

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10.30am on 14 JUNE 2013**

Present: Councillor J Salmon – Chairman for the meeting.
Councillors E Hicks, J Loughlin and A Walters.

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

Also present: Mrs Meecham, the operator.

LIC3 **WELCOME**

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

LIC4 **DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE**

The committee considered a report requiring it to determine whether to suspend or revoke a private hire operator's licence in accordance with section 62(1)(a) Local Government (Miscellaneous Provisions) Act 1976.

Mrs Meecham confirmed she had received a copy of the report.

The Enforcement Officer outlined the sequence of events as described in the report. Mrs Meecham was the licensed private hire operator for Hallingbury Travel. On 13 January 2013 Mrs Meecham's husband had driven a vehicle licensed by the Council on his way to collect a passenger due to be collected by Hallingbury Travel. The police had stopped him and ascertained that the vehicle was being used for private hire and that Mr Meecham did not hold a private hire driver's licence. Mr Meecham had explained that he had been driving the vehicle as a favour to his wife, who was not well. Mrs Meecham had then collected the passenger instead. Under section 46(1)(e)(ii) Local Government (Miscellaneous Provisions) Act 1976 it was an offence to operate a private hire vehicle with an unlicensed driver. Mrs Meecham therefore appeared to have committed an offence under Part II of the Act, giving rise to grounds for suspension or revocation of her licence. Officers had invited Mrs Meecham to attend an Interview Under Caution in February 2013 but she had requested that it be postponed until a date after 9 March 2013. The Enforcement Officer had emailed Mrs Meecham to ask her reasons for wishing to delay the IUC, but had received no reply. The Council had taken proceedings against Mr Meecham for the offence of driving a private hire vehicle without a private hire vehicle driver's licence. On Tuesday 28 May 2013 the case against Mr Meecham was proved in his absence and he was fined £200 and ordered to pay costs of £300 and a victim surcharge of £20.

The Chairman invited Mrs Meecham to question the report. Mrs Meecham said she had no questions. She said on the date in question she was ill and her husband had said he would do the pick up as he believed the insurance for the vehicle permitted social domestic and pleasure use. She had on the Monday telephoned the Council's Licensing Officer to report what had happened. She said her husband never drove the vehicle except on that occasion and he only did it because she was ill.

Councillor Loughlin expressed concern that the background papers did not include correspondence from the Council regarding the re-arranging of the Interview Under Caution.

The Assistant Chief Executive-Legal said the production of the Council's correspondence with Mrs Meecham was irrelevant as the purpose of the interview was to establish whether an offence had been committed and whether Mrs Meecham was a fit and proper person to hold an operator's licence.

Councillor Hicks asked whether there were any circumstances in which a licensed vehicle could be driven by a non-licensed driver.

The Assistant Chief Executive-Legal confirmed that a private hire vehicle could not be driven by someone who was an unlicensed driver, even if the insurance policy named a person who was not a licensed driver. The insurance policy relevant to the vehicle listed 5 people including Mr Meecham as named drivers, who could drive for social, domestic and private hire purposes. As a matter of insurance law, the journey made by Mr Meecham to the Airport was covered by the insurance as the vehicle was not carrying a passenger and was being used for the private hire business. However the carrying of passengers was not permitted under the insurance where the driver did not hold a valid private hire driver's licence. If Mr Meecham had not been prevented by the police from picking up the passenger, Mr Meecham would have been guilty of the offence of driving without insurance as well as driving without a licence.

Mrs Meecham then made a statement. She said her husband had never used the vehicle before or since. The reason he was on the policy was that he had been on a policy transferred from one vehicle to another. He was now excluded from the policy. She said she did not receive the email sent to her regarding the request to explain her reasons for wishing to arrange the IUC. On 28 March she received a number of emails all at once. She had written "second letter" on her letter to the Council because she had not heard from them. She had received no response to her letter. She had asked for another appointment. She had never had any trouble before and believed she had been a good operator. She felt she was facing more of a punishment than those whose cases had been in the local newspapers for having unlicensed vehicles or being unlicensed operators.

The Assistant Chief Executive Legal explained the distinction between the cases Mrs Meecham had referred to and her own circumstances. This

Committee dealt with cases of suspension and revocation, whereas the Court dealt with criminal offences.

Mrs Meecham said she had made one mistake, but that she was fit and proper and that she was an employer.

In reply to questions from Councillor Hicks, Mrs Meecham said she had received the conditions attached to her operator's licence and that she had read them thoroughly. In allowing her husband to drive the vehicle, Mrs Meecham said she believed he was permitted to drive under the insurance for social domestic and pleasure use. She said the insurance document should not state that drivers were covered if they were not permitted to drive.

