

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7.30pm on 24
OCTOBER 2012**

Present: Councillor D Perry– (Chairman).
Councillors J Davey, D Morson, J Freeman, M Lemon, V Ranger, J
Salmon and A Walters.

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

PUBLIC QUESTION AND ANSWER SESSION

Mr B Drinkwater made a statement, a summary of which is appended to these
Minutes.

LIC12 WELCOME

The Chairman referred to the presentation given by Trading Standards Officers
before the meeting, which had been of great interest to Members and
expressed gratitude to Sophia Harris and Sophie McKenna for attending.

The Chairman thanked Mr Drinkwater and welcomed all those present. He
informed Members that he had received sad news in that one of the District's
most respected private hire operators, Mr Dennis Causton of Elsenham Cabs,
had suddenly died and invited Members to observe a minute's silence.

LIC13 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Asker, Hicks and
Loughlin.

LIC14 MINUTES OF PREVIOUS MEETINGS

The Minutes of the meeting held on 11 July 2012 and of the extraordinary
meetings held on 14 August, 28 August and 11 October were received and
signed as a correct record.

LIC15 MATTERS ARISING - MINUTES OF 11 JULY 2012

**(i) Minute LIC10 (iii) – responsibility for licensing of children in
entertainment**

Councillor Ranger said the Licensing Officer had supplied the information he
had requested.

(ii) Minute LIC10 (i) – agenda item for members' suggestions

The Chairman referred to the Committee's decision that the agenda should
include items requested by Members. It was noted that future agenda for
scheduled meetings would include a standing item to give effect to this
provision.

The Chairman said that whilst the agenda tonight included licensing fees, he would like the Committee to consider at its next meeting as a separate item the licensing reserve. He invited Members to suggest items for the next agenda.

Councillor Lemon said he too wished the Committee to consider the licensing reserve, as this was an issue about which he had received many representations from taxi drivers and operators.

MINUTES OF 28 AUGUST 2012

(i) Minute LIC8 – determination of a private hire driver’s licence

The Assistant Chief Executive-Legal said no appeal had been lodged in this case, and that information had subsequently been received that the driver’s licence had also been revoked by the DVLA.

LIC16

LICENSING FEES

Members considered a report on the current position regarding licensing fees. The Assistant Chief Executive-Legal reminded Members of how the surplus had arisen. Between 2006/7 and 2010 licensing fees charged had given rise to a surplus in income over expenditure for licensing in the sum of £138,000. The measure by which this Committee had previously agreed to reduce the surplus was primarily by means of a fee structure for licences for drivers, vehicles and operators which would have eradicated the surplus within three years.

The Assistant Chief Executive-Legal said calculations for eliminating the surplus had been based on an assumption that the number of licences issued would remain the same. In practice there had been an increase in the number of licenses. It should therefore be understood that the surplus was now a fresh surplus figure created by the large increase in the number of licences being issued. The surplus at the end of the financial year 2011/12 was £102,000.

The Assistant Chief Executive-Legal explained that the fee reduction agreed in September 2010 had had the effect of repaying members of the trade the amount of the surplus within the target of three years. He reiterated that the surplus as it stood now was due to the significant increase in the number of licences being issued.

The Assistant Chief Executive-Legal said projections indicated that if the current fee levels remained unchanged the surplus would be reduced to £8,000 by the end of 2013/14. Thereafter an increase in licensing fees would be needed to ensure the Council would progress on a “break even” basis. Therefore the report before the Committee tonight recommended there should be no change to the fee structure.

The Assistant Chief Executive-Legal said this proposal meant the target date for reducing the surplus to zero would be missed by six months. However, the proposal would avoid the situation whereby keeping to the target date would result in a reduction in fees followed by a significant increase in fees from October 2013 in order to ensure a break-even position moving forward.

ULODA had agreed that the interests of the trade would not be best served by having a reduction in fees at this stage followed by a substantial increase from October 2013, and that price stability for the foreseeable future was preferable. ULODA had therefore agreed with officers that in the circumstances the current level of fees should remain unchanged until 1 April 2014.

The Assistant Chief Executive-Legal referred to the change in the Council's governance from a committee system to Cabinet, which meant responsibility for setting the three types of licence fees was now split between the Licensing Committee and the Cabinet. He said that a report was to be submitted tomorrow to Cabinet making the same recommendation in relation to the licensing function of the executive.

Councillor Lemon said he had received many comments from taxi operators and drivers. It was clear that the trade had ongoing and significant concerns about the question of the surplus which needed to be aired more satisfactorily.

Councillor Lemon raised four areas on which he had received representations from members of the taxi trade:

- concern that the surplus would never reduce due to the increase in the number of drivers obtaining licences in this area, since Uttlesford was perceived to be a comparatively cheap place to apply for a licence
- concern that new or recent applicants for driver's licences were benefitting at the expense of those drivers who had been licensed at the time the original surplus had occurred
- whether the surplus money was earning interest, and if so whether that income from interest was being added to what was in effect the drivers' money
- whether the surplus could be used to defray some of the costs of CRB checks which it appeared were to take place at a reduced interval contrary to government guidelines

Councillor Lemon said the taxi trade was an important part of the community and their concerns needed to be acknowledged and fully addressed.

The Chairman endorsed these remarks.

The Assistant Chief Executive-Legal responded to the above questions and concerns.

First, regarding concerns about increased numbers of driver licences, he said with no increase in license fees, the original surplus would have been eliminated; the increase in licences was to be welcomed, because increased business for the trade was also good for the Council. Despite the surplus arising from this increased level of issuing licences, it would be necessary in 2014/15 to increase licence fees therefore the surplus would be applied to keep this increase lower than it would otherwise be. In order for there to be no increase in fees in 2014/15 the number of licenses issued by the council would need to increase by 50%. There was no historical precedent to suggest that this could happen.

Regarding the attraction of taxi trade to this area because it was cheaper to obtain a licence in Uttlesford than in some areas, the Assistant Chief Executive-Legal said the case of *Berwick v Newcastle-upon-Tyne* was relevant as the Council had adopted a policy of granting licences only to vehicles predominantly used within the area of the licensing authority.

Regarding concerns about new drivers benefitting it was not the case that established drivers were being penalised, because the surplus now derived from the influx of new drivers and not from the original surplus. The increase in the number of licenses being issued was in fact to the benefit of those licensed when the surplus was first identified as not only have they had the benefit of the surplus being effectively repaid by the reduction in fees but they would continue to benefit as the new surplus would result in the inevitable increase in fees being pushed back further.

Regarding the timing of CRB checks, the Assistant Chief Executive-Legal said it was not clear to him why this should be a source of concern. He explained that the Council had for administrative reasons changed the timing of both medical and CRB checks for all drivers. In 2010 the Council had brought in a policy that checks would be required on application and thereafter three yearly. A small number of drivers were out of kilter with that timetable and it had been suggested that some drivers' checks should be done slightly earlier, to streamline the process. It was one of the delegated powers of the Assistant Chief Executive-Legal to be able to suspend a driver with immediate effect on medical grounds, therefore medical issues were administratively simple to address. However, the CRB checks were of more significance in terms of public safety as determining issues arising from those checks took far longer.

In response to a member question, the Assistant Chief Executive-Legal said this matter had been raised at a trade liaison meeting. He explained that the DfT best practice guidance was unclear. DfT guidance was that a CRB check and medical should be required on each renewal of the licence. However the guidance also recommended that licenses should be issued for 3 years, a recommendation not accepted by the Committee for sound reasons. This Committee had taken the view that three yearly rather than annual CRB checks were sufficient.

