

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 14
JANUARY 2014**

Present: Councillor J Salmon – Chairman
Councillors H Asker, J Davey, M Lemon, D Morson, V Ranger
and A Walters

Officers Present: M Chamberlain (Enforcement Officer), R Dobson (Principal Democratic Services Officer), M Perry (Assistant Chief Executive – Legal) and A Rees (Democratic Services Support Officer).

Also Present: Les Davidson (Treasurer – ULODA), Barry Drinkwater (Vice Chair – ULODA), Andy Mahoney (24x7 Ltd) and Mr Luchoo (Driver in relation to Item 3).

APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors D Perry, E Hicks and J. Loughlin.

PUBLIC SPEAKING

Mr Drinkwater said as ULODA's new Chair Mr Ott, had a prior engagement, Mr Drinkwater would speak on his behalf. The working relationship between ULODA and the Council had been productive. He extended his thanks to Councillor Perry for his leadership of the Licensing Task Group. He said that meetings with officers had proven productive since 2010. He praised the Assistant Chief Executive – Legal for his report on Licensing Fees for 2014/15 and said ULODA endorsed the recommendations put forward in the budget report.

Mr Mahoney reflected on 24x7's relationship with the Council of the past six years, which he said was good. He said by getting License Fees and other charges correct, the Council had allowed his business to go from employing 250 people six years ago, to 900 today.

LIC51

BUDGET 2014/15

Councillor Salmon outlined the recommendations of the report, which stated that fees for driver's licenses should not change, and that members should recommend to cabinet that the fees for operators and vehicle licenses should not change.

The Assistant Chief Executive – Legal said that in 2010 a surplus was identified and that the aim was to eradicate the surplus within three years. He said that fees were reduced to attempt to achieve this but that was not successful because there was a 42% increase in the amount of licenses issued. He said that whilst a surplus existed, it would not remain by the end of the next financial year. He then said he considered recommending an increase in fees, but based on historical trends the Chief Financial Officer

had agreed that it was reasonable to assume an increase in the number of licences issued in the next year. The proposal would result in a small deficit if this was the case but it was hoped to cover this by a greater than predicted rise in the number of licences issued and by reductions in costs. The Chief Financial Officer considered this reasonable.

RESOLVED

1. Fees for Drivers' Licenses should remain unchanged.
2. To recommend to Cabinet that the fees for operators and vehicle licenses should remain unchanged.

LIC52

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

Members were asked to consider suspension or revocation of a private hire / hackney carriage driver's licence in accordance with section 61(1)(b) Local Government (Miscellaneous Provisions) Act 1976, under the heading 'for any other reasonable cause'.

The Assistant Chief Executive – Legal said that the public had an interest in who was licensed to drive private hire vehicles and this was why Item 3 was not a Part 2 item.

The Enforcement Officer said that in July 2010 Mr Luchoo was suspended by the Assistant Chief Executive – Legal for two days, for failing to notify the Council within seven days after receiving a fixed penalty notice, for using a mobile phone whilst driving. He said that on 14 December 2013, Mr Luchoo's employer said he was not allowed to drive for three months. Further enquiries revealed that this was a drink driving related matter.

At a meeting with the Chief Executive – Legal, Mr Luchoo admitted to having been convicted of an offence under s.5(1)(b) Road Traffic Act of being in charge of a vehicle with excess alcohol, where he was fined £200, ordered to pay a victim surcharge of £20 and £85 costs and was disqualified from driving for a period of three months. Mr Luchoo said that on the night of question, he had been at a friend's party and was drinking throughout the evening. At around midnight he said that he went out with friends to have a cigarette. One of his friends then put the key into the ignition so that they could listen to the radio. Mr Luchoo said that a police patrol car stopped and asked who the owner of the car was. He said that he identified himself as the owner and was asked to provide a breath test, which was over the legal limit. Mr Luchoo said he did not recall the exact level of alcohol in his breath, but recalled that it was over 50. Mr Luchoo said that he pleaded guilty on legal advice and was not represented in court.

The Enforcement Officer said that it was not known what mitigation Mr Luchoo put forwards to the Magistrate's Court, but assuming the facts as explained to the Assistant Chief Executive – Legal, these facts would amount to a statutory defence, in which case the magistrates should have rejected the guilty plea and proceeded to trial. He said that by way of example, in the case of Brown -v- Higson 2000, the defendant was charged with being drunk

in charge of a motor vehicle after being found asleep with the ignition on sufficiently to allow the radio to be played. Despite being convicted in the first instance, on appeal the court found that any reasonable court would have concluded that the statutory defence had been established. The Enforcement Officer also referred to the case of Nottingham City Council -v- Farouk 1998, which showed that magistrates could not go behind the facts of a conviction on appeal. Therefore in the present case the Committee should not consider any submissions that would have amounted to a defence, but could only take into account any mitigating factors that fell short of a defence. The Council's Licensing Policy stated that when a matter was dealt with through the criminal justice system, it was the view of the Council that suspension would rarely be suitable. However, the Committee should consider in the light of conviction whether Mr Luchoo remained a fit and proper person to hold a licence. He said that in the event that the Committee were satisfied that Mr Luchoo remained a fit and proper person, members should note that he had failed to notify the Council of an offence within seven days. He said that although a longer or shorter suspension could be imposed, the starting point should be a five day suspension. He said that members should note this was the second time Mr Luchoo had breached this condition.

