

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES SAFFRON WALDEN at
2.30pm on 04 MARCH 2014**

Present: Councillor D Perry (Chairman)
Councillors J Davey, E Hicks and V Ranger

Officers in attendance: M Chamberlain (Enforcement Officer), M Perry (Assistant Chief Executive – Legal) and A Rees (Democratic Services Support Officer)

Others in attendance: B Drinkwater (ULODA – Co Vice-Chair)

LIC58 **APOLOGIES FOR ABSENCE**

No apologies for absence were received

LIC59 **ITEM 2 – DETERMINATION OF A PRIVATE HIRE/ HACKNEY
CARRIAGE DRIVERS LICENCE – MR YARDLEY**

The Assistant Chief Executive – Legal said that the driver had surrendered his licence to the Council and therefore the report was withdrawn.

LIC 60 **ITEM 3 – CONSIDERATION OF A PRIVATE HIRE
OPERATORS LICENCE – CAR SERVICE TRAVEL LIMITED**

No one appeared to represent Car Service Travel Limited. The Assistant Chief Executive – Legal informed the Committee that the company had not made contact with the council and had not requested that the meeting be adjourned or deferred. In the circumstances the Committee decided to proceed with the consideration of the matter in the company's absence. The Enforcement Officer said that Car Service Travel Limited was a private hire company, first granted a private hire operator's licence by the Council on 15 December 2011. This was due to expire on 30 November 2014. The company has one Director. James Lawson, who was not currently a Director, controlled the day to day running of the business. On 27 November 2013, a Transport Monitoring Inspector for Essex County Council carried out a stop check to monitor an Essex County Council school contract. He stopped Uttlesford Private Hire vehicle 1063. The driver identified themselves as Mohammed Alam, but did not have his driver's badge with him. An escort, with him at the time, confirmed his identity and that she was employed by Car Service Travel Limited. Mr Alam had held a license with this Authority, but this had expired on 5 October 2009. On 6 January 2014, two Enforcement Officers attended the operating address of the company. There was no sign advertising the company operated at the address. A lady from a nearby unit said that she had never seen anyone enter the unit, but understood it to be a taxi company. On 7 January 2014, the Licensing Officer received an application for a replacement vehicle from RTA Chief Car Rentals on behalf of Car Service Travel Limited for private hire vehicle 1063. The

Licensing Officer e-mailed Car Service Travel Limited that day to enquire whether the vehicle had been involved in an accident. A response was received the following day stating that the vehicle had been in an accident on 5 December. Failure to notify the Council of such an accident was an offence under section 50(3) Local Government (Miscellaneous Provisions) Act 1976. On 29 January 2014, Mr Alam attended an Interview Under Caution. He said he was licensed with Harlow Council. He did drive the Uttlesford Licensed private hire vehicle on 27 November 2013, in both the morning and afternoon. Mr Lawson had paid him £40 for the job. On 29 January 2014, Mr Lawson attended an Interview Under Caution. He said Car Service Travel Limited had been licensed by the Council for two years. He had been a Director of the company, but his daughter was now the sole Director. He confirmed the operating address of the company was Unit 10 Heathview, Pond Lane, Hatfield Heath. When asked why the Enforcement Officers could not gain access to the office, he said it was only in use for one and a half hours three times a week. The driver who ordinarily carried out the contract was unavailable, so he contacted Mr Alam to ask him to undertake the job notwithstanding that Mr Lawson knew that Mr Alam was not licensed by Uttlesford District Council. He informed the Director during the day that the contract was carried out by Mr Alam. Mr Lawson was also questioned regarding the failure to report the accident on 5 December 2013. He said the car was parked at the side of the road and was hit by another vehicle. The rear bumper and tow bar were damaged. It was his fault the accident was not reported. He blamed a heavy workload. It was the opinion of the Assistant Chief Executive – Legal that it was in the public interest to prosecute the company for two offences under the Local Government (Miscellaneous Provisions) Act 1976: operating a Private Hire Vehicle with an unlicensed driver and failure to notify the Council of an accident. Both carry a maximum fine of £1000. The company has pending prosecutions against them meaning they fell below the Council's licensing standards for private hire operators. The Council's Licensing Policy Relating to the Hackney Carriage and Private Hire Trades suspension would have been disproportionate. Prosecution should be brought, even for first offences. The prosecution authorised by the Assistant Chief Executive – Legal was consistent with this policy. It was up to members to determine whether the company remained a fit and proper persons to hold an operator's licence.

Councillor Perry asked what was required when a temporary replacement vehicle was needed. Mr Alam was used on more than one occasion, highlighting that Car Service Travel Limited would likely continue to use unlicensed drivers when needed. What was happening to Mr Alam?

The Assistant Chief Executive – Legal said that where a licensed vehicle was damaged and a replacement was hired a temporary licence was granted for the vehicle.

The Enforcement Officer said that Mr Alam was being prosecuted.