Councillor Lemon said he continued to have concerns about those drivers who had built up the subsidy which he felt benefitted new drivers.

The Assistant Chief Executive-Legal explained it was not possible to have a two-tier licence fee and neither was it possible to resolve the issue of drivers who had retired since the original surplus was created. In any case, the original drivers had benefitted up to 2013/14 due to the surplus now created by the influx of additional licensed drivers and after 2013/14 any surplus would be offset.

Regarding the question of interest, he said he did not have that information but was aware that interest rates earned by the Council were 0.25%, which would mean a payment of approximately 25p per driver.

Councillor Lemon said taxi drivers in Uttlesford were feeling disgruntled and he felt the issue of the surplus needed to be re-opened.

The Chairman said he understood the trade's concerns and this was why he wanted this item separately on the agenda.

The Assistant Chief Executive-Legal said liaison meetings took place with the trade at which these issues could have been raised, and that a meeting with Mr Drinkwater and with the Council's finance officers had taken place.

Councillor Walters said the Committee had considered the surplus issue for five years. The Committee had invited the Assistant Chief Executive-Finance, Mr Joyce, to be involved. Mr Joyce was a finance expert and was known to be very fair. The solution proposed was, in Councillor Walter's view, the best formula to achieve a resolution, and he could not think of any more satisfactory measure.

The Chairman said this matter needed to move forward.

Councillor Walters moved the recommendation which was seconded by Councillor Morson.

RESOLVED to note the report and approve no change to the existing fee structure.

LIC17 **REVISION OF THE STATEMENT OF LICENSING POLICY**

The Committee considered a report on the response to the consultation on the proposed revisions to the Council's Statement of Licensing Policy.

RESOLVED to approve the revised Statement of Licensing Policy amended as suggested in the report and recommend the same to Full Council for adoption.

LIC18 **EXERCISE OF DELEGATED POWERS**

The Committee considered a report on the exercise of delegated powers since the last meeting. Members noted that since that occasion the Assistant Chief Executive-Legal had dealt with 15 drivers for various matters under delegated powers.

The Assistant Chief Executive-Legal referred to an appeal to the Magistrates' Court of one of the Committee's decisions, which Mr Drinkwater had mentioned in his statement prior to the meeting. The appeal had been successful and costs awarded to the driver. The Assistant Chief Executive-Legal said in his opinion the decision had been proportionate, but he would take a view on whether to appeal the decision.

Referring to the number of cases now being dealt with under delegated powers, the Assistant Chief Executive-Legal said it was disappointing that the number of drivers in breach of their licence conditions had increased. He compared figures for the same time a year ago indicating 5 cases of exercise of delegated

powers were reported to that meeting, compared with the 15 now reported to Members tonight. The implication therefore was that sanctions being applied were not acting as a deterrent. The Assistant Chief Executive-Legal said he agreed with the view expressed on behalf of the trade by Mr Drinkwater, that the Council should have a licensing policy. He suggested that a task group be set up to consider such a policy.

Members endorsed this action. Councillor Lemon asked that the trade be involved in discussions and proposed that a task group be set up. The motion was seconded by Councillor Davey.

RESOLVED to set up a Licensing Task Group

- 1 the task group to comprise four members, Councillors Perry, Lemon, Davey and Loughlin subject to the consent of Cllr Loughlin to act in that capacity;
- 2 the terms of reference to be to examine policies and procedures in relation to hackney carriages, private hire drivers and operators on enforcement, conditions of licence, licensing standards, protocol on suspension and revocation of licence and on whether there should be a statement of licensing policy;
- 3 the task group to be time limited to the March meeting of the Committee but to report to an extraordinary meeting of this Committee sooner if able to do so..

LIC19

OTHER URGENT BUSINESS

The Licensing Officer said Trading Standards had requested that an article on "Buy With Confidence" should appear in *Uttlesford Life* and *Taxi Chat*. Mr Drinkwater would consult on whether for a cost of £150 ULODA would join the scheme, which was in effect a 'bolt-on' to the Quality Taxi Partnership scheme. There would be no administrative costs to this authority other than to support Trading Standards.

The meeting ended at 8.30pm.

STATEMENT OF MR DRINKWATER

Mr Drinkwater spoke about the licensing reserve surplus, which had been the subject of a meeting with the Council's finance officers. He noted the progressive reduction in the surplus which would be eliminated later than originally planned due to an increase in revenue generated in part by the addition of over 25% more drivers over the last two years. He referred to the possibility that discounted licence fees would continue beyond 2014 unless other options to compensate for original overpayments were identified.

Mr Drinkwater said Uttlesford's licensing policy in its current form was confined to matters which were outside the licensed taxi trade. He referred to existing information the Council published on its website for the benefit of the travelling

public, members of the taxi trade and prospective applicants for licenses. He referred also to new legislation and said that an overarching Statement of Licensing Policy would be beneficial and welcomed by the trade.

Mr Drinkwater referred to a decision today by the Magistrates' Court to overturn a suspension of a driver by the Assistant Chief Executive-Legal where costs had been awarded in favour of the driver. He suggested that all parties work in partnership to develop a protocol on sanctions.

Mr Drinkwater said there had been a meeting between ULODA, Council officers, Members and Trading Standards at which an initiative was announced to develop best practice in trading standards for the taxi trade. The initiative had come forward as a result of BAA complaints regarding unauthorised use of its logo on operators' websites. Councillor Salmon had also met with ULODA and Trading Standards to discuss benefits and costs of the "Buy With Confidence" scheme, and John Hull had been invited to speak to members at ULODA's AGM on 1 November.

Mr Drinkwater asked that Members work with ULODA to address the acceleration of enhanced CRB checks for drivers.

Finally Mr Drinkwater drew to Members' attention the commendation at the Green Fleet Awards of 24x7 Stansted which had been shortlisted in the top five UK private hire taxi companies. 24x7 had also had the highest carbon reduction, as it had reduced carbon emissions by 50% since the previous year.

LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2.30 pm on 29 OCTOBER 2012

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

Also present: Mr Burgon – the driver
Mr B Drinkwater, Chairman ULODA (representing the driver).

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

LIC20

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed the driver to the meeting, and introduced members of the Committee and officers.

The Licensing Officer took the Committee through a report regarding an application for a private hire/hackney carriage driver's licence. He explained that Mr Burgon's license had been revoked by this authority on 19th April 2011 because he had not met the Council's licensing standards, having more than 3 minor motoring convictions within 3 years. Mr Burgon had appealed against the decision but this had been dismissed.

On 29th March 2011 Mr Burgon appeared before Colchester Magistrates Court for an offence of excess speed, at a level that would probably not have been dealt with by a fixed penalty. A fixed penalty could not have been imposed in any event as this would have taken Mr Burgon to 12 points within a 3 year period, which would attract automatic disqualification for at least 6 months, except in exceptional circumstances. The Court took into account evidence that he would suffer exceptional hardship and decided not to disqualify him. If he had been disqualified the earliest he would have met the council's licensing standards would be September 2014.

Since the revocation of his licence, the first and second convictions had now elapsed and Mr Burgon currently met the council's licensing standards. However in determining whether he was a fit and proper person, members were entitled to take into account the totality of his driving record and officers had referred the matter to the Committee for decision rather than exercise delegated powers.

