

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH  
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON  
WALDEN at 2.30pm on 13 MAY 2013**

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

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

Also present: in relation to item 2 on the agenda (Minute LIC66), the driver and the complainant; in relation to item 3 (Minute LIC67) the applicant, and in relation to item 4 (Minute LIC65), the driver.

LIC63            **WELCOME**

The Chairman welcomed all those present and introduced members of the Committee and officers.

LIC64            **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.

LIC65            **DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Committee considered a report regarding an application for renewal of a private hire driver's licence.

The Driver confirmed he had received a copy of the report.

The Licensing Officer said the driver had at the time of making his application for renewal correctly disclosed a pending prosecution which brought him into conflict with the Council's licensing standards. The driver had been charged with an offence under section 2(1) and (2) of the Protection from Harassment Act 1997. The driver had been summonsed to appear at the Magistrates' Court on 30 April 2013 in respect of the charge.

The Licensing Officer said the driver had explained at interview that following a separation from his wife she had lodged a complaint about him with the Police. On attending voluntarily Braintree Police Station he had been arrested on suspicion of causing harassment to his wife.

The driver had been released from custody on conditional bail to re-appear at Braintree Police Station on 17 December 2012. On that date prior to the court

appearance, a Police Officer had attended the driver's home and advised him that his bail had been cancelled. He was issued with a harassment warning in accordance with Section 2 of the Protection from Harassment Act 1997, which he declined to sign, and his mobile was retained. The harassment warning related to an allegation that over an 18 month period the driver had sent over 100 text messages to his wife.

The driver had on the return of his mobile in December sent two further texts to his wife. He had also visited the home of his wife to deliver a part of a baby's crib, which he left with his wife's new partner as his wife was not present at the time. The following day the wife had made a complaint to Essex Police of further harassment by her husband. The driver had attended Braintree Police Station where he was re-arrested on suspicion of further harassment.

The driver had no questions.

In response to a question from the Chairman, the Licensing Officer said the driver had given notification on 31 March of the pending prosecution.

The driver made a statement. He said he had been a driver in Uttlesford for 14 years and had never had anything like this happen before. He had tried to settle matters with his wife, but now found himself having to defend himself in court. Whilst he had sent her over 100 texts, this was over a period of about 18 months. He had gone to the police willingly and openly.

The Chairman asked what had happened at court. The driver said a plea of not guilty had been entered and the matter had been adjourned until 28 June. He was now on unconditional bail.

Members asked questions regarding the driver's understanding of the meaning of direct or indirect contact; whether the visit mentioned in the report to drop off a crib on 5 January 2013 had been pre-arranged; whether the driver had come to terms with the break-up of his marriage and whether he could confirm that he was not interested in carrying on what could be construed as harassment of his wife.

The driver said he may have misunderstood what was required in having no contact at all with his wife, as in texting her in December it was his intention to suggest that they clear everything up so as to move on. He said he had not asked for any of this. He had complied with all Police requests, had not wished to cause his wife distress and had not thought he had done so. He had decided from 30 December 2012 that it was time to seek a divorce and he had to think of his children. His wife had previously said he should contact her when he was prepared to divorce, which was the reason why he had texted her on 30 December.

The Chairman commented that the notice of warning regarding harassment had been read to the driver and that he had refused to sign. The driver confirmed this was the case, and said he understood the Council's position in making sure

he was a safe driver, however he never thought anything like this would happen.

The Assistant Chief Executive-Legal said the Committee needed to be satisfied that the driver was fit and proper. The burden of proof was on him to establish that he was fit and proper, on the balance of probabilities.

At 3pm the Committee withdrew to determine the licence, and at 3.05pm returned to give its decision.

## **DECISION**

The Drivers' licence is renewed. The Committee warns the driver that he must comply with any requirement placed on him by the Police or by the Court.

LIC66

## **DETERMINATION OF A DRIVER'S LICENCE**

The Committee considered a report to consider suspension or revocation of a private hire/hackney carriage driver's licence. The driver and complainant were both in attendance.

The driver confirmed he had received a copy of the report.

