

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on 30
JANUARY 2013**

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

Also present: the drivers in relation to each matter.

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

LIC30 DETERMINATION OF A DRIVER'S LICENCE

The Chairman welcomed the first driver and his representative (item 3 on the agenda).

The Assistant Chief Executive-Legal said he had this morning received further information relevant to this case. He had received an email from the driver's operator, which included a reference to other similar incidents to the matter which the Committee was to consider today. Therefore he had emailed the operator to ask for details of such incidents to be supplied.

It was agreed that the determination of the driver's licence be adjourned until 7 February 2013.

LIC31 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Ranger.

LC32 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.

LIC33 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered a report regarding an application for a combined private hire/hackney carriage driver's licence which had been adjourned from the meeting on 23 January 2013 (item 4 on that agenda).

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 failed to disclose the existence of a caution which had been revealed by the enhanced DBS disclosure. He referred to question 12 of the application form where the driver had stated that he had been convicted of a motoring offence only.

Making a false statement to obtain a licence was an offence and whilst the Assistant Chief Executive-Legal did not consider that a prosecution was in the public interest, the matter had been referred to the Committee. The driver met the Council's licensing standards, and the caution had become spent on 19 April 2004.

The Licensing Officer said that under the Council's licensing standards spent convictions did not prevent a driver holding a licence; however if Members wish to take into account the spent caution in determining whether the driver was a fit and proper person, the Committee would have to give reasons for departing from policy. He concluded by saying that section 7(3) of the Rehabilitation of Offenders Act 1974 permitted spent convictions to be admitted before any judicial authority if it appeared to that authority to be relevant and that justice could not be seen to be done except by admitting those convictions. He referred members to the case of *Adamson v Waveney District Council* as a case which reinforced this authority.

The Chairman invited the driver to comment on or question the Licensing Officer's report.

The driver said all was clear and correct.

There were no Member questions. The Chairman invited the driver to make a statement.

The driver said he had worked for Stansted Airport for the last eight years, for which he had had to have criminal records disclosures obtained on two occasions, both of which had been the basic rather than enhanced disclosures. He therefore thought cautions were irrelevant to the disclosure process for employment.

The driver gave an account of events surrounding the caution he had received for common assault on 19 April 2004. He said he had been the landlord of a public house; that in his absence on a particular evening, he had left the premises in the charge of a female employee; he had returned unexpectedly after closing time to find the premises unsecured and the employee in bed with a companion. He had dismissed her with immediate effect, but was then arrested and charged with assault. The driver said it had very soon come to light that the complainant was a self-harmer. He had accepted a caution for assault which he regarded as just 'a bit of paper'.

The driver confirmed he had received the report and that it was his signature on the application form. The Chairman then asked why the driver had in reply to the question on the application form relating to whether the driver had any previous convictions, first put 'yes', then crossed it out and put 'no' and then put 'yes' again. The driver said he had done so because he had disclosed a speeding offence.

The Chairman asked whether the driver realised a caution was an admission of guilt. The driver said that no solicitor had represented him, that the

complainant had turned out to be a self-harmer, and that he had simply been released.

The Licensing Officer confirmed that employees of Stansted Airport Cars were required to undergo a basic CRB check.

The Assistant Chief Executive-Legal said a caution could only be administered where there was an admission of guilt. The Committee could not look behind the fact of a conviction and by analogy could not therefore look behind an admission of guilt. However it was understandable that the driver if normally subject to basic CRB checks might have been under the misapprehension that the caution was not relevant.

At 2.15pm the Committee withdrew, and at 2.20pm returned to give its decision.

DECISION

The chairman read the following decision

“The Committee have discussed this matter and must stress to you that the application for a driver’s licence forms the basis for a legal contract between you and the licensing authority. However, you responded to the question regarding previous convictions in a way which revealed you had given some thought about your reply. The Committee find you a fit and proper person and your licence will be granted, but I must emphasise that in future you should read the application form very carefully.”

LIC34

DETERMINATION OF DRIVER’S LICENCE

The Chairman welcomed the driver (item 2 on the agenda) and introduced members of the Committee.

The Licensing Officer presented his report. He said the driver had on his application for a licence stated that he had no previous convictions, but the enhanced certificate from the Disclosure and Barring Service (DBS) check had revealed that he had on 20 October 1983 been convicted of two counts of theft from a vehicle, for which he had received a fine, and on 18 November 2007 he had received a caution for assault on a constable.

The Licensing Officer said that under the Rehabilitation of Offenders Act 1974 these previous convictions had been spent. Had the driver disclosed these convictions his licence would have been granted as he met the Council’s licensing standards. Making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976 for which the applicant could be prosecuted. The Assistant Chief Executive-Legal had considered the public interest did not require a prosecution in the circumstances, but in the view of the false statement which had been made, he had not granted the licence under delegated powers but had referred the application to the Committee for determination.

If the licence were to be granted, the driver would be employed on education/school contracts with Essex County Council.

The Chairman asked the driver if he had any questions regarding the Licensing Officer's report. The driver said that what had been said so far was correct. He confirmed he had received a copy of the report and that it was his signature on the application form.

The Chairman then invited the Driver to make a statement. The Driver said he had completed the application form at the request of his potential employer whilst on his way to an appointment for a friend. He was therefore under time pressure when he had completed the form. He confirmed he had understood the form but said that he had not read it word for word.

The Chairman asked why he had not disclosed the previous convictions and caution. The driver said he had considered the conviction to be spent as more than 5 years had gone by, and was not trying to hide it.

At 2.30pm the Committee withdrew, and at 2.40pm returned to give its decision.

DECISION

The chairman read the following decision

"The Committee is concerned that despite a clear request on the form to disclose previous convictions you failed to do so. You said you were in a hurry, but I must stress that this is no excuse when completing a legal document. It is down to you to read the form and if you have any questions to seek clarification. However the Committee finds you a fit and proper person and your licence is granted."

The meeting ended at 2.45pm.