The Chairman invited the Applicant to comment on the report. Mr Drinkwater said that the report used too many suppositions when it should deal with the facts. He then asked if it was appropriate to bring this matter to the Licensing Committee as this committee had initially revoked the license. The Assistant Chief Executive – Legal explained that it was his decision to refer the application to the committee as he considered it more appropriate for the Committee to make the decision.

The Chairman invited Mr Burgon and his representative to address the committee

Mr Drinkwater put a number of questions which were answered by Mr Burgon.

He explained the nature of the motoring offences that they were all minor offences, two for holding a mobile phone and two for excessive speed on a dual carriageway. In relation to the appeal at Harlow Magistrates it had been found that the Council had a right to a policy. He did not appeal this decision, not wishing to prejudice future dealings with the Council.

Mr Drinkwater said that when Mr Burgon attended the Colchester Magistrates Court he had been confirmed as safe to continue to drive. Mr Burgon explained the extent of the financial loss from the revocation of his license, a reduction in 30/40% net revenue. He had operated an executive chauffeuring service, where he was the main driver so had lost this personal custom and although he had recently set up a courier service, he wished to return to his previous enterprise.

He confirmed that the safety of his passengers was paramount. For the 20 years previous to the offences he had a clean license, the timing of the 4 offences so close together was unlucky. He said that his license now showed 6 points and as he now met the licensing standards had made an application to have his license reinstated.

Councillor Ranger asked Mr Burgon about his attitude to the offences. He had referred to 2 cases when he had been 'holding a phone' when in fact he had

been texting which was a criminal offence. He also claimed to have been doing minimum excessive speed which would be 10% +2mph when in fact 52mph and 58mph was considerably more than this. Mr Burgon replied that by the words minimum he meant that he had received the lowest fine of 3 points, and he did not intend to play down the offences.

The Assistant Chief Executive – Legal raised the following legal issues
The Magistrate Court would not have said that Mr Burgon was fit to drive as this was outside its remit. Nor could it take account of his previous record. It only had discretion to consider the case for exceptional hardship.

Although the driver met the licensing standards the committee should still consider whether he was a fit and proper person to hold a license. It could take into account the driving history, the totality and timescale and also consider the circumstances, if the Magistrate had not exercised his discretion. The personal circumstances of the driver were not relevant to the fit and proper test. If the Committee did not consider the driver to be a fit and proper person the application should be refused. The burden of proof was on the driver, on the balance of probability.

In summing up, Mr Drinkwater said that Mr Burgon had an unblemished record except for the short period of time when the offences had occurred. It was the totality of the driving record that was important. He now met the Licensing Standards having 6 points and asked committee to grant the license to enable him to restore his earnings.

The Driver and the Licensing Officer left the meeting at 3.05pm returning at 3.25pm when the Committee gave its decision, as follows.

DECISION

Mr Burgon applied to the council for a joint hackney carriage/private hire driver's licence on 12 October 2012. He had previously been licensed by this council between 1 February 2008 and 19 April 2011 when his licence was revoked. The reason for the revocation was that Mr Burgon ceased to meet the council's licensing standards having had more than 3 minor motoring offences within 3 years.

The legislation provides that subject to an applicant meeting certain criteria (which are met in Mr Burgon's case) a local authority shall grant a licence but that it shall not grant a licence unless it is satisfied that the applicant is a fit and proper person. In deciding whether applicants are fit and proper local authorities are entitled to have policies and Uttlesford has such a policy in the form of its licensing standards. So far as an applicant's driving record is concerned the relevant standards are as follows:-

1. "Not more than 3 minor motoring offences during the last 3 years. For this purpose a minor motoring offence is defined as one where 5 or less penalty points have been endorsed on the driver's licence
2. No serious motoring offences in the last 3 years. For this purpose a serious motoring offence is defined as one where 6 or more penalty points have been endorsed on the driver's licence

3. Where a driver has been disqualified from driving for any reason an application for a licence will normally not be considered for 3 years from the date that the disqualification expires or twelve months from the licence being re-issued if this period is greater”

Mr Burgon’s driving licence reveals a number of motoring offences which led to the revocation of his licence. These are detailed in the officer’s report to the Committee on 19 April 2011 which was before Members this afternoon. The offences gave Mr Burgon 12 points on his licence within a 3 year period and under the totting up provisions Mr Burgon faced an automatic 6 month disqualification. He was therefore obliged to appear before the magistrates’ court. The magistrates were persuaded to exercise their discretion not to disqualify on the basis that a disqualification would cause Mr Burgon exceptional hardship as it would deprive him of his living as a private hire driver.

At the time of his current application for a licence Mr Burgon did meet the council’s licensing standards as the first 2 convictions disclosed by his licence were more than 3 years old leaving him with 2 minor motoring offences within the last 3 years. However the object of the licensing standards is to ensure the safety of the public. Those with bad driving records would not be licensed to drive. In the normal course of events a person who gets 12 points on their licence is disqualified from driving. The reason behind the licensing standard which provides that an application would not normally be considered within 3 years of the expiration of a period of disqualification is to demonstrate that the driver has modified his approach to driving so as not to break the law.

The committee are aware that there are circumstances in which magistrates do have discretion not to disqualify a driver with 12 points on his licence. However none of those circumstances go to the issue as to whether the driver is a fit and proper person. That is a decision for the Licensing Committee to take in each case. In determining whether an applicant is fit and proper the Committee are aware that the courts have held that the personal circumstances of a driver are not relevant save for in exceptional circumstances to explain the conduct of a driver in the commission of an offence. Thus the very matters which give magistrates a discretion not to disqualify are matters the courts have said should not be taken into consideration by the Committee on an application for a licence.

The fact that Mr Burgon now meets the council’s licensing standards does not entitle him to a licence. The committee may have regard to the fact that had the magistrates not exercised their discretion Mr Burgon would have been disqualified for 6 months from 29 March 2011, that is to say until 29 September 2011. If that had been the case Mr Burgon would not have met the Council’s licensing standards until 29 September 2014.

With regard to the offences themselves, the Committee is concerned that Mr Burgon has tried to trivialise these this afternoon. There were 2 offences of using a mobile phone whilst driving and 2 of excess speed. In respect of both of the mobile phone offences Mr Burgon’s mitigation at the meeting on 19 April 2011 was that he had not been making calls but had been reading text messages, something the Committee regards as being more serious as in reading texts Mr Burgon could not have been paying full attention to the road.

Both speeding offences took place in breach of temporary speed limits in road works. Mr Burgon submitted that these were minimum instances of excess speed but in the view of the Committee this was not the case. The last offence involved a speed almost 50% greater than the prevailing speed limit. Mr Burgon also expressed a view that he regarded himself as being “unlucky” that the offences should have fallen within a short space of time and that had the offences been committed over a longer period he would not have had his licence revoked. Such an attitude does not suggest a driver who acknowledges the seriousness of the offences he has committed and suggests that he may well be prepared to try his luck again in the future.

The Committee note from the minutes of the meeting on 19 April that the offences all occurred within a relatively short period of time when Mr Burgon was a professional driver who ought therefore to have had regard to his licence. The last of the 4 offences was committed despite the fact that when Mr Burgon renewed his licence shortly before that offence he was advised by the licensing officer that a further endorsement could put his licence at risk.

The Council has a duty to licence drivers upon application but must not licence a driver unless it is satisfied that he is a fit and proper person to hold a licence. Although Mr Burgon currently meets the Council’s licensing standards in light of the fact that had Mr Burgon been disqualified he would not have met the Council’s licensing standards, in the light of Mr Burgon’s driving record and in the light of Mr Burgon’s attitude to his motoring convictions today the Committee is not satisfied that he is a fit and proper person to hold a private hire drivers licence. For those reasons the application is refused.

