

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on 7
FEBRUARY 2013**

Present: Councillor D Perry - Chairman.
Councillors J Davey, E Hicks, V Ranger, J Salmon and A Walters.

Also present: the drivers in relation in relation to agenda item 3

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

LIC31 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Davey

LIC30 CONIDERATION OF A FILM CLASSIFICATION REQUEST

The Council had received a request for a certification of a film which did not have a BBFC classification. The film was to be shown at Saffron Screen in March. The Assistant Chief Executive – Legal explained that the exhibition of a film was regulated entertainment within the meaning of the Licensing Act 2003 and Section 20 of the Act had a mandatory condition that where a film did not have a classification, admission of children must be restricted in accordance with any recommendation made by the Licensing Authority. It was suggested that the classification should be made in accordance with that used by the BBFC. The Committee was required to view the whole film and reach a conclusion on the appropriate age restriction for the film concerned.

The Chairman suggested that Councillor Eden be invited to attend the viewing as an observer, as he had relevant experience in this area.

RESOLVED that an extraordinary meeting of the Committee be held at 4,00pm on Monday 18 February 2013 in order to determine the film classification. The film viewing at 2.00pm would precede this.

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

Councillors Perry, Ranger, Loughlin and Walters attended for this part of the meeting

The Chairman welcomed the driver and his representative.

The Committee considered a report which considered suspension or revocation of a private hire/hackney carriage driver's license in accordance with Section 61(1) (b) of the Local Government (Miscellaneous Provision) Act 1976 under the heading for any other reasonable cause.

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 presented his report. He said an allegation had been made by a passenger that during a journey the driver had engaged in an inappropriate conversation of a sexual nature. The driver had subsequently attended the offices to give an account of the allegations, saying that he had referred to one of the words, but not in a sexual context, and denied all other allegations. He cited reasons as to why the allegation may have been made.

Since the report had been published two further allegations against the driver had come to light. The first was a complaint that, when taking a group of ladies on a hen night, he showed pictures of glamor models on his mobile phone and made suggestive comments under the guise of banter. The second was from a customer, who had given him some items to sell on ebay on her behalf. As she had not received a satisfactory response as to how this was proceeding she had complained to the operator who referred her to the district council. She was advised there to contact the Police if she suspected theft. The matter was then resolved but this had taken 6 months to come to a conclusion.

A letter had been submitted by the operator explaining the action that had taken since the allegations had been made. The driver had been suspended for 7 days whilst an internal investigation took place. This had been concluded and he had since been reinstated after receiving a first written warning for an inappropriate conversation. The operator felt that this had been a harsh lesson but the driver had learnt, he would also be subject to monthly reviews.

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

The driver addressed each allegation separately.

With regard to the first incident, the driver said the conversation with the passenger had not have been how it was portrayed. He would not have used the words in the stated in report, particularly as the passenger had a young child with her. He had referred to the 'sex shop' but only in the context of where they were going. The comment 'we all go in them' made by the passenger had led to a more relaxed conversation. Other comments had been made in the context of questions asked by the passenger 'what do you talk about in the office when you get bored?' and 'I bet you hear some strange conversations?' the answers could have been misconstrued. Also as he had

driven the passenger a few times he had felt comfortable in her company. He had since learnt that as a ab driver conversations with passengers should be kept to a minimum.

In answer to a question from Councillor Loughlin, he explained that he had driven the passenger on 3 or 4 occasions and there had been problems with obtaining the fare. He felt the allegation could be related to the money owed. Other drivers had also experienced similar problems with this passenger and he produced 2 statements to this effect, which were read by the Committee.

In answer to a further question, he confirmed that the passenger had been happy to get in the taxi for the return journey and had not requested a change of driver. Councillor Perry questioned why the passenger would just make up the allegation for this driver when a number of other drivers also appeared to be affected by the non-payment of the fare.

In relation to the second incident the driver explained that the customer had asked if she knew someone who could sell some items for her on ebay. He replied that his daughter who was currently on maternity leave could do this. Unfortunately his daughter had gone back to work and this had been left, but not intentionally. He had given the customer an update each time he had picked her up but this was particularly regularly. After the call from the operator he had returned the items together with the money for the items that had been sold. At the time he felt he was doing the customer a favour.

With regard to the third incident he confirmed that he had shown a photo on his mobile phone to the passengers. He showed this picture to the Committee. The picture was of his nieces and as a part time photographer he was keen to show the quality of his pictures in order to obtain future work. He admitted that in hindsight showing these pictures could be misconstrued.

He said there had been an argument about the fare, as this had not been pre quoted by the taxi firm. He had made a joke about a 'discount' in order to defuse the situation. His conversation had been guided by the chatty and friendly nature of his passengers, which at the time seemed ok but looking back it was probably not an appropriate tone of conversation for a taxi driver.

Councillor Loughlin asked if he was aware of his driver's license conditions to be polite and orderly. He replied that at the time he didn't think he was doing anything wrong, just trying to be fun and friendly.

The driver's representative then made a statement.

