

25 February 2014

Dear Councillor

LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE

A meeting of the Licensing and Environmental Health Committee will be held in the Committee Room, Council Offices, London Road, Saffron Walden on Wednesday 5 March 2014 at 7.30pm or at the conclusion of the public speaking session whichever is the earlier.

Yours faithfully

JOHN MITCHELL

Chief Executive

Commencing at 7.30pm, there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements, subject to having given two working days prior notice.

Yours faithfully

JOHN MITCHELL

Chief Executive

A G E N D A

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To: Councillors D Perry (Chairman), H Asker, J Davey, J Freeman, E Hicks, J Loughlin, M Lemon, D Morson, V Ranger, J Salmon and A Walters.

Lead Officer: Michael Perry (01799) 510416
Democratic Services Officer: Adam Rees (01799) 510548

MEETINGS AND THE PUBLIC

Members of the public are welcome to attend any of the Council's Cabinet or Committee meetings and listen to the debate. All agendas, reports and minutes can be viewed on the Council's website www.uttlesford.gov.uk.

Members of the public and representatives of parish and town councils are now permitted to speak or ask questions at any of these meetings. You will need to register with the Democratic Services Officer by midday two working days before the meeting. An explanatory leaflet has been prepared which details the procedure and is available from the Council offices at Saffron Walden.

A different scheme is applicable to meetings of the Planning Committee and you should refer to the relevant information for further details.

Please note that meetings of working groups and task groups are not held in public and the access to information rules do not apply to these meetings.

The agenda is split into two parts. Most of the business is dealt with in Part 1 which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

You are entitled to see any of the background papers that are listed at the end of each report.

If you want to inspect background papers or speak before a meeting please contact either Peter Snow on 01799 510430, Maggie Cox on 01799 510433 or Rebecca Dobson on 01799 510433, or by fax on 01799 510550.

Agenda and Minutes are available in alternative formats and/or languages. For more information please call 01799 510510.

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**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7.30 pm on
16 OCTOBER 2013**

Present: Councillor D Perry - Chairman.
Councillors H Asker, E Hicks, J Loughlin, M Lemon, D Morson,
V Ranger, J Salmon and A Walters.

Officers present: M Perry (Assistant Chief Executive - Legal) and L Bunting
(Democratic Services Officer).

Also present: Mr B Drinkwater, (Uttlesford Licensed Operators and Drivers
Association) and Mr A Mahoney.

LIC24

PUBLIC SPEAKING

Mr Drinkwater and Mr Mahoney attended the meeting to address members on
several topics.

Licensing Reserve

Mr Drinkwater referred to the Licensing Accounts for 2012/13 which were
made available in late August. He said that they had been taking advice from
the NPHA before making final arrangements to meet. The Guildford Audit
Report had been used all over the country since 2013 as the first definitive
document setting out the parameters for calculating licence fees and this
needed to be taken into account.

Mr Mahoney reported that this had been a good year with an increase of 100
vehicles and an increase in office staff.

Licensing Policy

Mr Drinkwater referred to the agenda item to be discussed later in the meeting
regarding a request from a licensed operator to permit the licensing of
vehicles which are described as classic cars. He reported that ULODA had
consulted with members of the trade who would support a recommendation to
license such vehicles as a class. Minimum standards were set by the annual
test and it was considered that the Licensing Officer should assess each
application on its individual merits to determine if the vehicle satisfied the
Council's criteria.

Licensing Plates

Referring to whether the display of licensing plates should be required for
classic vehicles, Mr Drinkwater said that there was an on-going project within
ULODA to research other districts' licensing practices in respect of what may
be termed as high end luxury vehicles used by chauffeur service companies.
Representations would be made in due course, one of which was possibly to

be that a chauffeur class be created with a licence plate in the shape of a roundel to be displayed in the front and rear windscreens.

ULODA EGM

Mr Drinkwater wanted to place on record the thanks of the ULODA to the Assistant Chief Executive - Legal for attending the EGM held in September, where he had addressed members on the new Licensing Policy, touting, taxi ranks, top lights and plates, activities at Audley End and enforcement.

Mr Drinkwater referred to tension amongst members of the trade about the condition to allow the removal of the taxi top lights in certain circumstances including when a vehicle was being used for social events, for example weddings and pleasure purposes. A consultation with all proprietors and HCV drivers about the removal of this exemption was currently being undertaken and representations would be made at the conclusion of the exercise.

Mr Mahoney referred CRB/DBS system which was being utilised by most other authorities and thought that Uttlesford should consider adopting the scheme. The Assistant Chief Executive – Legal said that this was an agenda item for this meeting.

Mr Drinkwater informed members that he would be standing down from chairmanship of the ULODA at the AGM. At the moment there was no obvious successor and a change in the constitution to allow a non-operator to assist may be proposed.

The Chairman thanked Mr Drinkwater for all his hard work on behalf of ULODA and said that he had enjoyed partnership working. All members of the Committee agreed with these sentiments.

LIC25 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors J Davey and J Freeman.

LIC26 MINUTES

The minutes of the meetings held on 10 July and 26 September 2013 were received and signed as a correct record:

LIC27 MATTERS ARISING

(i) Minute LIC14 (meeting 10 July 2013) – Determination of an Operator's Licence

The Assistant Chief Executive – Legal reported that no appeal had been notified to the council and that the time allowed for an appeal had expired.

(ii) Minutes LIC18, LIC20 and LIC 23 (meeting 26 September 2013)

The Assistant Chief Executive – Legal reported that no appeal had been notified to the Council but that the time allowed for an appeal had not expired.

LIC28

DBS CHECKS

The Assistant Chief Executive – Legal reported that the Criminal Records Bureau (CRB) had been replaced by the Disclosure and Barring Service (DBS). The DBS operated in a slightly different way to the CRB. Under the old system the Council would request a search of criminal records and intelligence in respect of applicants for drivers' licences. The results were then sent to the Council with a copy being sent to the driver.

Under the new system the Council would not be provided with copies of checks from the DBS. The DBS report was sent to the driver and it was for the driver to produce this to the authority.

In some circumstances, drivers were required to have a DBS check for purposes other than the application to the Council for a driver's licence. For example, drivers working on an Essex County Council's schools' contract would require a DBS check for that purpose as well as for the Council.

It was important to ensure that a DBS check was current when a licence was granted. However, as there was no longer any facility for the DBS result to be sent directly to the Council there would appear to be no reason why a current DBS check carried out on behalf of another authority should not be acceptable. Provided that the checks were enhanced DBS disclosures and dated not more than one month before the application for the licence was made and it was not more than two months old the date the licence was issued it was considered unlikely that any matters which might have occurred would have been noted on the DBS check in any event. This would have the advantage for drivers of speeding up the application process and reducing expense.

When a driver made an application for a licence that had not been previously licensed by this authority, the policy had been that a CRB check would be acceptable providing that it was not more than 18 months old and that the applicant made a statutory declaration to the effect that a fresh check would not reveal any additional matters. Making a false declaration was an offence of perjury and the Assistant Chief Executive - Legal had delegated power to revoke a licence if a false declaration was made. The form of statutory declaration used made this quite clear to the drivers. Subject to the proposed amendment above there was no reason why this practice should not continue. Since the policy was introduced no licences had been revoked as a result of a false declaration.

Similarly, if for any reason a fresh check was not available upon a driver already licensed by the Council, the policy had been to renew the licence upon production of a statutory declaration that no new matters would be revealed by a new DBS check. This enables drivers to continue to drive

notwithstanding that a DBS check was not available and again since this policy was introduced no licences had been revoked because of a false declaration.

After a short discussion it was

RESOLVED to approve the replacement of the Criminal Records Bureau (CRB) by the Disclosure and Barring Service (DBS) and the changes as listed below:

- 1 that the Council accept DBS checks obtained by or on behalf of other authorities provided that the same were dated no more than one month before the application was received and no more than two months before the grant of the licence.
- 2 That in other cases the Council continued to accept DBS checks carried out by or on behalf of other authorities which were not more than 18 months old at the date of the application for a licence, provided the same was supported by a statutory declaration to the effect that since the date of such check no matters had occurred which would be disclosed on a fresh check.
- 3 That the practice of renewing licences for existing licence holders when a DBS check was due but not available, provided that the applicant made a statutory declaration to the effect that the DBS check requisitioned would not reveal any matters not disclosed by the previous check, should be continued.

LIC29

REQUEST FOR VARIATION OF THE LICENSING POLICY

The Assistant Chief Executive – Legal informed members that the Council had received a request to change its policy to permit licensing of Rolls Royce and Bentley motor vehicles after they are 12 years old. An operator had recently acquired a Bentley Arnage vehicle which was made in 1999. It was therefore currently 14 years old and did not meet the council's licensing standards

Before 2008, the Council did not impose an overall age limit beyond which it would not licence vehicles as private hire or hackney carriage vehicles. Instead, there was a requirement that vehicles should not be licensed for the first time if they were more than 10 years old. However, once licensed subject to passing six monthly road tests, vehicle licences could be renewed indefinitely. It had been resolved by the Committee on 9 January 2008 that, with certain exceptions, vehicles would not be licensed after they were 12 years old. Members had taken the view that the age limit was important to ensure that vehicles licensed by the council comprised a smart modern fleet which would enhance the character of the district. The exceptions to this policy were for wheelchair accessible vehicles, vehicles used exclusively for school contracts and classic vehicles.

When the council adopted its Licensing Policy in March 2013 these standards were carried forward although the exception that applied for classic vehicles

was deleted as none were licensed by the Council at that time and the exception was considered unnecessary. It should be noted that the age limit of 12 years applied to all vehicles of whatever description. There were a number of operators within the district operating high range luxury vehicles which are subject to the 12 year rule.

The operator in this case had originally obtained the vehicle for the purpose of, or providing wedding services. This was acceptable as no licence was required for vehicles when used in connection with weddings, therefore the operator did not need a licence for much of his proposed business although he had indicated that he wished to offer the service of collecting couples from the airport upon their return from honeymoon. This would be too remote from the wedding to be covered by the exemption. However, in addition to the wedding service the operator also wished to offer his Bentley for proms and for special days out to races, special events, special occasions and corporate pickups, all of which required licensing.

