goodwill but mainly to facilitate continued contact with his two grandchildren. However the relationship had deteriorated when the ex son-in-law, having benefitted from extensive financial help from him including a holiday at his home in Cyprus, did not pay for a hired car on that holiday but had left the bill to be paid by his ex father-in-law

The driver said that having already paid for his ex son-in-law's insolvency settlement, and having paid also for his son-in-law and his new partner together with the two grandchildren and the partner's three children to stay with him in Cyprus on holiday, the driver felt justified in feeling some resentment that the hired car bill was left to him to be paid. Accordingly, during a visit back to the UK, the driver had called on his ex son-in-law at his house in order to confront him about the issues between them, including payment of the bill for the hired car. The driver said he had then been confronted by the partner, now the wife, of his ex son-in-law. She had started swearing at him. He said he had then responded in a similar way, but said that the confrontation had remained a verbal altercation only. The wife had then called the police. The driver said he then went straight to the police station in Bishop's Stortford to report what had happened and was told the police were aware of the incident and that he was under arrest.

The driver said he was taken to a police station in Hertfordshire where he was interviewed and where he was offered the option to accept a caution or to go to the Magistrates' Court. He said in view of the fact that he was due to return to his home in Cyprus and as he had been told that by accepting a caution he would not have a criminal record, he agreed to accept the caution.

The driver said when filling in the form to apply for his private hire driver's licence he had not thought about the caution. He said he had not seen his ex

son-in-law for over five years and that the way the police had dealt with him had been friendly and relaxed, so that he had viewed the experience of receiving the caution merely as a 'slap on the wrist'. He said when he had seen the police record indicating the caution was for battery he had thought it was a nonsense.

The Chairman thanked the driver for his statement. He said his concern was that the driver had signed a declaration on the form to the effect that he had never received a caution. He asked whether it was the driver's signature on the form.

The driver confirmed that it was his signature and that he had thought from what the police had told him that he did not have a criminal record.

Councillor Loughlin asked whether the driver had at his police interview been offered legal representation and whether the interview had been recorded. The driver said he did not remember being offered legal representation but that the interview had been taped.

The Assistant Chief Executive-Legal said battery meant physical assault, and therefore the explanation offered by the driver that the caution related to swearing was inconsistent with the caution he had accepted.

The Assistant Chief Executive-Legal said the procedure at the police station would have included a formal caution both at the start of the interview and at the start of the recording, and that in accordance with the Code of Practice the driver would have been offered legal representation.

The Assistant Chief Executive-Legal drew attention to the statement on the application form immediately above the signature, by which the driver confirmed that the information given was correct and understood that for a wrong statement or failure to declare something which ought to have been declared, the signatory could be prosecuted.

The driver said it was asinine of him not to have read the statement.

Members asked several more questions about the caution. The driver said the police had not mentioned battery and that there had been no physical contact during the incident.

The Assistant Chief Executive-Legal advised Members that the case of Nottingham CC v Farooq provided authority that one could not go behind a conviction. If the driver wished to challenge the caution for battery on the police records, this was a matter for him to take up with the police.

At 10.25am the Committee withdrew to consider the matter. At 10.30am the Committee returned to give its decision.

Decision

The caution of an offence of battery is an admission of guilt. The Committee is concerned that you signed the form indicating you had no convictions or cautions. It is essential that those applying for a private hire/hackney carriage driver's licence should read the application form and take on board what it says. The Committee find you a fit and proper person, and grant you the licence, but you must be warned that you should have proper regard to what is required when completing an application to renew your licence.

LIC29

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed the driver in relation to item 2 and introduced Committee members and officers.

The Licensing Officer asked the driver whether he had received a copy of the report. The driver confirmed that he had received it.

The Licensing Officer explained that the driver on his application form had indicated that he had no previous criminal convictions. However, this statement was contrary to information shown in the enhanced Disclosure and Barring Service (DBS) certificate. The DBS certificate showed convictions dated 15 December 1995 for criminal damage, destroying property and being drunk and disorderly for which the driver had received a conditional discharge of one year for all three offences plus costs and compensation.

The Licensing Officer said that on the face of it the driver met the Council's licensing standards and the matters on the DBS had become spent on 2 November 2000. Under the Council's licensing standards spent convictions did not prevent a driver from holding a licence. However the Committee could take into account spent convictions in determining whether the driver was a fit and proper person, but if they did so they needed to give reasons for departing from policy. The Assistant Chief Executive-Legal had referred the matter to the Committee in light of the fact that a false statement had been made to obtain a licence.

The Licensing Officer said the driver had confirmed that the offences shown on the DBS related to him, but that the date was incorrectly shown as he remembered the incident very well since it occurred on his 18th birthday.

There were no questions for the Licensing Officer.

Councillor Loughlin asked the driver about the disclosure on the application for a licence regarding failure to stop at traffic lights. The driver said he had paid the fine straightaway, which he thought was £80.

The Chairman invited the driver to make a statement.

The driver said that when filling out the application form, the incident relating to the offences of which he had been convicted had not come to mind. It had taken place 17 years ago, it had been a genuine mistake and something he

was not proud of. He had been 18 at the time, and had subsequently regretted the incident over many years, and was now a good citizen. He had made a mistake and took full responsibility for it.

The driver confirmed it was his signature on the form.

The Chairman asked him what he understood by the reference on the application form to 'any offence'.

The driver said he had thought only of the vehicle offence, and not the incident which had happened when he was 18 years old.

The Chairman asked whether he had signed the form believing the statements he had made on it to be true and correct.

The driver replied that he had.

At 10.45am the Committee withdrew to consider its decision and returned at 10.50am.

Decision

In clear breach of the requirements of the licensing authority you did not disclose offences which were committed on your 18th birthday. I must emphasise that you need to read the form correctly and have regard to the requirements stated on it. However the Committee finds you a fit and proper person and accordingly grants your licence. Please do not do anything which would bring you before this Committee again.

The meeting ended at 10.55am.