In reply to a comment regarding exclusion on the insurance policy of driving hackney carriages, the Assistant Chief Executive-Legal explained that this exclusion did not apply to private hire vehicles.

In reply to questions from Councillor Loughlin, Mrs Meecham said she had had an email from the insurance company to the effect that Mr Meecham's name should not be on the certificate for this vehicle.

In reply to a question from Councillor Hicks, the Enforcement Officer said inspection of the records of Mrs Meecham had not been carried out.

The Assistant Chief Executive-Legal said the conditions in the agenda papers were the current conditions of licence. Under the old conditions which applied at the time the incident took place, it was a condition that only licensed drivers could drive licensed vehicles.

It was for the Committee to consider whether to suspend or revoke the licence. Suspension was a punishment and revocation was applicable where a person was not considered fit and proper to hold a licence. The reason Mrs Meecham was not prosecuted for an offence was that there was no evidence at the time of prosecution of Mr Meecham that he was driving at her request or with her consent. Mr Meecham did not attend court and gave no reason for not attending so he was convicted. Today Mrs Meecham had said quite clearly that her husband was driving with her consent so if she had been prosecuted a conviction would have followed. If the Committee found her fit and proper it was reasonable to allow the business to continue. Suspension of an operator was not usually considered as this impacted on the drivers employed by the operator. However in this case the business was a "meet and greet" transfer service. Suspension of the licence would cause inconvenience and have a financial consequence but it would not have the same effect as suspending a conventional operator. The offence was one of allowing a licensed vehicle to be driven by a driver who did not hold a driver's licence. The Council had no knowledge of Mr Meecham, he had no CRB check, the Council had no way of knowing if he was a fit and proper person, and no explanation had been given as to why the other licensed driver of the business or another operator could not have picked up the passenger.

The Committee withdrew at 11.05am to determine the licence. During the discussion period, Councillor Hicks was obliged to depart for another commitment, whereupon Councillors Salmon, Loughlin and Walters agreed the Committee's decision.

At 12.35pm the Committee gave its decision, although Mrs Meecham had departed by that time.

Decision

Mrs Meecham has held a private hire operator's licence from this council since 2010. On the grant of her first licence and on each renewal she was given a copy of her conditions of licence. Her last licence was granted with effect from 1 September 2012. Included in the conditions at that time (and on the previous grants) was a condition that "The operator shall not employ or otherwise engage whether directly or indirectly any driver to drive any private hire vehicle for which the operator invites or accepts bookings unless the driver has been granted the appropriate licence by the District Council." Mrs Meecham signed an acknowledgement of receipt of the conditions and agreed to observe them. This condition no longer appears as a condition of the licence as operating a vehicle with an unlicensed driver is an offence under the Local Government (Miscellaneous Provisions) Act 1976 and the council no longer considers it appropriate to include conditions which replicate the requirements of statute. It expects licence holders to know the law which relates to the business they operate. However that condition existed at the relevant time. Both because of the conditions of licence and the legislation Mrs Meecham knew or ought to have known that only a licensed driver is allowed to drive a licensed vehicle.

On 13 January 2013 Mrs Meecham's husband was approached by a police officer driving a licensed private hire vehicle registered to Mrs Meecham as he arrived at Stansted Airport to collect a passenger. Mr Meecham did not hold a private hire driver's licence. As such he was not authorised to drive the vehicle. The police officer ascertained that the insurance on the vehicle which was in Mr Meecham's name would not cover an unlicensed driver using the vehicle as a private hire vehicle. He therefore refused to let Mr Meecham take the passengers. Mrs Meecham was called and attended in another vehicle to collect the passengers and Mr Meecham drove back in that car.

Following the report of this incident Mr and Mrs Meecham were invited to attend an interview under caution at the Council Offices. There is a lack of complete clarity over the circumstances surrounding this although it appears that at least 2 letters were sent by the council as a letter of 11 February 2013 from Mrs Meecham refers to letters she had received. The committee also draw an inference that Mr and Mrs Meecham were asked to attend an interview on 28 February as in her letter Mrs Meecham refers to a telephone conversation in which she said she would let Mr Chamberlain know "if the 28 February 2013 was convenient". The letter went on to say that due to work commitments Mr and Mrs Meecham could not attend on that date and asked for a new date after 9 March. Mr Chamberlain says that an e-mail was sent to

Mr and Mrs Meecham asking why they could not attend on 28 February which was not replied to. Mrs Meecham denies having received that e-mail. As a result of no response to that e-mail having been received a decision was made to prosecute Mr Meecham for the offence of driving a licensed vehicle without a licence. Mrs Meecham was not prosecuted as the council had no evidence that Mr Meecham was driving on her behalf or with her consent. Mr Meecham failed to attend court when the case was proved in his absence and he was fined £200 and ordered to pay costs of £300 and a £20 victim surcharge.

