

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2.30pm on 4 JUNE 2013**

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

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

Also present: Mrs King (the driver), Mr Robbins (her friend).

LIC1 **WELCOME**

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

LIC2 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE**

The committee considered a report requiring it to determine whether to revoke a combined private hire/hackney carriage driver's licence in accordance with section 61(1)(a) Local Government (Miscellaneous Provisions) Act 1976 that since the grant of the licence the driver had been convicted of an offence which involved dishonesty.

Mrs King, the driver, confirmed she had received a copy of the report.

The Licensing Officer outlined the sequence of events. Mrs King's first combined hackney carriage/private hire driver's licence had been issued on 25 October 2012, and was due to expire on 30 September 2013. On 8 May 2013 Mrs King had notified the Council that she had received 3 penalty points on her DVLA driver's licence, and that she had been convicted of fraud on 21 March 2013. The Licensing Officer said there had been no indication from Mrs King of the date when the penalty points had been incurred.

The Licensing Officer said it was a condition of Mrs King's licence, compliance with which she had agreed to when she signed the receipt for it, that she should notify the Council of any convictions or fixed penalty notices in writing within 7 days. However, the email from Mrs King to the Council on 8 May 2013 was the first notification of these matters that the Council had received from her.

The Licensing Officer took members through the circumstances set out in the report regarding the conviction for fraud. East Cambridgeshire District Council had terminated benefits paid to Mrs King, because she had failed to disclose a change of circumstances affecting her entitlement to benefit. Mrs King had alleged maladministration by that authority regarding retention of bank statements and wages slips she claimed to have produced. She had said she had not kept the documentation herself as she did not wish to be

cluttered up. East Cambridgeshire District Council denied the allegation of maladministration stating that they had procedures in place which, had the matter gone to trial, would have identified any evidence that Mrs King had presented. The authority had not offered Mrs King an administrative penalty.

On 21 March Mrs King pleaded guilty at South Cambridgeshire Magistrates Court to an offence contrary to section 112(1A) and section 112 (2) Social Security Administration Act 1992. She was legally represented. The court imposed a fine of £120 and Mrs King was ordered to pay court costs of £150 and a victim surcharge of £15.

The Licensing Officer drew attention to the current application of Mrs King to East Cambridgeshire District Council for a private hire driver's licence. The date for hearing that application was 12 June 2013.

The Chairman invited Mrs King to put questions to the Licensing Officer. Mrs King said she had no questions.

In reply to a member question about the reinstatement of Mrs King's benefits, members were informed that the usual process when a discovery of fraud was made, which was to stop benefit, then make a calculation regarding underlying entitlement. Members were advised that this information was not relevant to the determination of licence.

The Chairman asked about the amount of repayment of benefit notified by East Cambridgeshire District Council.

Members were informed the overpayment was £1693.53 which was less than the £2,000 which Mrs King had reported at interview. Mrs King said outstanding amounts for repayment were now £88 Council Tax Benefit and £430 Housing Benefit.

Mrs King then made a statement. She said she couldn't prove it, she had learnt by her mistakes and had never imagined she would have any matters on her CRB. She said this type of incident would never happen again and that she loved her job.

The Chairman asked when the penalty points for speeding had been incurred.

Mrs King said she had received the penalty points on 8 May 2013, which was the same day she had emailed the Council. She explained the circumstances of the speeding offence, which were that she had thought she was entering a 40mph limit but in fact it was a 30mph zone, and that she had been pulled over by traffic police. A speed of 46mph had been recorded.

In reply to a question by the Licensing Officer Mrs King confirmed that she had signed the acknowledgement of receipt of her licence dated 25 October 2012 by which she also had agreed to abide by the conditions of her licence. She said the reason why she had not notified the Council of her court

appearance within 7 days was due to her own failure to think, and that she had been distracted by other matters on her mind.

The Licensing Officer asked whether it was fair to say that it was her application to East Cambridgeshire District Council which had prompted Mrs King to tell the Council about her conviction and the excess speeding.

Mrs King agreed that this was so.

The Assistant Chief Executive-Legal said regarding the administrative penalty which had not been offered that this decision was a matter for East Cambridgeshire District Council's discretion. Mrs King had said that she had notified the Council of her change of circumstances affecting her entitlement to benefit, she had pleaded guilty at the Magistrates Court. The Committee could not go behind the conviction. The Council's policy was clear that drivers who ceased to meet the Council's licensing standards were likely to have their licenses revoked unless a departure from that policy could be justified. The burden of proof was on the driver to show why her licence should not be revoked. Her personal circumstances were not relevant to whether she was a fit and proper person to hold a licence.