The operator had already applied for a licence for his vehicle which had been dealt with on the 26 September and the application had been refused. However different considerations applied when considering whether to make an exception to policy and whether to change the policy itself.

The Assistant Chief Executive – Legal reported that he had contacted all operators in September seeking their views on the proposal. However, only five of the 90 operators in the District had replied.

The Chairman commented that if the policy were changed it would then be open to all operators with vehicles over 12 years old. The Assistant Chief Executive – Legal said that it was up to members to decide what boundaries to impose.

Councillor Asker considered that any change should be done in a safe and proper fashion and that it was not every day business for people who had prestige vehicles. She proposed that ULODA be invited to comment on the grading of prestige cars and every vehicle that fell into that category.

The Assistant Chief Executive – Legal suggested deferring the proposal until trade had been consulted on grading. If members were minded to license a class of vehicles of more than 12 years old, they should be specific in what vehicles would be so licensed and justify the reason for changing the policy and explain why vehicles within the class designated by members were different from other luxury cars licensed by the council which were subject to the 12 year rule. Therefore a lead from the trade on grading would be helpful in making a final decision.

After further discussion it was proposed and agreed to defer a decision pending representations from ULODA on what grading should be on vehicles over 12 years of age.

CONSULTATION ON THE FUTURE OF PERSONAL ALCOHOL LICENSES

The government had indicated an intention to abolish the requirement for personal licence holders to renew their licences at ten year intervals as part of the review of its alcohol strategy. When the relevant legislation is passed this would mean that personal licences would last for the life of the licence holder or until earlier surrender or revocation. The intention to consult on whether personal licences should be abolished altogether was also announced. The Assistant Chief Executive – Legal requested members to decide what form of response the Council should take.

The first personal licences issued by this Council were not due for renewal until 2015 and the projected income from these had not yet been built into the budget. The Council presently issued approximately 60 personal licences per year at £37 per licence. In addition to this, personal licence holders were required to notify the Council of any change in their name and address and pay a fee of £10.50 in respect of each such notification. Roughly 20 notifications were received per annum. In the event that personal licences were abolished the fees would cease to be payable and the total loss of income to the Council was estimated at £2500.

The consultation document raised a number of questions to which a response was sought and the Assistant Chief Executive – Legal had been asked to provide answers. He then went through the questions as follows:

- (i) Does the Council think the government's proposal would reduce burdens in time and/or money or business including small and medium enterprises?

Yes, although it was difficult to gauge the amount of time. Responsible licensees would wish to ensure their staff was properly trained and it was a matter for proprietors of businesses to determine the resources they wish to put into this. Removal of the need for all personal licence holders to attend approved courses however would result in a financial saving.

- (ii) Does the Council think this proposal would undermine the licensing objectives? The four licensing objectives were: public safety; preventing crime and disorder; preventing public nuisance and protecting children from harm.

The weakness in the current system was the fact that the personal licence holder had not got to be present at all times when alcohol was being sold. Providing properly trained staff were employed on the premises, the abolition of personal licences would not appear to undermine the licensing objectives. The difficulty would be in monitoring that staff had been appropriately trained. Arguably a requirement that the premises must have a personal licence holder present at all times when alcohol was being offered for sale would be more likely to reinforce the licensing objectives than the abolition of personal licence holders.

- (iii) Does the Council think nationally accredited training courses for those authorising alcohol sales are necessary to help licensing authorities promote the licensing objectives?

Before the Licensing Act 2003 came into effect, licensing justices would not grant or transfer a licence unless they were satisfied the applicant was a fit and proper person to hold such a licence. For a number of years prior to the abolition of their jurisdiction magistrates were insisting upon a significant degree of experience in the licensed trade or a recognised licensing qualification. It was therefore important that all staff engaged in the sale of alcohol were properly trained. The advantage of a nationally accredited scheme was that it provided a level playing field for those engaged in the industry. However if the requirement for a qualification were removed the demand for such courses may be so low as to render them uneconomic to provide.

- (iv) Do the Council think a statutory list of relevant offences, such as theft or handling stolen goods, is necessary to help licensing authorities promote the licensing objectives?

The answer to this question was clearly no. Only the police could object to the grant of a personal licence and only if:

- (a) the applicant had an unspent conviction for a relevant offence and
- (b) the Police consider that the grant of a personal licence would undermine the licensing objective of prevention of crime and disorder and in the event of a conviction for a relevant offence only the magistrates could revoke or suspend the personal licence. This was therefore irrelevant to the licensing authority's functions. It did impose restrictions upon the police (in terms of objecting to licences) and on the courts (in considering revocation or suspension). This was maybe of more significance before the law was changed to include additional offences (e.g. conspiracies and attempts). However, there were still gaps in the law. For example, offences under the Social Security (Administration) Act 1992 were not included in the list of specified offences notwithstanding the fact that these were clearly offences of dishonesty. It might better promote the licensing objective of prevention of crime and disorder if the police could object to the grant of a licence because of any conviction which in their view undermined the crime and disorder objective and if the magistrates could consider the forfeiture or suspension of a personal licence for any offence. In such cases it would be for the licensing authority or the court to determine whether the nature of the offence was such that the crime and disorder objective was likely to be undermined.

- (v) What proportion of premises in your area do you think conditions requiring nationally accredited training would be appropriate?

The Council had no experience in this. The consultation gave a range of less than 10, 25%, 50%, 75% or greater than 90%.

- (vi) For what proportion of premises in your area do you think conditions requiring criminal records declarations for future designated premises supervised would be appropriate?

The consultation questionnaire gave a range of less than 10%, 25%, 50%, 75% or greater than 90%. It would appear that a basic DBS check was desirable in all circumstances. Whilst the police clearly had access to information regarding prior convictions, whether police resources would permit an examination of such records in the time allowed for dealing with applications was questionable and the requirement for a criminal records declaration would reduce the administrative burden.

LIC31

UPDATE ON THE LICENSING RESERVE

The Committee received the year-end accounts for 2012/13 which had now been finalised. The balance at year-end stood to the credit of the reserve amounting to £62,000. In round figures this was £5,000 more than was forecasted and £1,000 less than anticipated in the previous report in July.

A breakdown of the figures had been provided to ULODA on 21 August 2013, which was later than anticipated due to accountants being engaged in the first audit by new external auditor. ULODA had been invited at that time to agree to a meeting with the Assistant Chief Executive – Finance, the service accountant and myself to discuss the figures. The Assistant Chief Executive - Legal had been informed that two parties who wished to be involved in that meeting were busy with business matters and he would be contacted when their availability could be established. Nothing had been heard since.

The reserve had now been reduced to a level where an increase in fees would be necessary in 2014/15 to ensure that the Council breaks even going forward. The Assistant Chief Executive – Finance and the Assistant Chief Executive – Legal would engage with the trade during the budget process in determining what the level of fees should be agreed for 2014/15. There would need to be an extra-ordinary meeting of the Committee to determine the fees for which it was responsible and to advise the Cabinet on the suggested level of other fees as there was no other scheduled meeting of the Committee before the budget is set. A meeting would need to take place in November or December 2013.

LIC32

EXERCISE OF DELEGATED POWERS

The Committee received a report outlining the implementation of delegate powers of Assistant Chief Executive – Legal since the last meeting. He had dealt with nine drivers for various matters under delegated powers all relating to failing to notify the council of fixed penalty notices within seven days of the

same being imposed. In five of those cases licences had been suspended for five days. Another case had the licence being suspended for three days. The breach of condition occurred before the change in policy and the Council had been notified of the fixed penalty notice before the change in policy. In two further cases there were strong mitigating factors and two day suspensions had been imposed. In the final case no action was taken.

In another case the Assistant Chief Executive - Legal declined to deal with a breach of condition of failing to notify a fixed penalty notice within seven days under delegated powers due to aggravating features and the matter had been referred to the Committee. The driver's licence in that case was suspended for 14 days and a warning given that any further breaches of condition would be likely to lead to his licence being revoked.

The period involved in the report covered the busiest time of the year for licence renewals. It was to be expected therefore that more breaches of condition would come to light during this period than at quieter times of the year. It was noted that in the corresponding report in October 2012 it was reported that 15 drivers had been dealt with, six more than for the same period this year. However of those cases six had been concerned with minor offences which at that time were dealt with by a suspension. This meant that the number of drivers failing to notify fixed penalty notices as required had remained unchanged for the same period in 2013 as in 2012.

Under the current policy drivers who committed offences were dealt with under the criminal justice system. Usually for a first offence this would involve a caution although if there were aggravating factors a prosecution might be authorised for a first offence. All such matters were reported to Committee as the existence of a caution or pending prosecution took the licence holder out of our licensing standards and members therefore needed to consider in each case whether the driver/operator remained a fit and proper person. Since the date of the last report there had been no formal cautions administered. The Assistant Chief Executive – Legal had authorised three prosecutions, one of an operator for using an unlicensed driver (the Committee had revoked the operator's licence); one of a driver witnessed by an enforcement officer using a mobile telephone whilst driving and a third for making a false statement to obtain a licence. The second case was currently pending. The third was dealt with on 15 October 2013 when the applicant was fined £37 and ordered to pay a victim surcharge of £20 and £100 costs.

The Chairman congratulated the Assistant Chief Executive – Legal on the report and for keeping the Committee up to date with events.

With regard to items on the agenda, Councillor Ranger commented that the item for future agenda items had been omitted from the current publication. It was requested that this item be placed permanently on the agenda in future.

The meeting ended at 8.45 pm.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 19
NOVEMBER 2013**

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

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

Also present: the drivers in relation to agenda items 7, 5, 6 and 3; the complainant and Mr Cooper (the driver) in relation to item 2.

The Chairman was informed that the driver whose determination of licence was listed first, Mr Cooper, had not arrived at the start of the meeting, but that the witness had arrived. The Assistant Chief Executive-Legal explained that Mr Cooper had been made aware of the date and time of the meeting, and that he had to attend. As other drivers whose licences were to be considered were also present, the Chairman agreed to take agenda item 7 first.

LIC33 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.

LIC34 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The driver confirmed he had received the report.