The Enforcement Officer said the complaint related to return journeys on 18 and 25 January 2013. The journeys had been booked by the complainant with a company, OTS Ltd, which specialised in airport transfers. The booking was to convey the complainant and her husband from their home in Suffolk to Gatwick Airport. The booking was then legitimately subcontracted by OTS Ltd to the driver.

The complainant had made a complaint to OTS Ltd after the return journey, but had received only a £5 refund and a request that she direct her grievance to Uttlesford District Council which was the licensing authority for the driver.

The report set out the allegations of the complainant regarding both the outward and return journeys of the booking and gave details of the account given by the driver at an interview with the Council's enforcement officers on 6 March 2013.

The complainant made a statement. She said the day before the outward journey bad winter weather was forecast. She and her husband decided to use OTS Limited because the company's publicity stated it would send a vehicle appropriate to the weather. The company also offered for a small additional fee a "meet and greet" service for the return journey from the Airport. The complainant had booked the meet and greet facility, as she and her husband were elderly and wished to take advantage of such a provision. The complainant said the driver had informed her that he would not carry out the meet and greet service but instead required the couple to text him once their flight had arrived, and then to make their way to the Sofitel Hotel where he would collect them.

The complainant said she and her husband had told the driver they did not know how to text as they had never before succeeded in sending one from their mobile phone.

Once their return flight had landed, the couple had therefore tried to telephone the driver twice but he did not answer. He then succeeded in contacting them, and said he would meet them at the Sofitel Hotel. The complainant and her husband attempted to find the hotel, which was difficult as they were leaving the Airport from a different area to that in which they had arrived. The walk required them to venture across several roads up and down pavements with no dropped kerbs, through torrential rain late at night. As the complainant herself was not able to carry anything heavy, her husband had to carry both sets of luggage.

Regarding the return journey in the driver's vehicle, the complainant said the engine light had been on throughout the journey, and that it was only once the engine made an unusual noise that the driver stopped to top up the oil. He had said it was the catalytic converter.

The Chairman thanked the complainant and asked if there were any questions from Members or from the driver.

The driver apologised for OTS Ltd regarding their lack of communication between all parties. He felt the matter could have been resolved more satisfactorily much earlier. He apologised that the journey had not been up to standard. He said there was nothing he could have done as the contract was with the company. He said he would have ensured the complainant received compensation at an earlier stage of the complaint which he felt had taken an inordinate length of time to resolve. He said there might have been some confusion on the part of the complainant and referred to the long flight and the fact that she had had difficulties with baggage handling.

The complainant replied that no trolleys were permitted to be taken out of the Airport.

The driver said he had not been aware of the nature of the matter to be discussed at the interview with the Enforcement Officers. He had been licensed to drive for 12 years and had undertaken 20,000 jobs with no complaints. The interview had been intimidating for him and he had not been legally represented, nor had he realised the notes of the interview would appear in the context of a determination hearing in front of this Committee. He said there were certain points he had made which were not in the report.

The Chairman asked the driver to restrict himself to responding to the allegations against him.

The driver then made a statement, providing the Committee with written copies of it. In summary, he said he had asked OTS Ltd to keep him informed about the complaint but they had not done so. He was concerned that his livelihood was at stake. He had supplied character references to the Committee.

Members confirmed they had received these references.

The driver said he had learned lessons from the complaint. It was a point of pride for him to be on time, to keep his vehicle clean and safe, and to have a good rapport with his customers. He said there seemed to have been some confusion on the outward trip. He had tried to contact the customers and apologised to them regarding the meet and greet. Regarding his smoking in front of the customers he said he was sorry if that had caused inconvenience, but as a smoker after a drive of 45 minutes with the prospect of a journey of 2 hours ahead he had taken the opportunity to smoke at that point. He had tried to do so at a distance from the customers but had had no intention of blowing smoke in the complainant's face. He had not known of her health condition, but in future would ensure he did not smoke in front of customers.