The Council had held an amnesty for drivers to notify it of any breach of condition of licence earlier this year, from 31 March to 30 April, but Mrs King had not notified the Council during that amnesty of the conviction and penalty points she had received.

The Chairman invited Mrs King to comment.

Mrs King said the reason she had pleaded guilty to the offence for which she had been convicted was that she had had no documentation left in the house because she was separating from her husband and was de-cluttering. She explained that her husband had received a custodial sentence for an offence he had committed. She said her solicitor had advised her to plead guilty as she did not wish to receive a custodial sentence herself for the sake of her family.

At 3pm the Committee withdrew to determine the licence, and returned at 3.30pm to give its decision.

DECISION

Mrs King was first licensed as a private hire/hackney carriage driver by this council on 25 October 2012. Her licence was due to expire on 30 September this year. When her licence was granted Mrs King met the Council's licensing standards in that she had no unspent convictions at that time. When her licence was issued Mrs King was given a copy of the conditions relating to drivers' licences and signed a document to acknowledge receipt which also contained an agreement to abide by the conditions. One of the conditions on the licence requires drivers to notify the council of any convictions or fixed penalty notices in writing within 7 days.

On 21 March this year Mrs King appeared before South Cambridge Magistrates Court to face a charge of benefit fraud under s.112A Social Security Administration Act 1992. The allegation was that she had failed to notify East Cambridgeshire City Council that there had been a change in her circumstances which would affect her entitlement to benefits. Mrs King pleaded guilty to the charge. She was fined £120, ordered to pay costs in the sum of £150 and a victim surcharge of £15. Mrs King should have informed the Council of this conviction by 28 March. She did not do so. It came to the Council's attention because she applied for a licence with another local authority and having disclosed the conviction to that authority she was advised to tell Uttlesford about it. When doing so she also reported that her driving licence had been endorsed with 3 points for an offence of excess speed. Mrs King informed the committee that she notified the Council of this matter on the same day that she received the fixed penalty notice which was in respect of travelling at a speed of 46 mph in a 30 mph limit. Mrs King said she believed she was entering a 40 mph limit which was not in fact the case. Mrs King was interviewed by a licensing officer regarding the circumstances of her conviction. She maintained that she had provided East Cambridgeshire District Council with details of her change of circumstances and provided documentary proof of the same but that the council had lost the particulars. She maintained that position before the committee today. If that were correct that would be a defence to the charge. However Mrs King pleaded guilty and was convicted. Mrs King said that she pleaded guilty on the basis of legal advice. However as a matter of law the committee cannot find that a person is not guilty of an offence that he or she has been convicted of.

The Council has a duty to licence only those persons that it is satisfied are fit and proper persons to hold a licence. In determining whether an individual is a fit and proper person the Council is entitled to have policies and having adopted a policy it may determine matters in the light of that policy unless there are good reasons for departing from it. The relevant policy in this case is that drivers should have no criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974. The Council's policy states that drivers who cease to meet the Council's Licensing Standards are likely to have their licences revoked. The burden of proof is upon Mrs King to demonstrate to the committee on the balance of probabilities that she remains a fit and proper person to hold a licence even though she does not meet the Council's licensing standards. Mrs King has failed to do so. She has put forward no grounds which would justify a departure from policy other than to try and maintain her innocence of the offence, something she legally cannot do in the face of her conviction. Rather there are aggravating features. She failed to tell the Council of her conviction within 7 days as required by the conditions attached to her licence. She only told the Council of this matter when advised to do so by East Cambridgeshire District Council when it discovered her conviction as a result of a DBS check it had made. The unavoidable inference the committee draws is that had she not applied to East Cambridgeshire for a driver's licence she would not have told this Council of the conviction and we would not have known of it until 2015 when her DBS is due for renewal here. Further, although on its own it

would not justify a sanction, the committee take a dim view of the circumstances of Mrs King's speeding conviction. 46 mph in a 30 limit is grossly excessive and even on the basis that Mrs King thought she was entering a 40 mph zone she would have been exceeding the speed limit by 6 mph.

The decision of the committee is to revoke Mrs King's combined licence under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause namely that as a result of her conviction Mrs King does not meet the licensing standards of the Council. The committee is not satisfied that she is a fit and proper person to hold a licence and there are no grounds which would justify a departure from the Council's policy.