The meeting ended at 3.45pm

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2.30pm on 26
NOVEMBER 2012**

Present: Councillor D Perry - Chairman.
Councillors D Morson, J Salmon and A Walters.

Also present: Mr Kalam – the driver.
Mr B Drinkwater, Chairman ULODA (representing the driver).

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

LIC21

**DETERMINATION OF A COMBINED PRIVATE HIRE/HACKNEY CARRIAGE
DRIVER’S LICENCE**

The Chairman welcomed Mr Kalam to the meeting, and introduced members of the Committee and officers.

The Licensing Officer presented a report regarding an application for renewal of a private hire/hackney carriage driver's licence. He explained that Mr Kalam's licence had been due for renewal on 30 October 2012. Upon Mr Kalam's application to renew his licence the Council had become aware from the accompanying DVLA counterpart licence that Mr Kalam had been issued with six penalty points for an offence of driving a vehicle which was not insured on 19 October 2011. This fact brought Mr Kalam into conflict with the standard conditions attached to the issue of his private hire/hackney carriage driver's licence.

Mr Kalam had made his first application on 7 June 2011, when the DVLA counterpart licence submitted had revealed no endorsements. The advanced disclosure was not completed until 14 November 2011, the date when Mr Kalam's licence was issued.

Mr Kalam had on his application to renew the licence replied 'No' to the question 'have you in the last year been convicted of, or cautioned for, any offence (including motoring offences), been issued with a Fixed Penalty notice or is there any prosecution pending against you?'

Mr Kalam had attended an interview with the Licensing Officer on 30 October 2012, during which he had described the circumstances leading to the imposing of the penalty points on his DVLA licence.

The Chairman thanked the Licensing Officer and invited the driver and his representative to put questions.

In response to questions put by Mr Drinkwater, the Licensing Officer said he was aware the driver had had his full DVLA licence since 1 November 2006; that the offence had come to light on 19 October 2012; that during interview the driver had thought but was not sure that insufficient funds in his account were the reason for the non-payment of the insurance direct debit. He confirmed that character references supplied on behalf of the driver as testimonials had been circulated to the Committee.

Members asked questions about when the standard conditions of licence were served on the driver and why there had been a delay in the supply of the enhanced disclosure.

The Chairman invited Mr Kalam or his representative to speak. Mr Kalam said, in response to questions put by Mr Drinkwater, that he had had his licence for six years with no penalty points imposed other than in October 2011. His previous employment had been as a security officer during which his shifts had meant it was difficult to collect his mail from the Post Office depot where his mail was delivered to a PO Box address. He said he would sometimes collect his post only at intervals, sometimes as much as 14 days.

Mr Kalam gave an account of the events on 19 October 2011 when his private vehicle had been stopped by the police using automatic number plate recognition on the grounds that the vehicle was not insured. He described how unsuccessful efforts had been made to contact his insurers; the seizure of his car and the release fee he had paid the next day to get it back. On contacting

his insurer the next day, Mr Kalam said he had discovered his insurance had lapsed due to insufficient funds being in his account. The direct debit was due on the 7th or 8th day of the month. The insurance company had notified him in writing but this letter was in his PO Box and he did not collect his post until a week and a half later, whereupon he had learnt that his insurance had been cancelled.

Mr Kalam then went through the dates when he had applied for and received his private hire driver's licence. He said the private hire driver's licence was issued on 14 November 2011, that he collected it on 16 November 2011 and that his DVLA counterpart licence was returned to him on 17 or 18 November 2011. He said he had omitted to tell the Council about his penalty points as he was excited to receive his private hire licence and he had genuinely not thought there was an issue. He said he was unfamiliar with the documentation and that although he had read the conditions accompanying the private hire section he had not given thought to the issue of disclosure of the penalty points.

Mr Kalam said on his application to renew the private hire licence he had stated 'no' in relation to the question of whether he had had penalty points endorsed on his licence, because the offence predated the issue of the new licence. Mr Kalam assured the Committee of his remorse, and that he realised the importance of complying with the conditions of his licence and had learned his lesson. He said his operator was willing to take him back.

Members asked questions in reply to which the driver confirmed he had filled out the application for a licence himself and that he had read the condition requiring him to reveal to the Council within 7 days any convictions or penalty notices.

Members asked various questions about the insurance of the driver's private car and the reasons for using a Post Office box for his mail.

Mr Kalam said he had used his private car only for travel to work and for social reasons. He now had private hire insurance. He said he had first taken out insurance by telephone. When he had discovered his policy had been cancelled he had borrowed money from his brother and obtained insurance the next day.

Members asked how many letters the driver had received from the insurer warning him that his insurance could be invalidated. The driver said he had only received one letter. He had had insurance set up to be paid by direct debit for a number of years and had never before had any problems.

Mr Kalam then made a statement. He said he was sorry he had not complied with the conditions of his licence by omitting to notify the Council of the fact that he had received 6 penalty points for an offence relating to his private car. The points were incurred due to unusual circumstances, and he hoped the Committee would find this breach of condition an acceptable exception to its policy. He said he had genuinely thought the conditions only applied from 14 November 2011. He had not deliberately omitted notifying the Council of the penalty points on his licence; he had paid the direct debit for car insurance for some years; his private finances had been conducted by post and there had

been difficulties due to his shift work in collecting post. His employer wanted him back and he had received praise from his customers. He had lost earnings of between £1,800 and £2,000 since the date of his suspension pending this Committee meeting. He said he was a fit and proper person and was sorry for the breach of his conditions of licence.

Members withdrew at 3.10pm in order to consider the matter, and returned at 4.15pm to give their decision.

DECISION

Mr Kalam applied to this council for a combined hackney carriage/private hire vehicle driver's licence on 7 June 2011. In order for a licence to be granted to an applicant the council must be satisfied that he is a fit and proper person to hold such a licence. In determining whether an applicant is a fit and proper person, the council has adopted licensing standards. The standards state that "whilst each case will be dealt with on its individual merits, applications for a new licence from persons who fail to meet these standards will normally be refused". Where an application is received from somebody who does not meet licensing standards, officers may in their discretion refuse the application under delegated powers or they may refer the case to the committee for determination. Officers do not have delegated powers to grant a licence to a driver who does not meet licensing standards.

When Mr Kalam applied for his licence he produced a clean DVLA driver's licence. As this was his first application to this council he was required to have an enhanced CRB check. Mr Kalam lives in the area covered by the Metropolitan Police Authority. That authority has a history of delays in processing CRB applications. In Mr Kalam's case the CRB check was not received until November 2011 and Mr Kalam's licence was granted on the 14 November 2011. The licence was issued on the basis that Mr Kalam was a fit and proper person as it was believed at that time he met the council's licensing standards.

Unfortunately this was not the case. Between the application for the licence on 7 June 2011 and the grant of the licence on the 14 November 2011, Mr Kalam was stopped on suspicion of driving with no insurance. His car was impounded by the Police. Mr Kalam was issued with a fixed penalty notice for the offence which resulted in 6 penalty points being endorsed on his licence. The date of the offence was 19 October 2011. Because of this offence Mr Kalam did not meet licensing standards and the licence should not have been issued. His application should have been referred to the committee for determination.