Members considered suspension or revocation of the 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 report gave details of a routine inspection of the driver's vehicle carried out by a Contract Monitoring Inspector employed by Essex County Council on 1 October 2013. The inspection had revealed the driver was not wearing his private hire/hackney carriage driver's badge and did not have it with him. Failing to wear a private hire driver's badge when driving a private hire vehicle was an offence under section 54(2) Local Government (Miscellaneous Provisions) Act 1976.

At an interview under caution on 16 October 2013 the driver said he was on a school contract with a passenger in his usual vehicle but the brakes had seized up on a blind bend. He had exited the vehicle with the pupil and

contacted his employer, who arranged for another vehicle to attend so the passenger could complete the journey. The driver explained that when he picked passengers up he showed his badge but then took it off and put it on display on the dashboard. He had done so on this occasion, but did not want to retrieve the badge following the breakdown as the vehicle was on a blind bend.

The driver had accepted a Council caution for the offence of failing to wear a private hire driver's badge, which was administered by the Assistant Chief Executive Legal on 16 October 2013.

The Enforcement Officer said the driver now fell below the Council's licensing standards as he received an official caution within the last 12 months. As a result it was for the Committee to decide if he remained a fit and proper person to retain his licence.

The driver said he had no questions about the facts given in the report.

The Chairman asked whether the fact of the breakdown had been verified.

The Enforcement Officer said this information had not been obtained.

The Chairman invited the driver to make a statement.

The driver said he had explained at his interview under caution that he would be willing to supply evidence of the breakdown from the garage he had contacted. Regarding the display of his badge, he held the view that by displaying it on the dashboard he was complying with the legal requirements of his licence, as on the dashboard it was clearly visible to the passenger. For safety reasons he had not retrieved the badge from the broken down vehicle. He suggested the Council could supply drivers with two badges, one for drivers to wear, and one to be displayed in the vehicle.

The Assistant Chief Executive-Legal said the requirement for the badge to be worn at all times was set out in the legislation. The reason the badge had to be worn was not for the benefit of the passengers but for the benefit of police or enforcement officers in checking that the driver was compliant with the legislation. At a recent meeting between the Council and trade representatives, he had suggested that the trade consider a second badge for drivers, but this suggestion had not been received enthusiastically.

The driver said he felt this was a 'Catch-22' situation, as if the badge was worn it would not be 'distinctly visible' to the passenger at all times. He now fully understood the requirement and always wore it now.

At 10.15am the Committee withdrew to determine the licence, and returned at 10.20am to give its decision.

DECISION

The Committee was concerned at some of the comments the driver had made as the legislation was clear that the badge should be worn. However the Committee was satisfied that the applicant was a fit and proper person to hold a driver's licence.

LIC35

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

The Chairman asked whether Mr Cooper had arrived and was informed he had not. The Chairman agreed to proceed to item 8 on the agenda.

The Enforcement Officer said the driver had contacted him to explain that due to childcare issues she would not be able to attend the meeting. The circumstances of the matter were very similar to those of the previous item. He asked Members to consider suspension or revocation of a Private Hire/Hackney Carriage Drivers Licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had failed to comply with part of that Act.

On 8 October 2013 the driver was carrying out a school contract when she was stopped by a Transport and Contract Compliance Officer with Essex County Council for a routine inspection. During the inspection the driver was found to be wearing her private hire driver's badge which had expired on 30 September 2013.

At an interview under caution on 31 October 2013 the driver explained that she had not received her new badge; she kept ringing her manager to see if they had the badge, but the company had claimed it had not been received from the Council. The driver told officers that she had continued to wear her old badge, even though it was out of date, so that people could identify her. After she was stopped, her employer had located her badge and supplied it to her. She admitted the offence, but apologised and said she did not know it was an offence not to wear the badge.

The Enforcement Officer said that, in accordance with the Council's licensing policy, where an offence was committed under the legislation the Council should impose a sanction. The driver had chosen to accept a Council caution for the offence of failing to wear a valid private hire driver's badge. The caution had been administered by the Assistant Chief Executive Legal on 31 October 2013. Members were now required to decide if she remained a fit and proper person to retain her private hire/hackney carriage driver's licence.

The Chairman asked when the badge had been sent to the company.

The Enforcement Officer said this particular operator usually asked for items to be sent to the Dunmow Library Council Office for collection. There were indeed concerns about the operator and reports regarding other drivers working for the company would be brought before the Committee shortly.

Members found it surprising that the driver did not consider it an offence to fail to wear her badge.

The Assistant Chief Executive-Legal said delivery of licences to other offices for collection was a management issue which he would look into.

Members asked various further questions about the company.

DECISION

The Committee is satisfied that the applicant is a fit and proper person and the licence should be granted. The driver would be informed that she should not drive until she had obtained her badge.

LIC36

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman was informed that the driver in the first matter on the agenda had still not arrived. The Committee considered that he had been given more than sufficient opportunity to attend, and that as the complainant was present, this matter would be dealt with next.

RESOLVED to return to public session.

The Chairman welcomed the complainant and asked the Enforcement Officer to present the report.

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'.

On 19 September 2013 the Council received notification from the complainant who wished to report bad driving by private hire vehicle 478, a white Fiat minibus on 18 September 2013. The report gave details of the incident as alleged by the complainant. In the complainant's opinion the driving standard he had observed was extremely dangerous and nearly caused several accidents. The complainant had supplied a witness statement to confirm the details of this incident.

The report also summarised what had been said by Mr Cooper in an interview with the Assistant Chief Executive - Legal on 18 October 2013 to discuss the allegations. Mr Cooper had confirmed that he was the driver of the vehicle in question and said that he had a vague recollection of the incident, after hearing the witness statement read to him. The report stated that Mr Cooper had confirmed during that interview that on the date in question he was driving on the outside lane of the A1 with two passengers who had learning difficulties one of whom was a front seat passenger. This passenger was apparently pointing at something in front of him and Mr Cooper said he had thought he was going to interfere with the radio. He had then noticed that the vehicle in front of him had what appeared to be plastic flapping underneath

the rear of the vehicle. Mr Cooper stated that he had been concerned that this item might come adrift and go into his windscreen obstructing his vision or shattering the windscreen. He had therefore got closer to that vehicle and flashed his headlights to gain the driver's attention, but the driver had not noticed and he had indicated to overtake on the left hand side. He had carried out this manoeuvre and had considered it safe to do so.

The Assistant Chief Executive-Legal had put it to Mr Cooper that the complainant saw him undertake on three occasions and attempt to do so on another. Mr Cooper had not accepted this. As Mr Cooper disputed the statement of the complainant, he had been informed that the matter would be referred to members to consider.

The Chairman invited the complainant to make a statement. The complainant said he was a vehicle examiner with VOSA, and his role included investigation of fatal accidents on behalf of four police forces. He described what had happened on 18 September 2013. He had been driving in the outside lane when a vehicle had approached him at speed. The vehicle had very aggressively pulled over to force him out of the way. The complainant had realised the vehicle was a minibus with children on board. Then he had pulled back to observe the vehicle. It was zigzagging through traffic. The driver pulled to try and undertake, risking accidents and on several occasions he had had to abort that with heavy braking. Where he had pulled off the motorway there were part-time traffic lights. The complainant then had the opportunity to write down the driver's registration number and taxi licence number.

Members asked about the complainant's view of the standard of driving he had seen, and what his explanation was regarding the item said by the driver to be flapping under the vehicle.

The complainant said the standard of driving was very poor given the vehicle was carrying children. If he had been in one of the marked vehicles he would have pulled him over in order to obtain details for the agency to prosecute him. Regarding the description of a plastic item flapping under the vehicle, the complainant said he had not seen anything. It was not clear which vehicle this comment had related to, and he had wondered whether it was a reference to his own vehicle. His vehicle had to be checked each time it was taken out but on checking there was nothing under his vehicle. He said the natural reaction on seeing a flapping item on the vehicle in front was to back off, not close in on it.

The Assistant Chief Executive-Legal asked the complainant whether if he had been in a marked vehicle, in whose discretion it would have been to determine the charge if a decision to prosecute had been taken.

The complainant said that this might have been a decision that VOSA rather the police would have taken.

At 10.50am the Committee withdrew, and at 10.55 made its decision, to revoke the licence with immediate effect. *(NOTE: Minute LIC42 below sets out the decision in full as read out to Mr Cooper following his later arrival).*

LIC37 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

Members were informed that item 4 on the agenda had been withdrawn.

LIC38 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.

LIC39 APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered a report relating to Item 5 on the agenda.

The driver confirmed she had received the report.

Members were asked to consider whether to grant a private hire/hackney carriage driver's licence following her application dated 9 September 2013. In reply to a question on the form requiring her to list all convictions including motoring offences both spent and unspent, and any police cautions, the applicant had answered the question by disclosing that she had one motoring offence in 2012 for which she had received three penalty points, which were endorsed on her licence. No other offences were disclosed on the application form.

The Council had received with the application form an enhanced disclosure and barring service (DBS) check that had been completed when she applied for a position as a cleaner with a different employer. This certificate had shown that the applicant had received a police caution on 10 December 2003 for the offence of destroying or damaging property to the value of £5,000 or less.

The matter had been brought before the Committee for determination of the grant of a licence, as making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976. The applicant met the Council's licensing standards as the previous convictions were now spent in accordance with Rehabilitation of Offenders Act 1974.

At an interview under caution on 27 September 2013 the applicant said she had asked other applicants how to complete the question relating to previous convictions, and had been advised that only motoring convictions needed to

be described. Her completed application form had been checked by the prospective employer. She had explained the reason for the conviction was due to a domestic incident at her mother-in-law's house when items had been damaged during a fight and a neighbour had called the police. The applicant had been arrested with her husband and had spent the night in the police station before the applicant was cautioned. She had maintained that if she had wanted to hide any previous cautions or convictions she would not have supplied the previous DBS form with her application.

The Chairman invited the driver to make a statement. The driver said she had been one of four prospective drivers taken to her interview for the job by another driver, who had waited for them to finish the interview. She had misunderstood the question on the form and had asked her fellow applicants how to complete the form. They had told her she only needed to mention motoring convictions if they had let to points being endorsed on her licence. She said this was her mistake, that she had not intended to make a false statement, and she apologised for doing so.

In reply to a question about how she had filled in the form, the applicant said she had filled it in very quickly.