Regarding the allegation that there were animal hairs in the back of his vehicle, he said he did not carry animals but if there were hairs that these could have been fibres from an artificial fur coat worn by one of his regular passengers, although he had valeted the car before the journey with the complainant.

Regarding the allegations about the return journey, he said the plane landed at 22.30 as scheduled, and that he tried contacting the couple several times. It was not until 23.15 that he got through to them. It was raining so he considered going to the Terminal to meet them, but he was concerned he would miss them. He apologised if there were some issues there.

He said regarding allegations about his conduct, he did not swear and he was sorry if the complainant had found anything he said offensive. He said the passengers were a nice couple and had talked with them openly on a range of subjects. There were some things that could perhaps have been taken out of context. He agreed he had said he did not like working at weekends as it limited time with his girlfriend. However this was not an issue if he needed to work.

The Chairman asked the driver about the engine light in the vehicle. The driver explained the issue was difficult to ascertain and that he had discussed the problem when it first occurred with a garage. He had been advised the problem would probably clear if driven on the motorway. When it happened again during wet weather it had been possible to establish that, due to a design fault, water was reaching an electrical component, so he had sealed the area. The problem had not recurred until the night of the journey with the complainant. It had again been raining very hard, but when the engine management light had come on he had added oil, because he intended to get the complainant and her husband home. They had arrived at 01.30 hours.

The Chairman thanked the driver for his statement and invited questions.

Councillor Hicks said the complaints fell into two categories, contractual complaints regarding OTS Ltd, and the personal conduct of the driver. Regarding sub-contracting in future it was clearly necessary for the driver to

ensure he received better instructions from the contractor, as the customer in this case was expecting a meet and greet facility. This was a contractual matter between the parties. However, this Committee was required to be concerned with the driver's behaviour. He asked whether the driver considered his behaviour was normal and that there were no exceptional problems.

The Driver said he believed this was so.

The Chairman invited the complainant to comment on the driver's statement.

The complainant responded on various points, re-affirming what she had said earlier in relation to the state of the vehicle; saying that she had deliberately booked the lift early so as to allow for plenty of time at the Airport; stating that she felt the driver could have been better prepared for the wintry weather, and saying that she considered she had booked the meet and greet service; she referred also to the engine light and said if the car was for hire it ought to have been up to scratch.

The complainant said in these difficult economic times she would not wish anyone to lose their livelihood, but she wished to ensure that lessons could be learnt. She stood by everything she had said, but everyone deserved a second chance.

Officers confirmed that on inspection the driver's vehicle was found to be in satisfactory condition.

At 3.55pm the Committee withdrew to determine the licence.

At 4.05pm the Committee returned.

## **DECISION**

The Committee thanks the complainant, and finds her credible. The Committee feels that the behaviour of the driver on this occasion fell well below that which would be required, although it notes the driver states he has learned lessons and made changes. The way he acted is not the right way for a driver and the owner of a business to conduct himself. The Committee will take no action regarding the driver's licence but the driver should be aware that if he comes before the Committee for any reason in future he would not be treated so leniently.

LIC67

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

The Licensing Officer presented a report on the application to the authority for a grant of a private hire operator's licence. The applicant confirmed he had received a copy of the report.

The Licensing Officer highlighted for Members the main points of the report. The application form had revealed details of a previous conviction. The

applicant did not meet the authority's licensing standards as the last previous conviction had not been spent, and would become spent on 30 March 2017.

The applicant had attended an interview with the Licensing Officer at which he had given an explanation of the circumstances leading up to his most recent appearance in court.

He had on 1 April 2009 been granted a private hire driver's licence. On 17 December 2012 he had appeared before Basildon Magistrates Court to answer a summons alleging that he used a mobile telephone whilst driving his own vehicle. The applicant already had 9 penalty points on his licence so the case had to be dealt with by a Court. The applicant pleaded not guilty to this offence and was legally represented but after a trial the Court found him guilty. He was fined £450 plus costs and was disqualified from driving for a period of 6 months. The applicant had appealed against the conviction and sentence but these were upheld at the Crown Court. The applicant had served the six month disqualification period and his licence had been reinstated on 30 September 2012.