The application form for a driver's licence contains the following statement "in the event of a licence being granted to me I undertake to inform the council of any convictions which arise between the date of this application and the grant of my licence". Notwithstanding this undertaking, Mr Kalam did not inform the council of the fixed penalty notice. This matter did not come to the council's attention until Mr Kalam applied to renew his licence in October of this year. As Mr Kalam does not meet the council's licensing standards and the committee had not previously considered whether in light of his conviction it was satisfied that he was a fit and proper person to hold a licence, officers had no delegated

authority to grant a licence to him upon application for renewal. The matter therefore comes before the committee today to consider whether Mr Kalam is a fit and proper person and whether the licence should therefore be renewed.

The circumstances surrounding the offence giving rise to the endorsement are that Mr Kalam was the owner of a car. He insured the car through a broker and paid the premium by instalments by direct debit. At least one instalment of premiums was not paid causing the insurance to be cancelled. Mr Kalam said that he was not aware of this. He chose to have his correspondence sent to a post office box. He says that at the time in question he was doing night work and had difficulty in accessing his mail. He would sometimes leave his mail for between one and a half weeks to a fortnight without collecting it. For that reason he did not receive notification that the policy had lapsed. Following the seizure of the car he borrowed money from his brother to effect insurance and having done so and paid the release fee he collected his car the day after it was impounded.

The law is quite clear and is reflected in the licensing officer's report. In determining whether someone is a fit and proper person councils are entitled to have policies providing that they are prepared to depart from them in appropriate circumstances. What that means is that where a driver does not meet the standards the burden is upon the driver to satisfy the committee that he is nevertheless a fit and proper person to hold a licence.

The case put forward by Mr Kalam in that respect is not convincing. It appears to the committee that Mr Kalam was aware of the fact that a direct debit payment in respect of his insurance was unlikely to be met. Although he was able to borrow funds from his brother to insure his vehicle after it had been impounded he did not take steps to ensure that there were sufficient funds in his account to meet the insurance payment when due. Knowing that the payment was unlikely to be met and that his insurance cover was therefore in jeopardy Mr Kalam still drove his car. The committee regard Mr Kalam's practice of having mail delivered to a post box address as irresponsible. On the balance of probabilities it considers that at least one reminder would have been sent by the insurance company before the policy was cancelled. Had Mr Kalam had post delivered to his home address in the usual way he may have been prompted to take steps to avoid his insurance being cancelled or at least to have been informed that this had happened so that he did not drive.

The committee are also concerned that Mr Kalam did not draw the endorsement to the attention of the council before the licence was issued. He signed an application form containing a clear undertaking that any convictions would be reported. He was given an information pack which contained details of the council's licensing standards when he made his application in June 2011 and ought therefore to have been aware that a serious motoring offence carrying 6 points or more would mean that he did not meet licensing standards. Notwithstanding this he accepted his licence from the council without disclosing the conviction. The committee do not accept Mr Kalam's statement that he thought that the licence conditions only started to apply after his licence was granted. The licensing standards are separate from the licence conditions and are issued before an application is made. Mr Kalam therefore knew or at least ought to have known that he did not meet those standards.

The committee take a view that it is vital that licensed drivers and vehicles should be covered by appropriate insurance at all times. A driver who fails to take all reasonable steps to make sure that their insurance is effective at all times cannot in the committee's view be regarded as being a fit and proper person save for in exceptional circumstances. Mr Kalam has advanced no such circumstances today. He has given an explanation of the circumstances of the offence which exhibit an irresponsible attitude to insurance cover which is not acceptable to the committee. While he has produced testimonials as to the service he supplies to customers these does not convince the committee that similar circumstances may not arise with regard to his insurance in future.

In the circumstances Mr Kalam has failed to satisfy the committee that he is a fit and proper person and the application for renewal of his licence is therefore refused.

LIC22 **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 paragraph 3 of part 1 of Schedule 12A of the Act.

The Chairman welcomed the Operator and the Operator's representative, Mr Schiller, to the meeting.

LIC23 **DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE**

The Enforcement Officer presented a report seeking determination of a private hire operator's licence. The report set out circumstances in which information had come to the attention of the Council's enforcement team suggesting that the operator had been using an unlicensed driver.

The Chairman thanked the Enforcement Officer for his report and invited the operator's representative to put questions.

Mr Schiller questioned the Enforcement Officer, seeking confirmation regarding the list of bookings in question, totalling 392 bookings, and seeking confirmation that the operator had produced licences for the drivers in relation to such bookings. Mr Schiller said the majority of these drivers were licensed as hackney carriage drivers, although one was a private hire driver.

Mr Schiller asked further questions in order to establish that the bookings during a six month period numbered approximately 6,000 jobs; and that of the 392 being considered, 386 were subcontracted to Hackney Carriage licensed drivers. The Enforcement Officer said according to the records there had been bookings which were made to private hire licensed drivers not licensed by Uttlesford. Mr Schiller said that these were without exception made through a private hire operator.

The Assistant Chief Executive-Legal said it was irrelevant whether such bookings were made via another private hire operator, as it was this operator

which had taken the booking. He referred to the case of where a booking was taken and performed for no consideration. The issue there was that the booking had not been cancelled but had been fulfilled. The bookings to which Mr Schiller referred were not cancelled but were entered in the operator's records, which therefore indicated that the operator had used drivers and vehicles not licensed by this authority.

Mr Schiller then made a statement on behalf of the operator.

He said the operator was not a typical private hire company as it did not carry out work for the public but undertook chauffeuring exclusively for large corporate clients, taking mainly internet bookings. Following a change in the law in 2008 a phased-in licensing of all the company's chauffeurs was undertaken during a period of six to eight months. The operator's drivers were carefully vetted due to the nature of the chauffeur work undertaken. The operator had always complied with the law. A company of this sort was unique in Uttlesford. The operator was more than willing to comply with the law. There had been one small error, which Mr Schiller would address.

Mr Schiller said the company's sub-contracted work represented only a very small percentage of its other work. A small amount had had been subcontracted in relation to last-minute contingencies for example where it was important to make a substitution for business reasons in order to preserve a valued corporate client relationship. In such circumstances the operator had subcontracted to private hire operators elsewhere, ensuring that they despatched a driver holding the three types of licence, a vehicle, private hire and hackney carriage driver's licence.

Mr Schiller said the operator had been in business for 20 years and had gained business awards. If the operator had transgressed, this was in a simple way and the operator would put it right. The company wished to work together with the licensing authority to ensure it was in compliance and so as to get on with its business.

With reference to the one error Mr Schiller had referred to, this related to a particular driver, whom the company had employed on an ad hoc basis in 2007 – 2008 whilst he had held a full time job elsewhere. When the driver was made redundant from his other work, the operator had taken him into employment and had then ensured he obtained his licence. Mr Schiller said the operator's records had, apart from in relation to this particular driver for the reasons he had given, been maintained in good order. He said the operator was sorry for this error, and would learn from its mistake. To suspend or revoke the licence would be disproportionate, and he would suggest Committee members might feel a warning in relation to the error regarding this driver's records would be more appropriate.

The Chairman thanked Mr Schiller. He asked whether the operator could confirm receipt of the emailed guidance from the Assistant Chief Executive-Legal regarding subcontracting. The operator confirmed receipt of the email at the administration email address.

The Chairman referred to case law which he said was explicit that operators should only make use of drivers licensed by their licensing authority.

Mr Schiller said the Dittah and Chaudry case could be distinguished from the present matter in that the jobs were given to another operator as a whole job which was not the position in the cases cited.