The Assistant Chief Executive-Legal said the applicant had had a new CRB check when she had applied for the licence, but it appeared she had submitted one that she had had done previously.

The applicant confirmed this was the case. She said the earlier one had expired but that the prospective employer had asked her to hand one in if she already had one, and she had therefore supplied them with a CRB check which was a year old. The applicant now provided Members with her most recent CRB check, which indicated no further convictions.

At 11.15am the Committee withdrew to consider its decision, and at 11.20am returned.

DECISION

The Committee is satisfied that the applicant is a fit and proper person and the licence should be granted. The applicant is requested to ensure that in future she understands fully what information is required in renewal of her licence.

LIC40

DETERMINATION

The Committee considered agenda item 6 regarding an application for the grant of a joint private hire/hackney carriage driver's licence.

The Enforcement Officer explained that in response to the question on the application form requiring all convictions both spent and unspent and any police cautions to be disclosed, the applicant had disclosed one conviction for

the offence of breaking and entering in 1969 at Southend Juvenile Court. No other offences were disclosed.

A DBS check dated 22 September 2013 revealed the applicant had received a conviction on 2 September 1965 for larceny for which he had received a three year probation order and a fine of £3 for pavilion breaking and entering; and on 2 March 1971 he had received a 12 month conditional discharge for the offence of possession of a dangerous drug. As making a false statement to obtain a licence was an offence under section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976, the Assistant Chief Executive-Legal had declined to grant the licence under delegated powers and had referred the application to the Committee for determination. The applicant met the Council's licensing standards as the previous convictions were spent in accordance with the Rehabilitation of Offenders Act 1974.

The report gave details of an interview under caution conducted with the applicant on 14 October 2013. The applicant had emailed the Enforcement Officer on that date stating that he would not be able to attend the interview under caution. In his email he said that he did not own a car to get to Saffron Walden, and could not afford the train fare. He had asked his prospective employer for a lift but that they had refused as he was not a current employee. The applicant had stated that he would not have deliberately omitted a conviction as he would have known it would have shown up. He had explained he had been CRB checked previously for MOD security clearance and for a licence with the Security Industry Authority, with no problems. He had also referred to a 22 year exemplary record with the Army. He maintained this was a momentary lapse for which he had apologised.

The applicant confirmed he had received the report. He then made a statement. He said he had been informed when he attended his interview that an enhanced CRB check would be carried out. He had been fully aware that both his spent convictions would show up, so he did not understand why he did not record these on his application form. He had noted one of them, but because they were spent he had replied "no" to whether he had others to disclose. He apologised for the inconvenience, but he would not have done this deliberately. He had had things on his mind as his mother had recently died.

The Chairman said he appreciated these convictions were a long time ago, but he did have a concern about a conviction for possession of a dangerous drug on 2 March 1971 disclosed on the CRB check.

The applicant said the drugs were not for himself but for one of his siblings. At the time he had been applying to join the armed forces, and had been given a conditional discharge. As far as public safety was concerned he was aware of what the job entailed and the necessity to protect the public. He was a grandfather and he knew what it took to look after children. He was no threat.

The Enforcement Officer asked whether the interview was one-to-one or in a group and whether they had checked his forms. The applicant said he was interviewed by two people and he was not sure whether they had checked the forms.

At 11.35am the Committee withdrew, and at 11.40 returned to give its decision.

DECISION

The Committee is satisfied that the applicant is a fit and proper person and the licence should be granted. The Committee wishes to emphasise the importance of reading and complying in full with the questions on the application form.

LIC41

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

The Committee next considered agenda item 3.

The driver confirmed he had received the report.

Members were required to consider suspension or revocation of a private hire/hackney carriage driver's licence in accordance with section 61(1)(a)(ii) of the Local Government (Miscellaneous Provisions) Act 1976, under the heading that since the grant of the licence they had failed to comply with part of the Act.

The report set out details in that the driver's current licence was due to expire on 31 October 2013. On 17 October 2013 the driver had re-applied to the Council to renew his licence. In reply to the question on the form regarding previous convictions the driver had stated he had no previous convictions. He did not supply an up-to-date copy of his DVLA counterpart driving licence, which was a requirement on renewal of his private hire hackney carriage driver's licence, and was asked about this omission. The driver had explained to the Licensing Officer that his counterpart DVLA licence was currently in the possession of the Court, as he had a pending prosecution for an offence of speeding. He had been caught driving at 58 mph on the QE2 Bridge where the speed limit was 50 mph. He said he had refused the offer of a fixed penalty notice and had wished the matter to go before the magistrates' court, but that he was not able to attend court on the date given of 28 October 2013 and had decided to plead guilty in his absence.

The Enforcement Officer reminded Members that making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976.

The report set out details of the interview under caution which the driver had attended on 28 October 2013. He had admitted that he was speeding on the

occasion referred to, but had been unaware of the speed he was doing as he was concentrating on the road and not the speedometer. He had stressed that he had been a professional driver for over 13 years and was a member of the Institute of Advanced Motorists since 2006. He said a former police officer had told him it was acceptable to break the speed limit on occasions. The driver had said he had not read the form when completing it, but had verbally told four members of staff about the pending prosecution.

The driver had accepted a Council caution for the offence of making a false statement to obtain a licence which was administered by the Assistant Chief Executive-Legal on 28 October 2013.

The driver made a statement. He said he fully admitted that he did not read the form he signed properly, having not read the whole of each question. As soon as he was aware that there was a pending prosecution he had notified an officer in Licensing that he did not have his counterpart driving licence. He fully admitted he had a pending prosecution and the only thing he did was to tick "no" instead of "yes". As soon as he had had his licence returned he had sent it to the Licensing Officer.

Members were informed that the counterpart licence disclosed a fine of £60 and three points on the licence, with a conviction date of 28 October 2013. A letter had also been provided by the driver setting out a statement in mitigation, which the Assistant Chief Executive-Legal read out to the Committee.

The driver said that when he took his advanced test in 2006 he had asked the examiner if there were any situations where breaking the speed limit was the safest thing to do, for example when overtaking a lorry to minimise the chances of being crushed by a lorry pulling out and being caught in their blind spot. The examiner, who was a former police officer, had told him it was acceptable to do so to get out of a dangerous situation. The driver said it was this situation he had been referring to when he had said it was safe to speed in certain situations.

The Chairman referred to a comment by the driver that he was concentrating on the road not his speedometer; however the Chairman said he too had taken advanced driving courses and was aware that checking one's speedometer should be done every few seconds.

The driver said he had held a private hire driver's licence for 13 years with another authority and had experienced no problems.

Members asked further questions. Regarding traffic conditions at the time of the offence, the driver said traffic had been very light on the approach to the Bridge. Regarding the frequency with which he used the Bridge, he said he had at one time used it daily, but now it was three or four times a week. Regarding whether he had been aware the speed limit had changed in 2009, he said he had been aware of this, and had only been caught once in those

three years. The Chairman said he should not have been caught at all and this was not the right thing to say.

The driver said he was quite nervous. He said he did not speed over the Bridge at all. He referred to Home Office guidelines about speed limit guidelines which he said were not mandatory.

In reply to a question about how he calculated his speed he said he did not rely on satellite navigation to do so, but relied on his speedometer although he was aware that these often overstated the real speed.

At midday the Committee withdrew, and at 12.10pm returned.

DECISION

The Committee wish to make it clear to the driver that his attitude has given them some concern. However, the Committee is satisfied that the applicant is a fit and proper person and the licence should be granted.

LIC42

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

Members were informed that Mr Cooper had now arrived. Members agreed to give an opportunity to Mr Cooper to hear the reasons for the decision taken in his absence, and to have an opportunity to make representations.

The Chairman asked Mr Cooper whether he had been informed he should attend at 10am today, and that he understood he was required to be present.

Mr Cooper said he had been told by a colleague that the meeting would start at roughly 10am. He had arrived as soon as he had done his school run. He said he had been told that as there were other matters on the agenda that he couldn't be given a specific time.

The Chairman said the witness had been present since 10am.

The Assistant Chief Executive-Legal referred to a letter dated 30 October 2013 to Mr Cooper which informed him of the date of the meeting and the fact that he was required to be present at 10am. The letter also indicated that the order of items on the agenda might change and that if the driver failed to attend a decision might be taken in his absence.

The Principal Democratic Services Officer read out the statement of the complainant, and the replies he had given to questions put to him by the Committee.

The Assistant Chief Executive-Legal said the complainant had also commented that the driving standard of Mr Cooper had been "beyond careless".

Mr Cooper was invited to ask questions. He asked whether a police officer should be on duty "24/7".

He was informed that the complainant was not a police officer but an officer with VOSA.

Mr Cooper said the complainant must have been observing him quite a lot and could not have been concentrating on his driving. He said the complainant had referred to making several manoeuvres but if he had done that, there would have been accidents. There had been no accident, nor any damage to his vehicle.

The Chairman asked when Mr Cooper had received the letter requiring his attendance, dated 30 October 2013.

Mr Cooper said he had received it a couple of weeks ago. The Chairman asked him whether he had any further questions. Mr Cooper said he did not agree, and in response to further enquiry as to what it was he disagreed with, he referred to the complainant's assertion about the speed at which traffic in both lanes was travelling. He said he did not understand where the complainant was coming from regarding his statement about traffic being heavy for the time of day. He said there could be different conditions every day.

The Chairman reminded Mr Cooper that this was his opportunity to make a statement himself.

The Assistant Chief Executive-Legal suggested Mr Cooper read and comment on notes of the meeting which took place on 8 October 2013 between the Assistant Chief Executive-Legal and Mr Cooper. Mr Cooper read the note and said the witness did not specify how many manoeuvres were made. The Chairman asked him whether he stood by what he had said. Mr Cooper said he stood by what he had said.

The Assistant Chief Executive-Legal said the statement referred to at least three undertaking manoeuvres. He asked about Mr Cooper's view on comments made by the complainant on what would be a natural reaction to seeing something plastic flapping under a vehicle.

Mr Cooper said he had felt that if he had backed off, the item could have come loose and being at a distance would mean it would do so even harder. Therefore he had gone closer.

In reply to a question about whether he did anything as he pulled over past the vehicle to draw the driver's attention to the plastic, he said he had pointed to it and had got as close as he could, but that he had been concentrating on his driving as he did not wish to cause an accident.