Councillor Salmon asked if Mr Luchoo had any questions about what the Enforcement Officer had said.

Mr Luchoo said that he had no questions.

Councillor Salmon asked Mr Luchoo to make a statement.

Mr Luchoo said that he was unaware that just putting the key into the ignition under the influence of alcohol was an offence. He said he felt he hadn't done anything wrong, but became scared when he was charged. He said that losing his license would be costly to him, and that he would never drive a vehicle under the influence of alcohol.

In response to questions raised by the panel, Mr Luchoo said that he had not been drinking prior to the party. He said that he had planned on staying round his friend's house overnight before driving back late next morning. He said that he could not recall the exact intoximeter reading, only that it was over 50, possibly 53 or 54. He also said he did not have work the following day. Later Mr Luchoo said that he and his friend planned travelling into Central London by train and he would return to collect his car and drive home in the late afternoon. Later still he said that he and his friend would be travelling to Highams Park in London by public transport. Mr Luchoo said that he had not informed the Council of this offence within the seven day period because he was stressed and had then missed the office opening times. He then said that his estimated daily earnings were £60 and that although he normally worked four days a week, the days he worked varied and occasionally he would only work three days a week.

The Assistant Chief Executive – Legal read out the Guidelines that were issued to magistrates relating to drink driving. He said that given the severity of Mr Luchoo's sentence, it was unlikely his intoximeter reading was under

60, which would have led to a Band A sentence. His sentence indicated either a reading of 60 – 89 with aggravating factors, or a reading of 90 – 119 with no aggravated factors. These were Band B and Band C levels respectively. He said the sentence would have been inconsistent with a Band D reading of 120 or higher.

At 08.10 pm the Committee withdrew to consider its decision, and at 08.45 pm returned.

DECISION

Councillor Salmon read the decision of the Committee. “Mr Luchoo is a private hire driver who has been licensed by the council since November 2009. On 6 December 2013 Mr Luchoo appeared before a magistrates court charged with an offence under s.5(1)(b) Road Traffic Act 1988 of being in charge of a motor vehicle on a road after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit. He was fined £200 and ordered to pay a victim surcharge of £20 and costs of £85. He was also disqualified from driving for a period of 3 months which will expire on 6 February. Thereafter he may apply to have his DVLA licence restored.

Under the conditions of his licence Mr Luchoo should have notified the council of the conviction within 7 days. He did not do so. The council only became aware of the conviction when Mr Luchoo’s operator notified the council that Mr Luchoo had informed him that he was unable to drive for 3 months.

On 20 December 2013 Mr Luchoo met with the Assistant Chief Executive Legal to explain the circumstances of his conviction and why he had not notified the council of the conviction in accordance with the conditions of his licence. Mr Luchoo said that on the 31 October 2013 he had been to a party at a friend’s house. He arrived there about 8pm. He acknowledged he had been drinking in the course of the evening. Shortly before midnight he and some friends left the property to have a cigarette. Mr Luchoo opened up his car. His friend sat in the driver’s seat and turned on the ignition so that he could have the radio on. Mr Luchoo says that the engine was not turned on and was not running. A police car stopped and the officers enquired as to who was the owner of the vehicle. Mr Luchoo said that the vehicle was his (this vehicle was his private vehicle and not a licensed private hire vehicle). Mr Luchoo was asked if he had been drinking and he confirmed that he had. He was asked to take a breath test at the roadside which proved positive. He was arrested and taken to a police station where he took an Intoximeter test. Mr Luchoo has not retained the print out but recalls that the reading was high and says it was over 50. He was prosecuted for the offence of being in charge of a motor vehicle whilst over the legal drink drive limit. Mr Luchoo says that he took legal advice and the advice was that he should plead guilty. He attended court on the 6 December 2013 unrepresented. He pleaded guilty in accordance with the advice previously given. When asked why he had not reported the conviction to the council Mr Luchoo had no explanation other than that it was an oversight.