The Assistant Chief Executive-Legal asked Mr Schiller to produce the documents for the hackney carriage driver who had taken on quite a number of the jobs which were of concern.

The papers being produced these were found to state the driver and vehicle were private hire licensed and that the papers obtained by the Enforcement Officer indicated the driver was trading as a chauffeur business.

Mr Schiller said the driver informed the operator that he was a hackney carriage driver.

The Chairman asked Mr Schiller for his summation.

Mr Schiller summed up by saying that the operator occupied the top end of the market; that a small percentage of jobs had been called into question, but that for the many years it had been in business, the operator not been the subject of a complaint. The operator was willing to accept the Committee's wishes to adjust its practices in order to ensure full compliance and was a fit and proper body to act as a licensed operator.

The Committee withdrew at 5pm to consider its decision and returned at 5.40pm.

DECISION

The operator is a private hire operator licensed by this authority. On 3 July 2012 this committee met to consider whether it was satisfied that a driver engaged by the operator was a fit and proper person to hold a licence the driver having been convicted of an offence involving violence. During the course of that meeting, evidence was brought by the driver's representative which showed that the driver had driven for the operator between 2007 and 2010 during which period he did not hold a private hire driver's licence from this council. The disclosure of this information caused the council to carry out an investigation of the operator. Enforcement Officers obtained copies of all bookings made by the company for the period between 1 January 2012 and 30 June 2012. These records are kept by the company in accordance with its conditions of licence and section 56 Local Government (Miscellaneous Provisions) Act 1976. On examination of the records officers identified 392 bookings where neither the driver nor vehicle used to fulfil those bookings was licensed by this council.

Mr Schiller in his submissions said that almost all of these bookings were carried out by a hackney carriage operator. He said that the operator kept copies of the licenses for hackney carriages and vehicles engaged to carry out

contracts. However when asked to produce copies of the licenses for a driver who has carried out a considerable number of bookings Mr Schiller was only able to produce private hire licenses issued by Transport for London. Mr Schiller subsequently reported that he had spoken to Transport for London who confirmed that the driver concerned held both hackney carriage and private hire driver's licences. However the committee draw an inference that as the operator have produced private hire vehicle licenses and a private hire driver's licence for this individual and that he trades as a chauffeur service similar to the operator that private hire vehicles were used for the contracts subcontracted to him.

Mr Schiller sought to distinguish the Dittah and Choudry cases on the basis that the operator subcontracts to other licensed operators. The committee see no such distinction. The law is quite clear that drivers and vehicles must be licensed by the same authority as the licensed operator. From the evidence before the committee whenever the operator is unable to honour a booking it does not cancel the booking but arranges for it to be fulfilled by other drivers not licensed by this council using vehicles not licensed by this council. That constitutes offences under section 46(1)(e) of the 1976 Act.

There is also the issue of the driver who was employed by the operator as a private hire driver between 2007 and 2010 without a licence. Prior to the change in the law in 2008 this may have been legitimate depending on the circumstances but after the law changed it was not. The explanations put forward by Mr Schiller that he was used "occasionally" are at odds with both the testimonial put forward when the committee considered his licence and the letter submitted by the operator's director when she stated that he had been employed for 4 years. The use of unlicensed drivers who have not had the standard vetting procedure of the council and CRB checks could potentially put the public at risk and such a situation is not acceptable to the committee.

However the committee accepts that to take any action on this occasion other than a warning would cause a disproportionate loss of income to the company and more importantly from the committee's point of view upon the drivers who are employed by the company who would lose the opportunity to earn an income if any more draconian action were taken. The committee therefore places reliance upon the assurance given by Mr Schiller as to the company's future conduct and is prepared to accept that the operator wishes to operate within the law.

The committee therefore gives the operator a warning that it expects it to observe the law fully in the future by not engaging any drivers who are not licensed by this council and by not subcontracting any contracts directly or indirectly which may be performed by drivers or using vehicles which are not licensed by Uttlesford District Council unless they are licensed hackney carriages.

The meeting ended at 5.45pm.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 18
DECEMBER 2012**

Present: Councillor D Perry - Chairman.
Councillors D Morson, J Salmon and A Walters.

Also present: the driver.

Officers present: K Carson (the Council's Solicitor), M Hardy (Licensing Officer)
and R Dobson (Democratic Services Officer).

LIC24 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 paragraph 3 of part 1 of Schedule 12A of the Act.

LIC25 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed the driver to the meeting, and introduced members of the Committee and officers.

The Licensing Officer asked the driver whether he had received the report. The driver confirmed that he had.

The Licensing Officer explained that the driver had submitted to the Council an application for a combined private hire and hackney carriage licence. The Enhanced Criminal Records Bureau disclosure had subsequently revealed that the driver had spent convictions. Details of these convictions were given in the report. The driver had not declared the existence of the spent convictions on his licence application form.

The Licensing Officer reminded the Committee that making a false statement to obtain a licence was an offence under section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976. He said that whilst the Assistant Chief Executive-Legal had not considered it was in the interest of the public to require a prosecution, he had declined to grant the licence under delegated powers and had referred the application to the Committee for determination.

The Licensing Officer referred in detail to the dates and circumstances of the offences for which the driver had been sentenced. He said that the driver met the Council's licensing standards as the two offences were now spent, the last matter becoming spent some years ago on 19 July 2000. The driver's application was supported by an operator for which he would be working should the licence be granted. The Licensing Officer said that during his interview with the driver, the driver had said the application form had been completed on his behalf by a member of staff of the operator, and that he had then simply signed and dated the form.

The Chairman invited questions. There were none.

The Chairman invited the driver to address the Committee. The Driver said the first of the two offences had been committed during his youth, when he was one of a group of youths 'mucking about'. The second offence related to his discovery of the infidelity of his wife, and this incident was some time ago, in 1995. He said he had not known he had to include these convictions on his application for a driver's licence, as no-one had told him. He was dyslexic, and could not write properly.

The Chairman asked the driver what his understanding was of the enhanced, as opposed to the routine, CRB check.

The driver said he had no idea.

Councillor Salmon asked whether in view of his dyslexia the driver would find someone to go through the Code of Practice with him. The driver said he could read 100%, and that his dyslexia just meant he could not spell.

Councillor Loughlin asked the driver about the whether the person assisting him to complete his form had told him about the requirement to state any spent convictions or whether she had invited him to check the form before signing.

The driver said no-one had mentioned the need to declare spent convictions and that he had not checked the form before signing.

The Chairman said he was concerned to hear that the driver had signed a legal document without understanding it.

In reply to a question from the Licensing Officer, the driver confirmed the name of the person who had assisted him in completing the application form. The Licensing Officer said he had spoken to this individual who had informed him she had explained to the driver the need to complete the section on spent convictions.

The driver said he did not remember this to be the case.

At 10.20am the Committee withdrew to consider the matter. At 10.25am the Committee returned to give its decision.

DECISION

This Committee is disappointed that despite repeated requests for drivers to report minor infringements of law to the Council or spent convictions, cautions, etc, yet again we have before us another incident where this approach has failed.

Taxi Watch carries repeated requests for infringements to be reported as well as meetings with the Trade where further requests are made.

Our policy and procedure is very clear and a copy is given of the procedure at every opportunity and every encouragement given to disclose infringements.

The document that is signed by the driver is technically a written contract between the driver and the Council and to fail to adhere to this contract or to mislead or lie is a serious breach that could result in a refusal, prosecution or revocation.