Councillor Hicks asked what the vehicle was doing between 23 November 2013 and 5 December 2013.

Councillor Perry asked whether it was possible to gain access to the vehicle records.

The Enforcement Officer said that it was not known what the vehicle was doing between the two dates. It was not possible to gain access to the vehicle records.

LIC61

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.

The Enforcement Officer and Mr Drinkwater left the room at 2.45pm so the Panel could consider its decision. The Enforcement Officer and Mr Drinkwater were invited back into the room at 4.20pm when the Committee gave its decision.

DECISION

Councillor Perry read the following statement. "Car Service Travel Ltd is a private hire operator licensed by Uttlesford District Council. It was first licensed in December 2011 and the current licence is due to expire on 30 November 2014. Apparently the company has a number of school transport contracts. Its operating address is given as Unit 10 Heathview, Pond Lane Hatfield Heath.

On 27 November 2013 an employee of Essex County Council was monitoring drivers undertaking school contracts on behalf of that authority. He approached the driver of an Uttlesford District Council licensed vehicle operated by Car Service Travel Ltd and asked to see his driver's badge. The driver, a Mr Alam, did not have a badge with him. Uttlesford District Council was informed of this and upon checking found that Mr Alam was not licensed as a driver by this authority. This gave rise to suspicion that offences under the Local Government (Miscellaneous Provisions) Act 1976 may have been committed as under that Act it is illegal for an individual to drive a private hire vehicle licensed by this council unless he holds a driver's licence also issued by this council. For the operator of the vehicle it is an offence to operate a vehicle licensed by this council if it is driven by a driver who is not also licensed by this council.

Enforcement officers invited Mr Alam and a representative of the company to attend interviews under caution at the Council Offices. Mr Alam was interviewed on 24 January 2014. In his interview Mr Alam said that he was licensed as a private hire driver by Harlow District Council. He was approached by Mr Lawson of Car Service Travel to do a driving job on behalf of that company. He knew that his licence authorised him to drive in

Harlow. He was not sure whether he could drive vehicles licensed by Uttlesford. He said that he asked Mr Lawson if it was OK for him to drive a Car Service Travel vehicle and Mr Lawson said that it was. He acknowledged that he did not enquire of this council as to whether it would be legal for him to drive. During the course of the interview Mr Alam said that he had driven on behalf of Car Service Travel on other occasions. On those occasions he had used his own car licensed by Harlow. The reason he had used Car Service Travel's car on the date he was stopped by Essex County Council was that his vehicle had been broken into. Mr Alam said that he was paid £40 in cash for the job.

Mr Lawson was interviewed under caution on behalf of Car Service Travel on 29 January 2014. He said that the company had been engaged in the private hire trade for 30 years, originally in Epping but since 2011 in Uttlesford. He said that he had previously been a director of the company but now his daughter was the sole director. He described himself as the manager. Mr Lawson said that the company was familiar with the conditions of an operator's licence.

Mr Lawson acknowledged that he knew Mr Alam. He said that he knew Mr Alam's cousin and had known the family for quite a few years although he had only known Mr Alam for about a couple of months. Mr Lawson said that Mr Alam had driven for the company on only one occasion, in November 2013. The driver who was to undertake the contract concerned was unable to undertake the booking and Mr Lawson asked Mr Alam if he would do so. Mr Lawson delivered the Uttlesford licensed vehicle to Mr Alam the day before the booking for that purpose. Mr Lawson acknowledged that he was aware that Mr Alam did not hold a driver's licence from this council. He said that he asked Mr Alam to drive because he was stuck to get the children into school. He said he knew it was against the rules but that he had to get the contract covered. Mr Lawson did not appear to be aware at the time of the interview that using an unlicensed driver was an offence under the legislation, not merely a breach of the council's rules. Mr Lawson denied that he paid Mr Alam anything for undertaking the job.

During the interview under caution enforcement officers raised the issue of a further offence. A vehicle licensed by the council was involved in an accident on 5 December. Mr Lawson was the driver at the time. Where a licensed vehicle is damaged as a result of an accident the proprietor has a duty to report this to the council within 72 hours. No such report was made and the first time the council became aware of the accident was when an application was made for a licence for a replacement vehicle. Mr Lawson had no reasonable explanation as to why the accident had not been reported as required by the legislation but accepted that he was responsible for the failure on the part of the company.