The report also set out details of an alleged offence of benefit fraud. Due to this allegation the Licensing Committee had on 23 November 2010 met to determine the driver's licence. The decision of the Committee was that on the balance of probabilities the applicant was not fit and proper to hold a licence, and revoked his driver's licence. Subsequently the applicant had accepted an administrative penalty regarding the alleged offence. Members were made aware that the acceptance of an administrative penalty did not require an admission of guilt, but that the benefits agency could only offer an administrative penalty if it was satisfied that it had sufficient evidence to secure a conviction if the matter were taken to court.

Members heard that if the applicant were successful in obtaining a licence then he would take over a business which had been operating in the district. He did not intend to make an application for the grant of a licence to drive licensed vehicles, but would employ drivers already licensed in the district.

The applicant then made a statement. He said he wished to take over the business of a local private hire operator, as the current manager was suffering ill-health. He would pay him an amount for the losses of the business. He would like to run the business properly and said he would undertake all official checks and requirements necessary. He said he had a young family and this was his chance to take control of a business to give them financial stability. If granted the licence he planned to employ four drivers. He said that in 2010 he had gone through a difficult period, having lost both his mother and grandfather in a short space of time. He wished to take over the business in question and bring it into compliance with the licensing authority's requirements.

In reply to a question from Members, officers explained that the operator company in question had tended to be run somewhat outside the Council's supervision. It had a history of unlicensed drivers and vehicles, and the current operator had had his licence revoked and was being prosecuted for not keeping

records. However, this matter was irrelevant to the current application. The applicant wished to take over the business, not its operating practices.

The Chairman asked the applicant about his previous convictions and about the acceptance of an administrative penalty for benefit fraud.

The applicant described the circumstances giving rise to the penalty for benefit fraud. He said upon getting married he had taken advice from the Job Centre regarding his wife's benefits having been stopped. He said the information he had been given was incorrect and that he had incorrectly applied for his wife's back rent to be paid. He had made a mistake during what was a difficult time for him due to bereavements in the family and he had paid back the money.

The Assistant Chief Executive-Legal referred Members to the report of the Enforcement Officer dated 23 November 2010 which indicated the issue was Job Seekers' Allowance.

The Chairman questioned the applicant regarding the acceptance of the benefit fraud administrative penalty.

The applicant said no such thing would happen again and he had learned from his mistakes. He had family responsibilities and it was his ambition to follow in his grandfather's footsteps and be a good businessman. He had taken advice already from the Council's officers to try to ensure he took all the right steps regarding his intentions for the business.

The Chairman noted the report regarding the investigation for benefit fraud stated there was strong evidence to show that the applicant made a false claim from the outset.

The applicant agreed that this would have been the case but said that he only claimed because he thought it was allowed. He accepted this was wrong.

Members asked various questions. In reply the applicant said he would be employing only those drivers from the business that he considered suitable. They would be self-employed. Regarding how payment could be made to the current proprietor of the business, the business had only made a loss last year due to how it was run, and the applicant was confident it could turn a profit. He had been involved for three and a half years in an office role at the business, in a role which did not require him to drive.

The Assistant Chief Executive-Legal said the reason that the applicant did not meet the authority's standards was the motoring offence, which had on a technicality regarding totting up been dealt with at Court. However, this offence did not count against him as an applicant to be an operator. He had a history of dishonesty regarding benefit fraud. It should be noted that the DWP had considered prosecution but had opted to offer an administrative penalty. The overpayment was £2,000, and the administrative penalty was £600.

At 4.35pm the Committee withdrew, and returned at 4.45pm to give its decision.

## **DECISION**

The Committee has serious concerns regarding the history of the private hire operator business which the applicant wishes to take over, and would not wish to see such issues repeated. However we are prepared to grant the operator's licence to the applicant, but warn him that the business will be monitored. The Committee encourages the applicant to consult the officers of the authority when necessary. If the private hire operator does come to the attention of the authority due to any failures in running it properly then the applicant will face the risk of losing everything he has sought to achieve with the business.

The meeting ended at 4.50pm.