I can assure all drivers that they will be given a fair hearing and I am in discussion with the Committee and the legal officer to consider a period of time, i.e. an amnesty, whereby anything that is reported, will not be the subject of punishment, unless it is a serious infringement. If agreed after that period all drivers failing to notify this council of infringements within the specified time period or on application or renewal will be treated more seriously, and may lead to a prosecution.

As far as you are concerned, you have two matters albeit spent, that should have been disclosed on application and were not, for whatever reason.

Question 12 on the form is clear. You put "no" and signed the document having read the endorsement following Question 15, a clear breach. Your signature was dated 27 September 2012.

However we do find you are a fit and proper person to and we therefore grant the licence.

The meeting ended at 10.30am.

**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.

**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.

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 CONSIDERATION 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

**EXTRAORINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 4pm on 18 FEBRUARY 2013**

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

Also present: Councillor K Eden.

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

LIC35 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Morson and Hicks

LIC36 **CONSIDERATION OF A FILM CLASSIFICATION REQUEST**

The meeting had been called in order to determine the classification of a film which did not have a BBFC classification. The whole film had been viewed by the Committee prior to the meeting.

The Committee discussed the appropriate classification, taking account categories used by the BBFC.

RESOLVED that the film be classified with a 12A certificate.

The meeting ended at 4.15pm

**EXTRAORINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 25 FEBRUARY 2013**

Present: Councillor D Perry - Chairman.
Councillors J Freeman, M Lemon and J Loughlin.

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

LIC37 DECLARATIONS OF INTEREST

There were no declarations of interest.

LIC38 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.

LIC39 DETERMINATION OF A DRIVER'S LICENCE

The Chairman welcomed all those present. On being informed that the first driver on the agenda had not arrived, and that the second driver was present, that his determination of licence would be dealt with first.

The Chairman invited the Licensing Officer to present his report.

The Licensing Officer said the driver had applied for a combined private hire and hackney carriage driver's licence. Contrary to the information the driver had given in the application, the enhanced disclosure under the Disclosure and Barring Service had revealed the driver had two convictions. These convictions were for store breaking and stealing, and for assault occasioning actual bodily harm; the convictions had become spent on 11 March 1970 and on 23 January 1978, respectively. The Assistant Chief Executive-Legal had referred the

matter to the Committee, rather than deal with it under delegated powers, in light of the false statement which had been made, which under section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976 was an offence. The driver met the Council's licensing standards and if granted his licence would be offered employment by 24 x 7 on a school contract.

The Chairman invited the driver to question the Licensing Officer. The driver said he had no questions. He said he had been aware there would be an enhanced disclosure, but he had not thought his spent convictions would be included on it as they had taken place such a long time ago.

The Chairman asked the Licensing Officer whether the driver had been given an opportunity to respond to the information revealed in the enhanced disclosure. The Licensing Officer said that the driver had not been interviewed since the disclosure but had been contacted by telephone by the Licensing Department.

The driver made a statement. He said a standard disclosure had not included the convictions and that he had thought that the convictions were spent for the purposes of this application. He had had no intention to deceive. He was retired and that his decision to apply for a hackney carriage/private hire vehicle driver's licence was for vocational rather than career reasons.

In reply to questions about the completion of question 12 on the application form relating to the disclosure of spent or unspent convictions, the driver agreed he had stated 'no' in response and that he had understood the meaning of the statement under which his signature appeared regarding the consequences of making a false statement.

Regarding the convictions, the driver said the first offence had been committed when he was 14 years old. He said the second had taken place when he was 18. This was an altercation between youths, in which he had been one against three. The injury caused to the victim was the result of his having cut his leg when falling back against a car. The matter had been dealt with in the Magistrates Court, and he had pleaded guilty to the assault and not guilty to criminal damage. He had received a fine.

In reply to further questions the driver said he had not realised he should have included these convictions under the question on the application form, and the omission was not intentional. He confirmed he had completed the form at the offices of his prospective employer, to whom he had given the form for it to be sent to the Council. He said his previous employment was as a project management consultant, that he had been a company director and had had responsibility for managing significant construction projects.

At 10.15am the Committee withdrew to consider the matter. The Committee returned at 10.20am and the Chairman gave the decision as follows.

Decision

The Committee would expect that as you have during your career held positions of responsibility you should have been aware of the requirement to read the

driver's licence application form carefully. The wording of the questions and statements on that form is clear, but if you did not understand any part of it, it was your responsibility to seek clarification. You have been at risk of prosecution and refusal to grant your licence. However, due to the passage of time since your convictions, the Committee considers it should grant your licence, but advises you to read the application form carefully in the future.

LIC40

DETERMINATION OF A DRIVER'S LICENCE

The Chairman agreed to consider the first driver listed on the agenda next. The driver was not in attendance. The Licensing Officer presented a report detailing the fact that the application for a driver's licence had not, contrary to the information disclosed in the enhanced disclosure, shown the existence of a conviction. The driver met the Council's licensing standards as the conviction was now spent, but in view of the false statement which had been made to apply for the licence, the Assistant Chief Executive-Legal had referred the matter for determination by the Committee rather than deal with it under his delegated powers. The Assistant Chief Executive-Legal said the Committee could take into account the fact that the driver was not attending the meeting today and had provided no explanation for his non-attendance, nor had he contacted the Council. Officers produced to the Committee the letter sent to the driver advising him of the date time and location of this meeting. The Chairman said he would like to have an explanation from the driver as to the circumstances of his failure to declare the existence of a conviction on his application form.

Decision

The Committee note the driver has not attended today to give an account of the circumstances, nor otherwise attempted to provide an explanation, regarding his failure to declare the existence of a conviction on his application for a private hire/hackney carriage driver's licence. The Committee is not satisfied the driver is a fit and proper person and the licence application is refused.

LIC41

DETERMINATION OF A DRIVER'S LICENCE

The Committee then dealt with the fourth driver.

The Chairman welcomed the driver and his wife.

The Assistant Chief Executive-Legal presented the facts as set out in the report. The driver had applied for a combined hackney carriage/private hire driver's licence and on his application form had notified the Council of an offence of assault said to have been committed in August 2008. The CRB check had confirmed that on 10 September 2008 the driver had been convicted of an offence of battery. The driver had been sentenced to a community order for 24 months supervision with a requirement to participate in a domestic abuse programme, and to pay costs of £87.

The conviction was not yet spent, as a consequence of which the driver did not meet the Council's licensing standards. The driver had at interview given an account of the circumstances of the incident giving rise to the conviction. He

had explained he had been drinking at home, and the incident in which he had shoved his wife had been seen by a neighbour who had telephoned the police.

Following conviction, the driver had at the time informed his then employer and had kept his job, although subsequently he was made redundant along with 350 other staff. Since then, the driver had stopped drinking, had attended the integrated domestic abuse course and he and his wife had put the incident behind them and were still together.

The driver said he had no questions. He then made a statement.

The driver thanked the Committee for the opportunity to speak. He said he had worked for 27 years in the security business in various positions of responsibility and trust. He said he considered himself to be a trustworthy person, and was not proud of the one glitch in his record. He had tackled his drinking which he had identified as the real problem.

Members asked various questions about the levels of stress the driver had experienced in his work, and about the circumstances of the incident leading to the conviction. The driver agreed that he had suffered stress, and said the neighbour who had reported the incident had been passing the living room of his house at close quarters when she had seen the incident.