There are differences in the accounts given by Mr Alam and Mr Lawson in their respective interviews under caution. The company has chosen not to send Mr Lawson or any other representatives today to enable the company's position to be explained. The Committee have therefore had to

form a view as to which version of events it prefers. It notes that Mr Alam acknowledged that he had driven for Car Service Travel on more than one occasion. In particular he said that he had carried out the school run to and from the school on 27 November 2013 and had driven his own car for the company on one or two other occasions. Mr Lawson on the other hand initially maintained that Mr Alam had driven for the company once only on the morning of 27 November, only later acknowledging that Mr Alam had done the evening journey back from school as well. In the context of an interview under caution for an offence of driving whilst unlicensed Mr Alam was admitting offences on other occasions that the council was not otherwise aware of. The Committee consider it highly unlikely that Mr Alam would have made such admissions if they were not true. Further Mr Alam said that he was paid about £40 in cash for the jobs. Mr Lawson denies that Mr Alam was paid any money. On Mr Lawson's version of events he had known Mr Alam for only a short period of time and they did not have a close relationship. Mr Alam drives for a living. The Committee cannot conceive any reason why he should agree to undertake these journeys without payment and believes that he was paid as he stated. Where there are differences in accounts the Committee therefore finds the version given by Mr Alam more reliable.

The council's policy provides that where there is a breach of the legislation or of a condition there should normally be a sanction imposed. For drivers a sanction may take the form of a suspension of the licence for a short period, a formal caution or a prosecution. However for operators the policy states that suspension of an operator's licence, even for a short period of time, is likely to be disproportionate. It is also likely to impact upon innocent parties as the effect of a suspension of the operator's licence is to deprive the drivers working for that operator of an income for the period of the suspension. The council's policy is therefore that where an operator has committed an offence a suspension should not be imposed and a prosecution should be brought even for a first offence. The Committee understands that prosecutions have been authorised consistent with this policy.

The policy also states that the council expects the legislation relating to the hackney carriage and private hire trades and the conditions attached to licences to be observed and will take action in respect of any breaches. Drivers or operators who cease to meet the council's licensing standards are likely to have their licences revoked. The Committee must not slavishly follow its policy and must be prepared to depart from it in appropriate cases. However where a departure from policy is sought the onus is upon the person seeking the exception to justify it. In the absence of any representations from the company the Committee can see no grounds which would suggest that a departure from policy is appropriate.

Under s.62 of the Act the council can suspend, revoke or refuse to renew a licence on any of 4 statutory grounds. For the reasons given suspension of the operator's licence would not be appropriate in this case. The Committee are therefore left with the options of either taking no action or revoking the licence.

In the view of the Committee 3 of the 4 statutory grounds apply in this case. s.62 (1)(a) provides that a licence may be revoked for any offence under, or non-compliance with the provisions of Part 2 of the Act. Unlike drivers this subsection does not require a conviction. Car Service Travel through its representative at interview under caution acknowledged that it had committed 2 offences under the Act namely operating a vehicle when the driver was not licensed by this council and failing to notify the council of an accident within 72 hours of it occurring.

s.62 (1)(b) of the Act provides that a licence may be revoked because of any conduct on the part of the operator which appears to render him unfit to hold an operator's licence. The decision to use an unlicensed driver was a deliberate one. Mr Lawson acknowledged in interview under caution that he knew it was against the rules. On the basis of Mr Alam's account (which the Committee accepts) Mr Lawson assured Mr Alam that it was lawful for him to drive notwithstanding that he was not licensed by this council. He therefore lied to Mr Alam to secure his services. Further on Mr Alam's evidence he had driven for the company before. This demonstrates that the company will use unlicensed drivers to suit its convenience. That position is wholly unacceptable. The Committee take a particularly dim view of operators using unlicensed drivers. Whilst Mr Alam was licensed by another authority, that did not authorise him to drive vehicles licensed by this council. It is for each council to determine its standards for drivers and to decide what checks to carry out. Uttlesford District Council had no current knowledge as to the suitability of Mr Alam at the time he drove for Car Service Travel.

Finally s.62 (1)(d) provides that a licence may be revoked for any other reasonable cause. Operators licences may only be granted where a council is satisfied that an applicant is a fit and proper person. It follows that where an operator is found no longer to be a fit and proper person the licence should be revoked. In determining whether an operator is fit and proper the Committee has regard to its policy incorporating the licensing standards for operators one of which is "no pending prosecution for any criminal offence". Car Service Travel no longer meet this standard and therefore are not on the face of it to be considered fit and proper persons to hold an operator's licence. As mentioned previously the company has not made any representations to attempt to justify departure from policy.

Further under this ground Mr Lawson is the manager of the company and therefore in day to day control. The policy states that operators are expected to know the law as it relates to them and observe it. Mr Lawson exhibits an ignorance of the law in that he appeared to be unaware that using an unlicensed driver and failing to report an accident were not merely breaches of condition but were offences under the Act. He also believed that the operating address was merely the place where the records have to be kept rather than the place from which the business of making provisions for the acceptance of bookings for hire should be carried on. The Committee are also most concerned that on Mr Lawson's account he discussed his decision to ask Mr Alam to drive for the company with the company's sole director who was not happy with it but

appeared to acquiesce. The absence of management control over an illegal act again indicates that the company is not a fit and proper person.

For the reasons given the Committee therefore revokes the operator's licence held by Car Travel Service Ltd under the grounds set out in s.62 (1) (a) (b) and (d) of the Act."

The meeting ended at 4.35pm.