At 1.10pm the Committee withdrew. At 2.20pm the Committee returned to give the reasons for its decision.

DECISION

Mr Cooper has been licensed as a private hire/hackney carriage driver since November 2012. His licence was last renewed with effect from 31 October 2013. On 19 September 2013 the Council received a complaint from a member of the public regarding the manner of driving of a licensed vehicle number 478. Enquiry was made of the operator of that vehicle and Mr Cooper was identified as being the driver.

The nature of the allegation was that the complainant had been driving on the A1 M heading north on 18 September at approximately 3.40 pm. He described what he took in the first instance to be a van tailgating him in an aggressive manner. The complainant pulled over to allow the vehicle to pass at which point he noticed that it was a private hire vehicle licensed by this council and that there were passengers on board including children. The complainant moved back into the second lane and observed the vehicle. He said it was tailgating vehicles in front in an aggressive manner and when they did not move over he overtook the vehicles on the inside. The driver did this on three occasions and attempted the manoeuvre on several other occasions until it turned off at junction 8. The complainant described the manner of driving as being dangerous. The complainant has some experience in this area as he is employed by VOSA as a vehicle examiner. Part of his duties involves the investigation of fatal accidents. He stated that had he been in a VOSA marked vehicle the incident would have been recorded on camera and Mr Cooper would have been reported for prosecution. When asked to rate the standard of Mr Cooper's driving he said that it was worse than careless. It was put to the complainant that Mr Cooper had said that he was following a vehicle which had something flapping under the rear of the vehicle. The complainant did not see anything to support that but said that if that was the case the natural reaction would be to hold back rather than to move closer to the vehicle concerned.

Initially Mr Cooper failed to attend the hearing. Members however had the benefit of a note of an interview between Mr Cooper and the Assistant Chief Executive – Legal which was carried out on 18 October. In that interview Mr Cooper said he had a vague recollection of the incident but then went on to give an account in some detail. He acknowledged that he was the driver of the vehicle at the relevant time. He was driving in the outside lane of the A1 M. He had two children with learning difficulties on board one of whom was a passenger in the front seat. That passenger was pointing at something in front of him. Initially Mr Cooper thought that the passenger was going to interfere with the radio. However he then noticed that the vehicle in front had what appeared to be plastic flapping under the rear of the vehicle. Mr Cooper was concerned that his may become detached and fly onto the windscreen of his vehicle obstructing his vision or possibly shattering his windscreen. He therefore moved closer to the vehicle in front flashing his lights to try and attract the driver's attention. The driver appeared not to notice so Mr Cooper

indicated his intention to overtake on the left and carried out that manoeuvre considering it safe to do so. Mr Cooper did not accept that he had overtaken other vehicles on the inside lane as alleged.

When he eventually appeared before the committee Mr Cooper relied upon the account he had given to Mr Perry on 18 October. He doubted the complainant could have witnessed what he said he had seen without being guilty of careless driving himself. He said it was a matter of judgement whether to get closer to a vehicle with something flapping underneath or not. If you backed off there was a risk that if the object became detached it could strike a following vehicle which had dropped back at even higher velocity. When asked if he attempted to attract the attention of the driver of the vehicle with the object flapping underneath when he was alongside he said that he pointed but could not see whether the driver took notice as he was watching the road.

Where the evidence of the complainant and Mr Cooper differs the Committee preferred the evidence of the complainant. The complainant gave his evidence clearly. He has professional experience in the field of road safety by virtue of his employment. The Committee could not conceive any reason why the complainant should make up his evidence. On the other hand Mr Cooper's evidence was not clear. He was more concerned with attacking the evidence of the complainant on the basis that he did not believe the complainant could have seen what he did without taking risks. Having stood by the version of events he gave Mr Perry today he elaborated upon that by saying that he attempted to draw the attention of the driver of the vehicle he admitted undertaking to the potential danger by pointing as he drove past. The Committee would have expected if that was the case that Mr Cooper would have sounded his horn and would have volunteered that information when asked that question but he did not do so.

On the balance of probabilities the Committee find that Mr Cooper's driving on 18 September was dangerous. Overtaking on the inside is a breach of the highway code and is an inherently dangerous manoeuvre. On the day in question Mr Cooper carried out this manoeuvre not once but at least 3 times and attempted it on other occasions. Had Mr Cooper been prosecuted the Committee is satisfied on the balance of probabilities that he would have been convicted of an offence of dangerous driving or at least of an offence of careless driving in respect of which his licence would have been endorsed with 6 or more points. In either event Mr Cooper would have fallen outside the Council's licensing standards. In the view of the Committee the circumstances are aggravated by virtue of the fact that Mr Cooper was carrying children with learning difficulties. Adult passengers may be prepared to comment upon the manner of a driver's driving and the driver may moderate his driving as a result. Children with special needs cannot be expected to do so.

The circumstances of Mr Cooper's driving on 18 September are so serious that the Committee is not satisfied that he is a fit and proper person to hold a private hire/hackney carriage driver's licence. His licence is therefore revoked

for any other reasonable cause under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976. It also appears to the Committee that the interests of public safety require the revocation of the licence to have immediate effect because the manner of Mr Copper's driving on 18 September was dangerous and such driving puts his passengers and the general public at risk. This decision which is being handed to Mr Cooper today constitutes notice of the Committee's decision as required by s.61 (2)(a) of the Act and gives the requisite notice of the revocation taking immediate effect as required by s.61 (2B).

You have a right to appeal against this decision. An appeal must be made in writing to the Magistrates' Court at Essex Magistrates Court, Osprey House, Hedgerows Business Park, Colchester Road, Chelmsford CM2 5PF. Any appeal must be made within 21 days that is to say by 10 December 2013. The magistrates do not have power to extend this period. A fee of £200 is payable upon appeal. As the revocation of your licence is expressed to be with immediate effect you may not drive during the appeal period or process.

LIC43

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

The Committee considered a report for members to consider suspension or revocation of a private hire/hackney carriage driver's licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had failed to comply with part of the Act.

The driver had on 18 September 2013 been stopped by a Transport Monitoring and Contract Compliance Officer with Essex County Council for a routine inspection. During the inspection she was found not to have her private hire/hackney carriage driver's badge with her, nor any other form of identification. Failing to wear a private hire driver's badge when driving a private hire vehicle was an offence under section 54(2) Local Government (Miscellaneous Provisions) Act 1976. On 8 October 2013 the driver had attended an Interview Under Caution when she had admitted that she was driving the vehicle in question on the day she was stopped and that she was picking up school children. She had explained that her private hire/hackney carriage driver's badge was in her usual vehicle which had been taken into the garage for its Council inspection the day before, and she was using another 24x7 Limited vehicle to carry out her work. She managed to get her drivers badge back from 24x7 Limited not long after she was stopped. She had admitted the offence and had received a Council caution, which meant she now fell below the Council's licensing standards. As a result Members were to decide if she remained a fit and proper person to retain her private hire/hackney carriage driver's licence.

The Assistant Chief Executive-Legal said he had received an email from the driver stating she had not received the correspondence about the hearing today, and giving her apologies. She had explained the badge was in her car,

and that the previous night her vehicle had been exchanged for another. She stated that she hoped the Committee had enough information to make a decision in her absence.

The Chairman said he was concerned that the same operator was involved as in some of the other matters which had today come before the Committee.

The Assistant Chief Executive-Legal said the responsibility for wearing the badge was that of the driver. However he would emphasise to the operator the need for drivers always to wear their badge and to ensure drivers were assisted when filling in their forms.

DECISION

The Committee is satisfied that the applicant is a fit and proper person to hold a licence.

The meeting ended at 2.35pm.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 4
DECEMBER 2013**

Present: Councillor D Perry - Chairman.
Councillors V Ranger, J Salmon and A Walters.

Officers present: M Perry (Assistant Chief Executive-Legal), M Chamberlain (Enforcement Officer), M Cox (Democratic Services Officer), M Hardy (Licensing Officer), J O'Boyle (Environmental Health Officer) C Nicholson (Solicitor) and A Rees (Democratic Support Officer).

Also present: the drivers in relation to agenda items 2, 3, 4; the applicants and interested parties in relation to items 5 and 6.

LIC44 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest received.

LIC45 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.

LIC46 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

Members considered suspension or revocation of a private hire/hackney carriage driver's licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976, under the heading that the driver had failed to comply with part of this Act.

The report explained that a routine inspection by ECC contract management on 1 October 2013 had revealed that the vehicle was displaying a private hire plate that had expired on 30 September 2013. An expired license plate was an offence under the Act.

At an interview under caution on 5 November 2013, the driver had confirmed that she had been driving the vehicle on that day but did not realise that the license plate had expired. She said she conducted a regular general check of the vehicle but did not look at the plate as she relied on receiving a text from the operator to bring the vehicle to the yard when a new plate was ready. She explained that after she had been stopped she went to the company offices where the vehicle plate was waiting and it was changed there and then.

The driver had accepted a council caution for the offence of failing to display a valid private hire vehicle plate. As a result the driver fell below the council's licensing standards, having received an official caution within the last 12 months, and it was for the Committee to decide whether she remained a fit and proper person to retain the licence.

The driver was not present at the meeting.

The Chairman stated there was an onus on both the operator and the driver to ensure that the vehicle had a valid license plate. However this was a minor matter and as a caution had already been given, the committee made the following decision.

DECISION

The Committee was satisfied that the applicant was a fit and proper person to hold a driver's licence and no further action should be taken.

LIC47

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

The Committee considered the suspension or revocation of a Private Hire/Hackney Carriage Drivers Licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had failed to comply with part of that Act.

The Enforcement Officer explained that at a routine inspection by the Contract Compliance Officer on 30 October 2013, the driver was found not to have his private hire driver's badge with him.

At an interview under caution on 18 November 2013 the driver explained that he had returned from holiday on 28 October, collected his vehicle on 29 October and had driven without the badge on this date and on 30th October because he had forgotten to collect it from his house. He had confirmed that he had received training and understood the protocol for wearing his badge. He had accepted the offence and apologised.