Members asked whether the driver's wife had made a complaint to the police. The driver's wife said she had made a statement in her home, not at the police station. She had not wished to press charges but the matter was out of her hands as the police had a policy of prosecuting any incident of domestic abuse.

Members had no further questions and withdrew to determine the licence at 10.30am.

At 10.35am Members returned to give their decision.

Decision

The Committee takes into account the fact that you are accompanied today by your wife and accepts that you have put behind you a one-off incident of domestic abuse. This incident occurred in August 2008, and due to the passage of time and the fact that you are here supported by your wife, the Committee considers your licence should be granted.

LIC42

DETERMINATION OF A DRIVER'S LICENCE

The Committee considered a report in the absence of the third driver.

The Assistant Chief Executive-Legal explained that the driver had attended an interview with the Licensing Officer on 21 December 2012 regarding the renewal of his licence. In that interview the Licensing Officer had asked the driver if he had done any work recently. The reply given was that the driver had done a job for his operator about two weeks prior to the meeting. The job was to take a customer from London City Airport to a school in Ipswich. On being asked what kind of vehicle had been used, the driver had said it was a

Ssangyong but could not remember whether it was licensed as a private hire or hackney carriage vehicle. The Council did not currently licence any Ssangyong vehicles. The Council's Enforcement Officer, who was investigating a possible offence surrounding subcontracting under the Local Government (Miscellaneous Provisions) Act 1976 emailed the driver to question him regarding the journey he had mentioned. The response given to this email, as detailed in the report to the Committee, prompted the Enforcement Officer to invite the driver to an Interview Under Caution due to a suspicion that he had made a false statement to obtain a licence which was an offence.

Members requested the Licensing Officer be called back to the meeting to answer questions.

The Licensing Officer on his return to the meeting was asked to explain his interpretation of the statement of the driver in his email of 21 January 2013 'I will point out at this time that any comment to Mr Hardy was after I had renewed my licence.' The Licensing Officer said he had spoken to the driver when he interviewed him in connection with the renewal of his licence on 21 December 2012. The driver had in reply to a question said he had done a job for the operator a couple of weeks before, from London City Airport to a school in Ipswich.

Members asked the Licensing Officer how he interpreted the statement in the driver's email of 8 January 2013 'the reason I originally told you I did was because I thought my taxi licence would not be renewed, having not worked for so long.' The Licensing Officer said how many times the driver used his licence was up to him.

The Committee withdrew at 10.45am to deliberate and returned at 12.00 noon to give its decision.

Decision

Mr Heathorn is licensed by the Council as a hackney carriage/private hire driver. Apparently this is not his full time job. He is also employed as a HGV driver. When he acts as a licensed driver he is employed by either Airport Executive Cars or Airport Taxis Mountfitchet Ltd. It is not clear which as his last application for renewal of his licence states that he works for the former but in a subsequent e-mail he said he works for the latter. Both of these businesses are owned by Mr Peter Burgon.

In December 2012 Mr Heathorn applied to renew his driver's licence. At the time there appeared to be no reason not to grant the application so the licence was issued under delegated powers. On 21 December 2012 Mr Heathorn attended the council offices to collect his licence. Mr Hardy met Mr Heathorn in reception to hand the licence over. During the course of the conversation Mr Hardy asked if Mr Heathorn was still working for Mr Burgon. Mr Heathorn confirmed that he was. Mr Hardy then asked if Mr Heathorn had done any work recently as he was aware that Mr Burgon did not have any cars licensed by the Council at that time. Mr Heathorn replied that he had done a job for Mr Burgon about 2 weeks earlier taking a client from London City Airport to a school in Ipswich. Mr Hardy then asked what type of vehicle Mr Heathorn had driven. Mr

Heathorn said it was a Ssangyong but he could not recall whether it was a private hire vehicle or a hackney carriage. Mr Hardy has informed the committee that the Council did not licence any such vehicles at the time.

The information given to Mr Hardy gave suspicion about possible offences being committed under the Local Government (Miscellaneous Provisions) Act 1976. An enforcement officer, Mr Chamberlain, sent an e-mail to Mr Heathorn asking a number of questions about this particular trip. Mr Heathorn replied that "I would like to state that I have done work for Airport Taxis Mountfitchet Ltd and not Airport Executive Cars as you have mentioned. As per our telephone conversation I confirmed that I did not do an airport run before Christmas and the reason I originally told you that I did was because I thought my taxi licence would not be renewed having not worked for so long. After our previous conversation I feel that the rest of the questions you have asked me are irrelevant as the job never took place".

The statement that Mr Heathorn "thought [his] taxi licence would not be renewed" suggested that he may have made a false statement in order to procure the grant of a licence. Mr Chamberlain therefore invited Mr Heathorn to an interview under caution. Mr Heathorn responded to that invitation by way of e-mail in which he said "... As I had outlined in our conversation the comment I had made to Mr Hardy was an error of facts. ... "I will point out at this time that any comment to Mr Hardy was after I had renewed my licence."

Mr Heathorn declined to attend the interview under caution (as is his right). He was notified of the meeting today and was sent a copy of the committee report. He has not attended today and has not given any explanation for his non-attendance.

The Committee having considered the evidence before it, finds on the balance of probabilities that approximately 2 weeks prior to 21 December 2012 Mr Heathorn undertook a job collecting a passenger from London City Airport to a school in Ipswich. Mr Burgon is an operator licensed by this Council. As such Mr Burgon can only use vehicles licensed by this Council to fulfil bookings taken by him. The Committee also find as a fact that the vehicle used for that journey was a Ssangyong as stated by Mr Heathorn to Mr Hardy and that the vehicle was not licensed by this Council. On the balance of probabilities therefore Mr Burgon had committed an offence under s. 46 (1)(e) Local Government (Miscellaneous Provisions) Act 1976 of operating a private hire vehicle when a vehicle licence under s.48 of the Act was not in force. By driving the vehicle Mr Heathorn was aiding and abetting that offence.

The committee does not accept the explanations given by Mr Heathorn in his e-mails to Mr Chamberlain. Firstly the details of the journey given to Mr Hardy were too precise to have been fabricated on the spur of the moment. Secondly Mr Heathorn's e-mails contradict themselves. In his e-mail of 8 January 2013 Mr Heathorn said that he lied to Mr Hardy because he was thought that his licence would not be renewed as he had not worked for some time. However in his e-mail of 21 January Mr Heathorn says (as was in fact the case) that his comments to Mr Hardy were after his licence had been renewed. There was therefore no reason why he should seek to mislead Mr Hardy.

It seems clear to the Committee that Mr Heathorn did tell Mr Hardy the truth at their meeting on 21 December and that having subsequently realised that the journey which he had undertaken involved the commission of an offence he then tried to cover it up by pretending that the information given to Mr Hardy was untrue. The Committee also note that Mr Heathorn failed to assist with an investigation into the suspected offence. It is his right not to attend an interview under caution and also he is not obliged to attend before the Committee today but the Committee is entitled to, and does, draw adverse inferences from these matters.

The Committee find that Mr Heathorn has acted as a private hire or hackney carriage driver in contravention of the law in that he drove as a private hire vehicle or hackney carriage a car which was not licensed by this Council. Instead of assisting an investigation into this matter he tried to cover things up. It is essential that drivers should be honest with the Council which licenses them. Mr Heathorn has demonstrated that his honesty cannot be relied upon. In the circumstances the Committee is not satisfied that Mr Heathorn remains a fit and proper person to hold a driver's licence and therefore revokes his licence for any other reasonable cause under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976.

The meeting ended at 12.05pm.