He said he had been a friend of the driver for over 10 years and had been very shocked by the severity of the allegations. He knew him very well and that he wouldn't engage in conversations along the lines suggested. He enjoyed being a taxi driver as he was a sociable person but the allegations didn't ring true. He explained that the driver was an accomplished photographer had done some portraits locally, and worked with local sports clubs.

He was a person that never stopped talking. He now knew that he has made mistakes in some of the language he had used and had taken this on board.

The driver concluded that he had learnt the hard way that some conversations were inappropriate as a taxi driver. In future he would keep conversations professional and to a minimum, not be too friendly with customers or become involved with their personal life.

He had been given character references from 3 ladies customers and these were circulated to the committee members.

At 3.15pm the Committee withdrew, and at 4.00pm returned to give its decision.

DECISION

The chairman read the following decision

You have been licensed by the council as a combined hackney carriage/private hire driver since November 2011. Your current licence is due to expire on 31 October 2013. At the time of your application and at all times since you have meet the council's licensing standards. However following a recent complaint officers have referred you to the Committee for consideration of your licence.

The complaint that prompted the reference was from a lady who was taken by you as a passenger in the course of your employment from her home to Chelmsford. This person has made a written statement which is annexed to the officer's report and there is no need for me to read that statement here. In summary the complainant alleges that you engaged in inappropriate conversation with her of a sexual nature. Unfortunately the complainant has not attended the committee meeting today to expand upon her statement.

in response to those allegations acknowledged that you made a reference to a sex shop in Chelmsford in the context of identifying the approximate location of the passenger's intended destination. You also acknowledged that during the course of the journey you made reference to men being offered "sex on a plate". You said this was in the context of the passenger asking what drivers talk about in the office when they get bored. You accepted that these conversations were inappropriate but said that after you had referred to the sex shop you apologised but the passenger had said that it was alright and that "we all go into them". This statement led you to take a more relaxed approach to the conversation. You denied referring to sex toys or threesomes. You speculated that the reason why the passenger may have made these allegations against you was that she owed you for her fare and was trying to evade payment.

Since the preparation of the officer's report other matters have come to light. The first is an allegation that last year the husband of a passenger

complained about comments you had allegedly made to his wife who was travelling with a number of other female passengers including the complainant's daughter. The complaint arose from you allegedly showing glamour model pictures you said that he had taken as a part time photographer which were on your mobile phone. It was also alleged that you made lewd suggestive comments under the guise of banter.

The other issue concerns another customer of yours. It is alleged that in the summer of 2012 this customer gave you some items to sell on e-bay on her behalf. She asked you how the sale was proceeding but did not receive a satisfactory response so she complained to your operator who referred her to the district council. The complainant was advised by a licensing officer to report the matter to the police as a suspected theft. Before she did so the matter was apparently resolved but this took over 6 months to come to a conclusion. The customer concerned is an elderly lady and may be considered vulnerable.

You were asked to comment on both of these matters. With regard to the first issue you recalled the journey. You said you were taking a group of ladies to a hen party. You believe that the controller had not quoted a fare for the journey as there was an argument about the fare being expensive. You said that he offered a discount and was trying to joke with the party to diffuse the situation. You admitted showing the party a photograph on your mobile phone which could have been misconstrued and showed the photograph to the committee. You said that the ladies had been drinking and were effectively in a party mood and agreed you were joking with them but denied any sexual innuendo on your part. Again you accept that your conversation during this journey was inappropriate.

Dealing with the goods being offered for sale on behalf of a customer you said that this was being done as a favour. Your daughter sells on e-bay and was on maternity leave so you asked her to offer some items for sale on behalf of the customer. There were delays in this due to the daughter resuming work full time and then losing her internet connection. Ultimately this situation was resolved after about 6 months by you returning unsold goods and paying money received for goods which had been sold but this was not done until after the customer had complained to the operator and the district council.

In terms of its findings of fact the committee is satisfied on the balance of probabilities that you did engage in inappropriate conversations of a sexual nature with customers on 2 occasions. The committee do not accept your explanation as to why the first complainant should have made a false allegation. The committee notes that you are not the only driver who has experienced difficulty in recovering fares from the first complainant but you are apparently the only driver against whom such allegations have been made. The similarity in 2 complaints is striking. With regard to the second complainant whilst the customers may have been dissatisfied with the fare that would not be a reason to make false allegations.

The issue with regard to the sale of goods for a customer is different in nature but it exhibits a pattern of you getting too close to your customers, something which has now caused you difficulty on 3 occasions.

You told the committee that you have learnt your lesson and will not be so friendly with customers in future. The committee believe you are sincere in this and accept that assurance. On that basis the committee are satisfied that you remain a fit and proper person to hold a licence. The committee did consider whether a suspension of the licence for breaching the condition on your licence to behave politely at all times may be appropriate. However the committee noted that you were suspended for 7 days by your proprietor during its investigation and decided that in the circumstances no further action is necessary.

However if a further complaint were to be received regarding your conduct this would seriously call into question whether you were a fit and proper person to hold a licence and in the event the committee decide on a future occasion that you are not your licence will be revoked.

The meeting ended at 4.15pm