In accordance with the Council's Licensing Policy, where an offence was committed under the legislation the Council should impose a sanction. The driver had chosen to accept a council caution and as a result, the driver now fell below the council's licensing standards. Members were required to decide if the driver remained a fit and proper person to retain his licence.

The driver addressed the meeting. He confirmed that he had not lost his badge but it was still in his house following his return from holiday. It was a simply a slip of memory. Also, at the time he had been distracted by the poor weather conditions. In answer to a question he confirmed that he always kept

his badges in the vehicle except when he went on holiday. He told the Committee he was sorry for this mistake and that it wouldn't happen again.

The Chairman was concerned that that this was the 4th case of this kind concerning this particular operator. The Assistant Chief Executive – Legal said the operator had been asked to remind the drivers of this requirement but pointed out that the wearing the badge remained the responsibility of the driver.

At 10.10am the Committee withdrew to consider its decision, and at 10.15 am returned.

DECISION

The Committee was satisfied that the applicant was a fit and proper person and that no further action should be taken.

LIC48

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'.

On 14 November 2013, information had been received that the driver had been referred to Aviation Medica by his employer and pending an examination had been suspended from driving. The Licensing Officer explained that when a driver was suspended by his employer his license still remained in force, which would permit him to drive for another operator, so in view of the doubt about the medical condition the licence had been suspended by the Assistant Chief Executive – Legal with immediate effect.

Members had received the report from Aviation Medica. Whilst this concluded that the driver was not outside group 2 standards, there were some concerns about behavioural changes and it had been recommended that the driver should not drive until he had undertaken a formal driving assessment and a obtained a current optician's report. The driving assessment had been carried out by an approved driving instructor with many years of experience. This report had highlighted 7 areas of concern with the driving, which were of sufficient severity that the instructor had terminated the assessment early due to safety concerns.

The Committee was advised that a license could not be suspended indefinitely. If the driver was found to be unfit to drive there were two options, either to revoke the license, or to suspend the license until its expiry date, giving delegated authority for the license to be reinstated if he produced a medical certificate that he was fit to drive.

The driver spoke to the Committee. He said the assessment had been carried out in a vehicle that he was not used to, it had been dark and rainy and the instructor was aggressive towards him. He drove as he always did, using his gears to slow down at each corner and properly observing the speed limit. He contested the content of report did and said it did not reflect his experience of the drive.

In reply to questions, he said that he had driven extensively in Africa and he now drove a VW estate. He had driven other classes of vehicles and a minibus abroad. For the operator he now drove an 8 seat minibus.

The Chairman asked him to comment on the assessment by Aviation Medica He said it comprised a series of intelligence/ memory tests. The doctor had suspected that he had a cataract but a subsequent visit to the opticians had confirmed that he did not. He was prescribed a new pair of glasses, which he was now wearing.

He mentioned the 4 occasions when he had lost a wing mirror from his vehicle, and explained that he had not necessarily been at fault.

The Chairman asked what assurance he could give that he was still a fit and proper person to hold a license. He replied he had been with for the current company for 5 years and had driven many different vehicles during that time.

At 10.30 am the Committee withdrew to consider its decision, and at 10.50 am returned.

DECISION

The driver was first licensed by the council as a private hire vehicle driver on the 25 September 2008. At that time the driver produced a driving licence showing one lapsed fixed penalty notice for excess speed, a clear CRB check and a medical certificate showing that he was considered fit to drive by Group 2 standards. Since that time the driver's licence had been renewed annually. His last medical examination for the purpose of licence renewal was in September 2011. At that time he was again certified fit to drive. The driver's licence does not reveal any current endorsements. His driver's licence was last renewed with effect from the 1 September 2013.

On the 14 November information was received by the council that the Driver had been suspended by his employer due to concerns about his driving and he had been referred to Aviation Medica. It emerged today that at least part of the reason for this is that the Driver has recently lost 4 wing mirrors while driving his employer's vehicle. In the light of this information the Driver's private hire driver's licence was suspended with immediate effect in the interests of public safety. The suspension is due to expire at midnight tonight.

Since his suspension the Driver has been examined by Dr Orton of Aviation Medica and has undergone a driving assessment by a DSA approved driving instructor. There are some concerns arising from the medical report. Dr Orton

recommends that the Driver should see an optician regarding the prescription for his glasses although he states that with the current prescription the driver does meet the required standard. Dr Orton also suggests that due to behavioural changes exhibited by the driver he ought to be referred for neurological examination. However Dr Orton does not say that the driver fails to meet group 2 medical standards at the present time.

Notwithstanding the fact the driver may still meet group 2 standards and therefore would be considered to be a fit and proper person on medical grounds within the council's policy the committee have to take all relevant factors into account in determining whether an individual is or is not a fit and proper person. The committee have read the report of the driving instructor who assessed the driver's driving with the greatest concern. The assessment was intended to last for 1 hour 30 minutes. The instructor terminated the assessment after 45 minutes as he did not consider it safe to continue. He describes the assessment as the most frightening 45 minutes he has ever spent. He lists a number of very serious shortcomings in the manner of the driver's driving. The committee note not only the seriousness of the instances recorded but also that the driver seemed to be unaware that he was driving in a manner which was dangerous. The driver does not accept this assessment. He states that he was driving an unfamiliar vehicle at night and in poor weather conditions. He considers that his manner of driving was acceptable and in particular that it is appropriate to use the gears to slow down approaching bends rather than the brakes. However the driving instructor is an independent person with a great deal of experience and in the absence of any independent evidence to the contrary the committee has to be guided by his views.

In the light of the driving assessment the committee are not satisfied that the Driver is a fit and proper person to hold a licence. There is no suggestion that this position will change in the foreseeable future and suspension is not therefore an option. The committee therefore revoke the driver's private hire driver's licence. Given the manner of the driver's driving the committee are of the view that it is necessary for the suspension to have immediate effect in the interests of public safety and direct accordingly.

The Assistant Chief-Executive - Legal advised the driver of his right of appeal to the Magistrates Court in 21 days. He explained that the revocation was with immediate effect.

The public were admitted to the meeting.

LIC49

APPLICATION TO VARY A PREMISES LICENSE – SAFFRON WALDEN FOOTBALL CLUB

The Committee considered an application for the variation of a premises License for the Saffron Walden Football Club.

The Licensing Officer presented the report, which set out the current licensable activities. The variation sought would include live music, recorded music, and the performance of dance. The proposed hours for the entertainment activities would be from 7pm until midnight Monday to Friday, from 10 am until midnight on Saturday and from noon until midnight on Sunday. The variation also sought an extension of the permitted time for the sale of alcohol by retail by 1 hour to midnight and an extension of the time at which the premises should close to the public until 12.30 am. It also asked for non-standard times on Christmas Eve and New Year's Eve and the removal of all embedded conditions contained in the Licensing Act of 1964.

Members were given details of the operating schedule which set out the measures to be adopted to promote the key licensable objectives.

The application had been served on all statutory bodies and a representation had been received from the Principal Environmental Health officer, based on the licensable objective of public nuisance. An agreement had subsequently been reached with the applicant for 5 additional conditions to be added to the license to overcome this objection. These were as follows

- Premises supervisor or representative shall regularly assess noise from the premises during amplified music events. Steps shall be taken to reduce the level of noise where it is likely to cause disturbance to residents
- Prominent and clear signage shall be displayed near exits and around the site requesting patrons and guests to leave the premises and area quietly
- The premises supervisor or representative shall ensure that providers of live or recorded music announce at least twice before the end of their act a request that patrons and guests leave quietly and quickly
- External doors and windows to be kept closed after 2300hrs except for access and egress when live or recorded music is being played or performed
- The premises supervisor or representative shall monitor the car park for noise from customers. Steps shall be taken to encourage customers to leave quietly and quickly

Representation had been received from interested parties on the grounds of public nuisance and crime and disorder.

The Licensing Officer advised the members that when determining the application, they should have due regard to the council's licensing policy and statutory guidance.

The Committee asked questions of the Licensing Officer. The Chairman about comments from the Police, as the interested parties had mentioned incidents where the Police had attended. The Licensing Officer confirmed that the Police had raised no objection to the application.

The Environmental Health Officer attended the meeting and explained that her assessment had concluded that the indoor music could impact on nearby residential properties. The 5 conditions had been proposed to prevent public nuisance, the applicant had agreed and these would be applied to the license. The applicant confirmed that he was happy with this approach.

Councillor Ranger said the condition to measure noise levels was of little value if the acceptable level of noise was not explicitly defined. Mr Vincent, the representative of the applicant said there were acceptable levels set out in the Noise Act and using his own monitoring equipment, this was what he tried to adhere to.

The Committee then heard from the interested parties.

Peter Taylor referred to the difficulty of assessing noise levels and felt that the condition relating to this was not realistic. In summer it was unlikely that the windows would remain shut. The existing use gave reasonable discomfort especially on summer evenings and he thought that the extension to 12 midnight was too late, especially on week day evenings. He mentioned that new houses were being built very near to the site and the future occupants would have had no say in this application.

Catherine Cameron said she lived in Castle Street next to the alleyway, which was the way out from the football club. She was concerned that the increase in hours and the variation would exacerbate the public nuisance issues already being experienced.

Mr Vincent, the representative of Saffron Walden Football Club, made his statement. He said he understood the concerns of the local residents but pointed out that there were other public houses in the vicinity and it was not always possible to determine where people had come from. He and his wife were experienced publicans; at closing time there a member of staff outside the premises, monitoring behaviour and taking bottles and glasses. He confirmed that windows in the building were permanently fixed shut. There were 3 out-facing doors, three of which were fire doors, which could be pushed open, but there were regular patrols to keep them shut.

He explained the extension to midnight during the week was mainly to do with the drinking license, to operate alongside non music events. He was happy to operate within the conditions of the license and the additional conditions proposed. He explained that he had carried out an assessment of the noise levels by playing a PA very loudly inside the hall, leaving the door open and measuring the decibel level with a noise meter on his phone. At the boundary of the site 70dB had been recorded and at Castle Street 63dB, which he understood to be around the level for normal speech. When events were being held he or staff regularly checked these levels.

The Chairman asked whether soundproofing had been included in the recent refurbishment of the premises. Mr Vincent replied that the external wall had

been triple lined, double-glazing installed, the doors replaced so the noise levels were considerably lower than 18 months ago.