As a result of his conviction Mr Luchoo no longer meets the council's licensing standards one of which is that a driver should not have been disqualified in the previous 3 years. That does not mean that his licence should be automatically revoked but it is for Mr Luchoo to demonstrate to the Committee that he remains a fit and proper person to hold a licence. The Committee note Mr Luchoo's explanation of the circumstances of the offence. In response to questions from the Committee Mr Luchoo said that he was not intending to drive that night but was staying at his friend's home. Initially he said he was intending to drive home the following morning. Later he changed that statement to say that he was intending to travel to London the following morning by train with his friends and drive home in the afternoon. He was not due to work again as a private hire driver until Saturday evening. Mr Luchoo told the Committee he was not aware that being in control of a vehicle with excess alcohol was an offence.

The officer's report explains that section 5(2) Road Traffic Act 1988 provides that "it is a defence for a person charged with an offence under sub-section (1)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit." It is not known what mitigation Mr Luchoo put forward to the Magistrates' Court. However, assuming that he gave the facts as explained to the Assistant Chief Executive – Legal and the facts he gave to the Committee these would amount to the statutory defence. The magistrates ought therefore to have rejected the guilty plea and proceeded to trial. However Mr Luchoo has pleaded guilty and been convicted on his admission. The Committee are not able to go behind the fact of the conviction.

The Committee has been advised of the sentencing guidelines issued to magistrates for the offence of being in charge of a vehicle with excess alcohol. The sentencing guidelines differentiate the seriousness of the offence by reference to the ratio of alcohol to breath. There are 4 levels with a starting point for sentence and a suggested range for each level. These are:

Breath 36 - 59	Fine of 100% relevant weekly income	Fine 75% - 125% RWI Endorse licence 10 points
Breath 60 - 89	Fine of 100% RWI	Fine 75% - 125% RWI Endorse licence 10 points OR consider disqualification
Breath 90 - 119	Fine of 150% RWI	Fine 125% - 175% RWI or medium level community order. Consider disqualification up to 6 months OR 10 points
Breath 120 +	Medium level community order	Low level community order - 6 weeks custody. Disqualify for 6 - 12 months.

According to the guidelines aggravating features are:-

1. The vehicle concerned was an LGV/HGV or PSV
2. Ability to drive was seriously impaired
3. High likelihood of driving

4. Driving for hire or reward

The only mitigating factor is that there was a low likelihood of driving. Mr Luchoo was unable to provide his exact breath reading although he recalls it was over 50. The Committee do not accept that his reading was less than 60 because the sentencing guidelines do not suggest a disqualification where the breath reading is 59 or less. There would therefore have had to be significant aggravating factors for the magistrates to disqualify for a reading under 60. The offence involved Mr Luchoo's private vehicle and the factors 1 and 4 cannot therefore apply.

The next category of offenders is where the breath reading is 60 – 89. The committee note that for such a reading an endorsement is the first option and a disqualification can be considered. A disqualification is not therefore the first option and magistrates would be unlikely to have disqualified if there were no aggravating features present.

The third category of offenders is where the breath reading is 90 – 119. Here a disqualification is the first option with an endorsement as the alternative. Members consider that magistrates would only endorse rather than disqualify if there were no aggravating features present and the magistrates were satisfied that there was a low likelihood of driving.

In the view of the committee for the magistrates to rationally conclude that Mr Luchoo should be disqualified they would have to be satisfied that there were severe aggravating features if his breath reading were less than 60 or that there was one or more aggravating features if his breath reading was between 60 and 89 or that there were no mitigating features regarding the offence if his breath reading were 90 to 119. In deciding to disqualify and in determining the length of the disqualification the magistrates would undoubtedly have taken into account the fact that Mr Luchoo was a private hire vehicle driver and that even if he were to keep his job despite the disqualification he would lose significant income while he was unable to drive.

In short the overwhelming inference is that the magistrates found the offence to be a very serious one. The Committee accept that view. Members do not accept the version of events given by Mr Luchoo as that account would be a defence which would involve going behind the conviction.

The burden is upon Mr Luchoo to satisfy the committee that he is a fit and proper person notwithstanding that he fails to meet the council's licensing standards. He has been convicted of a very serious offence involving drinking when in charge of a motor vehicle. Although the vehicle concerned was not licensed he could easily have driven the following day whilst still over the limit. The purpose of the policy is so that where a driver has been disqualified from driving he can demonstrate over a period of time by driving other than as a private hire driver that he is safe. On the evidence the committee has heard it is not satisfied that Mr Luchoo is a fit and proper person to hold a licence and there are no grounds to make an exception to the council's policy. His licence is therefore revoked under s.61(1)(b) Local

Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause. Drivers who may drive under the influence of drink pose a threat to the public. The Committee is of the view that the interests of public safety require the suspension or revocation of the licence to have immediate effect and therefore direct under s.61(2B) of the Act that the revocation will have effect immediately. The Committee directs that formal notice to that effect shall be given to Mr Luchoo pursuant to s.61(2B).”

The meeting ended at 9.00pm.