Whether or not Mr and Mrs Meecham received the e-mail from the council asking why they could not attend the interview on 28 February the committee draw an inference that they failed to co-operate fully with enforcement officers investigating what was a serious allegation. The letter inviting them in on that date must have been received no later than the date of Mrs Meecham's letter dated 11 February which was 17 days before the appointment offered. In response to the invitation Mrs Meecham telephoned the council and at that stage did not know whether the 28th would be convenient or not. The committee find this strange as presumably Mrs Meecham would have checked her diary before making the telephone call and could have re-arranged the appointment on the telephone at the time if 28 February was genuinely inconvenient. Her letter of 11 February does not offer any explanation as to why 28 February was inconvenient other than "work commitments" nor any explanation as to why an appointment before 9 March would not be suitable. The committee regard such a failure to co-operate as a serious matter.

Turning now to the circumstances of Mr Meecham's offence, Mrs Meecham said that she was due to collect some regular customers from the airport. She was feeling unwell and her husband offered to collect them on her behalf. She said that they thought it would be OK as he was driving for social, domestic and pleasure purposes under the policy for the vehicle.

The committee do not accept this explanation. Mr Meecham was clearly not driving for social domestic and pleasure purposes but was collecting customers of the parties' business from the airport. The insurance covers driving for hire and reward under the terms of a private hire licence. Mrs Meecham knew her husband had no such licence. The insurance was not therefore valid for him to carry passengers. Mrs Meecham knew or should have known this. The fact is that the offence of using a vehicle without insurance was only avoided by the intervention of the police.

Although Mrs Meecham has not been prosecuted for the offence of operating a private hire vehicle with an unlicensed driver on what the committee has heard today it is satisfied that the offence has been committed. It is a ground to revoke or suspend a licence that an operator has committed an offence under the Act. Unlike driver's licences a conviction is not necessary. The committee may also suspend or revoke a licence for any other reasonable cause.

Where an operator is no longer considered to be a fit a proper person the only realistic option for the committee is to revoke the licence as it is highly unlikely that a suspension would render the operator a fit and proper person once the suspension had expired. In this case the committee are prepared to accept that Mr Meecham drove the vehicle in unusual circumstances because Mrs Meecham was ill. In the absence of evidence of repeated breaches of the legislation and the fact that there have been no issues relating to Mrs Meecham as an operator since the first grant of her licence in 2010 the committee is satisfied that she remains a proper person and it is not therefore necessary for her licence to be revoked.

However the committee do take a very dim view of the commission of this offence. It has always been the policy of the council that sanctions should be imposed where there has been a breach of condition or the legislation and that approach was embodied in the council's policy adopted in March this year. Had Mrs Meecham been prosecuted it would not have been necessary to impose any further sanction but as she has escaped prosecution the committee consider that a sanction is necessary to serve as a deterrent both to Mrs Meecham and others. In that respect Mr Meecham's conviction is a completely separate issue as had sufficient evidence of an offence by Mrs Meecham been available both would have been prosecuted. Although the council's policy says that a suspension will rarely be appropriate for operators that is in the context of a standard private hire business where a suspension could cause a considerable loss of income and also impact upon innocent third parties, namely the drivers, who would be unlikely to have work during the period of suspension. Mrs Meecham does not operate a conventional private hire business however. She runs a park and ride operation which is her main business and the private hire operation is very much ancillary to that. Whilst there will undoubtedly be some financial loss arising from a suspension as she will need to arrange for other operators to undertake the journeys to and from the airport it will not be as great as the impact upon a conventional private hire business. The council's policy does not indicate what length suspension would be appropriate for operators but the starting point for drivers is 5 days. In this case the committee consider that 4 days would be appropriate and the licence will be suspended under s.62 (1) (a) and (d) for that length of time.

The committee stress to Mrs Meecham the importance of her being aware of and observing the council's conditions of licence and the legislation. If she is unable to fulfil any bookings in future she must not permit an unlicensed driver to do so on her behalf but must make arrangements for a driver licensed by this council to carry out the booking for her. Should Mrs Meecham be found to have used an unlicensed driver on a future occasion there is a very real probability that her licence would be revoked.

The meeting ended at 12.45pm.