The Chairman asked the Environmental Health Officer if it was possible to set an appropriate noise level. She replied that it difficult to define a base level, in rural areas this should be around 35dB but would be more in the town. A noise study would be required to determine the level.

Councillor Walters said that being realistic, in the summer it would hard to prevent doors being opened, and it was also difficult to control noise levels for live music. From the representations received there appeared to be objections to certain types of music. Mr Vincent responded that the demographic of people who attended events had changed over the years and was now more in the 35 -55 years category. He also explained that although the public could hire the premises, it was still managed by the club who provided the staff, bar and catering.

In answer to a question about training he said that there were currently 3 Personal License Holders (PLH) and other staff had expressed an interest in obtaining this qualification. The Chairman felt there should be at least one PLH present at each event. Mr Vincent confirmed this was currently the case. He and wife were responsible for the day to day running of the club and his wife was the Designated Premises Supervisor.

At 11.45 the committee retired and returned at 12.40 and announced the following decision.

DECISION

The committee have today considered an application for a variation of the premises licence for the Saffron Walden football club. The premises have been licensed for a number of years and the licence was converted from a magistrates licence to one issued by this authority under the Licensing Act 2003 during the transitional period. The current licensable activities are the playing of recorded music and the sale of alcohol by retail. The permitted hours for both licensable activities are 10.00 am to 11 pm, with music and drinking up time up to 11.20. The hours are less on a Sunday, from 12pm to 10.30 pm.

The variation sought would include live music, recorded music, and the performance of dance. The proposed hours for the entertainment activities would be from 7pm until midnight Monday to Friday, from 10 am until midnight on Saturday and from noon until midnight on Sunday. The variation also seeks an extension of the permitted time for the sale of alcohol by retail by 1 hour to midnight and an extension of the time at which the premises should close to the public until 12.30 am.

The application attracted representations from the Council's Environmental Health Department as a responsible authority and also from some local residents as interested parties. These concerned the licensing objectives of

the prevention of public nuisance and in the case of the interested parties' also prevention of crime and disorder.

Having considered the submissions on the issue of crime and disorder Committee were not satisfied on the evidence that was likely to be a significant problem of crime and disorder and it was not necessary or proportionate to take any steps in that regard either by refusing the application, modifying the licence or imposing conditions.

The objective of the prevention of public nuisance is however far more relevant in particular with regard to potential noise nuisance from the premises. The Committee note that the premises are close to a residential area and note the concerns of local residents are to the potential of noise nuisance.

The proposed hours for licensable activities extend beyond 11.00 pm and on week days the premises will not close until 12.30 am. Licensable activities (particularly the provision of regulated entertainment) may adversely impact upon the local community. The Committee has to balance the benefits of musical events against the rights of residents to peace and quiet. Mrs Lee-Moore in her representation and Mrs O'boyle today on behalf of the Environmental Health Department proposed certain conditions which would meet their concerns.

- Premises supervisor or representative shall regularly assess noise from the premises during amplified music events. Steps shall be taken to reduce the level of noise where it is likely to cause disturbance to residents
- Prominent and clear signage shall be displayed near exits and around the site requesting patrons and guests to leave the premises and area quietly
- The premises supervisor or representative shall ensure that providers of live or recorded music announce at least twice before the end of their act a request that patrons and guests leave quietly and quickly
- External doors and windows to be kept closed after 2300hrs except for access and egress when live or recorded music is being played or performed
- The premises supervisor or representative shall monitor the car park for noise from customers. Steps shall be taken to encourage customers to leave quietly and quickly

The applicant has got a noise meter which they do use to monitor decibel levels.

In reaching its decision the Committee has had regard to its licensing policy and in particular to paragraphs 1.16, 2.1 – 2.4, 5.1 – 5.3 and 5.5 – 5.7. It has also had regard to the government guidance including paragraphs 2.7, 2.11, 2.20, 2.22, and 2.24. Members also took into account residents' concerns over the proposed Environmental Health conditions when reaching their decision.

The Committee is of the view that the promotion of the licensing objective of the prevention of public nuisance can be met by conditions. Such conditions should normally flow from a risk assessment carried out by the applicant as is reflected by the Council's policy and government guidance. These documents are there not only as a reference point for the Licensing Committee but also as a guide to applicants to assist them in making applications which are more likely to succeed. In this case it would appear that the applicant either did not carry out a risk assessment or did not submit it with the application. In the circumstances in determining what is necessary to promote the licensing objectives the committee has had to rely upon representations made in writing and received today.

Members are also aware of the deregulation of the playing of live music by the Live Music Act 2012, that amended the Licensing Act 2003 which no longer needs a licence between 0800 and 2300 if it is unamplified, and if it is amplified music it does not need a licence if it is for an audience of less than 200 people. It follows that no conditions can be placed on a licence in respect of those times for that particular activity.

The Licensing Committee are therefore prepared to agree to the addition of the provision of live music, the performance of dance and recorded music permitted from the premises subject to those conditions and subject also to the addition of two conditions and a reduction in hours on a Sunday as follows:

- Premises supervisor or representative shall regularly assess noise from the premises during amplified music events . Steps shall be taken to reduce the level of noise where it is likely to cause disturbance to residents
- Where regulated entertainment events continue after 2300 the premises supervisor or representative shall take a decibel reading outside the premise with their decibel meter equipment and record the level, and made the record available for inspection by the Licensing Authority
- Prominent and clear signage shall be displayed near exits and around the site requesting patrons and guests to leave the premises and area quietly
- The premises supervisor or representative shall ensure that providers of live or recorded music announce at least twice before the end of their act a request that patrons and guests leave quietly and quickly
- External doors and windows to be kept closed after 2300hrs except for access and egress when live or recorded music is being played or performed
- The premises supervisor or representative shall monitor the car park for noise from customers. Steps shall be taken to encourage customers to leave quietly and quickly
- A Personal Licence holder, or person with a personal licence qualification to be on the premises during any regulated entertainment events.

The hours for regulated entertainment as applied for shall be granted subject to the reduction to 2330 hours on a Sunday.

With regard to the application to vary the hours for the sale of alcohol for consumption on and off the premises to 12.00 am Monday to Saturday and to

midnight on Sunday, the application is granted with the reduction of hours on a Sunday to 2330. The hours of opening are also granted, save that it be reduced on a Sunday to midnight. The removal of the embedded conditions is also agreed.

Parties present were reminded of the right to appeal against the Council's decision to the Magistrates Court within 21 days.

LIC50

APPLICATION FOR GRANT OF A PREMISES LICENSE– THE PLOUGH INN RADWINTER

The Committee considered an application for a premises license at the Plough Inn, Radwinter

The Licensing Officer presented the report and explained that this application had come before the committee because representations had been received. The previous license had been issued under the Licensing Act 2003 and the report explained the previous licensable activities. The new request was as follows, the showing of film, live music inside and outside from 10 am to 11.30pm Monday to Wednesday, to midnight on Thursday, until 1 am on Friday and Saturday and until 10 30 on Sunday. Recorded music (inside and outside) and supply of alcohol to start at 9 am other than Sunday when it would be 10am, and to finish at the same times as for live music. The premises opening times were proposed to be from 9 am until 30 minutes passed the finish times for the licensable activities. There were proposed to be additional hours on Bank Holidays

The application had been served on the statutory bodies and an objection had been received from the Principal Environmental Health Officer on the grounds of public nuisance. As a result of this objection the applicant had agreed to remove outside live music and films from the application, and for the committee to consider the application on this basis. The Licensing Officer reported that at 9.00am that morning he had received a phone call from applicant who stated that he now wished to include the outdoor activities and for the Committee to consider the original application.

The Chairman asked the Environmental Health Officer to state her views on the application. She said the application, as originally submitted, could not be seen to prevent public nuisance due to noise disturbance, which was likely to affect the 15 to 20 properties near the premises. Playing live music outside or in a marquee would cause noise nuisance, particularly if it was after 11pm and also if it occurred regularly before 11pm. Any outdoor events should be limited in number, extend no later than 11.00pm and be dealt with through a Temporary Event Notice.

To prevent noise breakout from the premises, it had been suggested that the noise levels should not exceed 45dB after 22.00 at the boundary with Plough Cottage. She had also recommended a noise management plan detailing measures to control noise from external areas.

The Committee then heard from the interested parties.

Mr Rex Howling said that until the recent announcement from the Licensing Officer the residents had understood that the issue of the live music and film outdoors had been addressed. The change of stance was a sign of bad faith on the part of the applicant. He said that as the pub was at a high point in the village the outdoor activities would undoubtedly cause a noise nuisance.

He explained that following the email exchange between the applicant and the Council and subsequent discussion between himself and the Applicant, the residents had been informed, via the village magazine, of the withdrawal of the outdoor activity elements of the application. The magazine had been distributed before the end of the representation period, and many local residents could well have decided not to submit representations based on this information and in fact he was specifically aware of people who had not commented who would have otherwise done so. He requested that the meeting be deferred to allow residents to make representations on the full application.

The Chairman agreed to adjourn the meeting at this point to check the process and relevant dates in relation to this issue.

At 2.00pm the Committee returned and the Chairman announced that in the interests of fairness and transparency, and for the Committee to be in full possession of the facts he would adjourn the meeting. The meeting would be reconvened on either 16, 17 or 20 December 2013, the date to be advised as soon as possible.

The Solicitor said that this action had been taken under Regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005, where an authority could adjourn a hearing to a specified date where it considers this to be necessary for its consideration of any representations or notice made by a party. The Solicitor advised that there would be no re-consultation on the application.

The meeting ended at 2.35pm.

Addendum

On Thursday 5 December the applicant advised the Licensing Officer of his intention to withdraw this application.

**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.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 5
FEBRUARY 2014**

Present: Councillor D Perry (Chairman)
Councillors J Davey, V Ranger and A Walters

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

Also Present: Mr Burlingham (Driver in relation to Item 2) and the driver in relation to Item 4.

LIC53 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillor J Loughlin.

There were no declarations of interest.

LIC54 DETERMINATION OF A COMBINED HACKNEY CARRIAGE/ PRIVATE HIRE DRIVER'S LICENSE

The Licensing Officer said he had received a letter from Mr Burlingham's solicitor that requested an adjournment of the meeting subject to the outcome of the appeal of the relevant court case.

The Assistant Chief Executive – Legal said an adjournment was inappropriate because the Committee was not able to go behind the facts of the conviction. There was no reason to believe an appeal would be successful and the date of the appeal was unknown.

The Licensing Officer said that 14 July 2011 was the first instance Mr Burlingham was issued with a Combined Hackney Carriage/ Private Hire Driver's Licence. He had subsequently held a license on an annual basis with his current licence due to expire on 30 June 2014. On 14 January 2014, Mr Burlingham telephoned the Licensing Officer to report that he had appeared before Hertfordshire Magistrates Court charged with two offences: one of common assault and one of racially aggravated abusive language. He said he was found not guilty on the first charge, and guilty on the second. The Licensing Officer requested Mr Burlingham to confirm this in writing which he did. On 26 September 2013, there was an altercation between Mr Burlingham and two others, who were described as neighbours, over the neighbour's vehicles being parked in such a way as to prevent access. It was alleged that Mr Burlingham used racially aggravating language during this altercation. An allegation of common assault was made to Hertfordshire Constabulary and consequently Mr Burlingham was arrested and later interviewed. After the interview, he was charged with common assault and with using racially aggravating language. On 23 December 2013, he appeared before Hertfordshire Magistrates and pleaded not guilty to both charges. He was found not guilty of assault, but found guilty of using racially

aggravating language. The Court imposed a Conditional Discharge for 12 months. He was also ordered to pay prosecution costs amounting to £320 and a victim surcharge of £15.

The Licensing Officer said his employer had indicated that if a suspension was imposed and he remained a fit and proper person, his services would be retained. His conviction was on 23 December 2013, and he had first contacted the Council on 14 January 2014. This breached the condition of his licence that stated that a driver must notify the Council of any convictions, cautions or fixed penalty notices in writing within seven days.

Councillor Perry asked Mr Burlingham whether he was happy with what the Licensing Officer had said. He asked Mr Burlingham to provide his account of the event.

Mr Burlingham said that he was happy with the Licensing Officer's account. He said that he had not used racially aggravating language and his neighbours were the ones being aggressive. They wanted him to lose his job. He said that the Police arrived at 11pm the night of the altercation and that he still believed he was innocent.

In response to questions by the Committee, Mr Burlingham said that he could not have been aggressive because he had injured his shoulder the night previous to the altercation. He hadn't notified the Council because his solicitor was on holiday over the Christmas period. He informed the Council having been advised to do so by his employer. He denied being aggressive, but admitted calling one his neighbours "trailer trash". There had been no incidents subsequent to this one.

The Assistant Chief Executive – Legal reminded the Committee that they could not go behind the facts of the conviction. He said that if Members considered that Mr Burlingham remained a fit and proper person they should take no action regarding the circumstances of the offence, but that the Council's policy provided that a sanction for breach of a condition was appropriate. The policy provided that the starting point for a first breach of condition was a 5 day suspension. This could be increased or decreased if there were aggravating or mitigating factors. In determining whether to impose a sanction it would assist Members to know of Mr Burlingham's financial circumstances. He asked Mr Burlingham how much he earned.

Mr Burlingham said that he earned £350 - £400 a month after tax and received a state pension, along with three other smaller pensions.

The Enforcement Officer, the Licensing Officer and Mr Burlingham left the room at 10.30am, so the Committee could consider its decision. They returned at 10.40am.

DECISION

Councillor Perry said, relating to his Court conviction, that the Committee considered that Mr Burlingham remained a fit and proper person. Mr

Burlingham should ensure he did not enter into similarly compromising positions in the future. Relating to Mr Burlingham's failure to notify the Council 7 days after a conviction, he said the Committee found no aggravating or mitigating factors and Mr Burlingham would be suspended for 5 days.

The Assistant Chief Executive – Legal told Mr Burlingham that he had 21 days to appeal. During this period the suspension would not be active. If he chose to appeal, the suspension would not be active until the appeal was heard.

LIC55 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.

LIC56 ITEM 4 – DETERMINATION OF A PRIVATE HIRE/ HACKNEY CARRIAGE DRIVER'S LICENSE

The Chairman asked the Committee to consider this item before Item 3, because the driver for this item was present, whereas the driver for Item 3 was not. The Committee agreed to move this item forward.

The driver in relation to Item 4 was invited into the room.

The Committee considered the suspension or revocation of a Private Hire/Hackney Carriage Drivers Licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had been convicted of an offence under Part II of that Act.

The Enforcement Officer said that the driver had first become a licensed driver on 25 September 2013, with the license due to expire on 31 August 2014. On 25 November, she was carrying out a contract and was stopped by a Contract Monitoring Inspector for Essex County Council on a routine inspection. She was not wearing her hire driver's badge. On 20 December 2013, she attended an Interview Under Caution relating to her failure to wear a hire driver's badge. She said that she kept her badge in her coat pocket and because she was late, she did not take her coat and consequently her badge. She accepted a formal caution.

Councillor Perry asked the driver if she disputed anything the Enforcement Officer had just said. He asked to explain the events relating to the caution and whether her employer explained the procedure relating to the wearing of private hire driver's badges.

The driver said she did not dispute anything said by the Enforcement Officer. Relating to the event, she said that because the weather was warm and she was running late, she had forgotten to take her coat when she left her house.

She could not remember whether her employer had told her the procedure surrounding the wearing of private hire driver's badges.

The Enforcement Officer, the Licensing Officer and the driver left the room at 10.50am, so the Committee could consider its decision. They returned at 10.55am.

DECISION

Councillor Perry reminded the driver of her responsibility to wear her badge whenever she was working and that it was her responsibility, not that of her employers. The Committee considered her a fit and proper person and took no action with regard to her licence.

LIC57

ITEM 3 – DETERMINATION OF A PRIVATE HIRE/ HACKNEY CARRIAGE DRIVER'S LICENCE

The driver was not in attendance as she was abroad on a pre-booked holiday. However she was anxious that the matter should be resolved as soon as possible and had requested the Committee to deal with the matter in her absence. The Committee agreed to do so.

The Committee considered the suspension or revocation of a Private Hire/Hackney Carriage Drivers Licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had been convicted of an offence under Part II of that Act. The Enforcement Officer presented his report which the Committee took as read.

On 13 November 2013, the driver was carrying out a schools contract. She was stopped by a Contact Monitoring Inspector for Essex County Council for a routine inspection. She was found to be carrying a private hire driver's badge that had expired on 31 March 2013.

On 26 November 2013, she attended an Interview Under Caution for this offence. She explained that the offence was an error on her part. Whilst cleaning out her dresser she picked up the incorrect badge by mistake. She had since destroyed the invalid badge.

The Committee considered its decision.

DECISION

Councillor Perry said the Committee found that she remained a fit and proper person and took no action with regard to her licence. She should be sent a letter reminding her of her responsibility to wear her driver's badge at all times.

The meeting ended at 11.05am.

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

4

Title: Sky Lanterns

**Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416**

Item for decision

Summary

1. This report is to inform members of a request received to amend the council's Licensing Policy under the Licensing Act 2003 and to seek members' views thereon.

Recommendations

2. Members determine whether to consider a variation to the Licensing Policy.

Financial Implications

3. Under the Licensing Act 2003 the council is obliged to carry out a wide ranging consultation exercise before adopting any variation to the Licensing Policy. There is no budget available for the cost of any consultation exercise.

Background Papers

4. The following papers were referred to by the author in the preparation of this report:
 - Letter from the Country Land Association ("CLA") to the Chief Executive dated December 2013 – a copy of which is attached.

Impact

5.

Communication/Consultation	Should members wish to proceed with the consideration of a variation, the council would be required to consult widely with the responsible authorities, members of the trade, town and parish councils and the public.
Community Safety	Any benefits from an amendment to the policy may well be marginal.
Equalities	None.
Health and Safety	None.
Human Rights/Legal	Releasing sky lanterns is not an unlawful act. Further it is not a licensable activity

Implications	under the Licensing Act 2003. It is therefore questionable whether the 2003 Act should be used to endeavour to control sky lanterns.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. Sky lanterns (also known as Kongming Lanterns or Chinese Lanterns) are small hot air balloons made of paper. There is an opening at the bottom where a small fire is suspended. They are launched by lighting the fire and holding the lantern until there is sufficient hot air in the balloon to cause it to rise. Ultimately, the fire burns itself out and the lantern will fall to the ground although on occasions the fire will ignite the paper whilst in flight. The lanterns are generally used for celebratory purposes at weddings, birthday parties etc.
7. The CLA have recently raised concerns regarding the use of sky lanterns. These concerns have been explained in a letter to the Chief Executive in December last year. Unfortunately, the letter is factually incorrect in its reference to the Vale of White Horse District Council. It is correct to say that contractually the council has banned the use of sky lanterns when renting out its own land to be used for functions. However, it has not and cannot legally impose conditions on all entertainment licences. The council has adopted modifications to its Licensing Policy to enable it to respond to representations made regarding sky lanterns on applications for new licences, variations or reviews.
8. The council has not received any reports of sky lanterns causing any damage within the district. The council has also not received any representations on applications for new licences or variations nor has it received any request for reviews of premises licences arising from the use of sky lanterns within the district.
9. Bearing in mind the location of Stansted Airport within the district, I have considered guidance issued by the Civil Aviation Authority to ascertain whether sky lanterns may cause a hazard to aviation. The guidance indicates that sky lanterns can travel considerable distances at unpredictable heights on prevailing winds from the point of release. They can be ingested into the engines of airborne aircraft or if they fall to the ground they have the potential to become debris on runways. The recommendation is that organisers of events that are 10 miles or less from any aerodrome or where significant numbers of lanterns are being released at any one time need to be aware of the potential risks to aircraft. Organisers of such events are urged to refer to the CAA online guidance and if necessary contact the CAA or local aerodrome with details of the event. The online guidance is more specific and recommends that organisers or events releasing more than 10 sky lanterns should contact the CAA prior to release. Where the site of proposed release is 10 nautical miles or less from an airfield then the airfield operators should be contacted.

However, organisers releasing 10 sky lanterns or less at a site more than 10 nautical miles from the nearest airfield need take no action.

10. In the light of the guidance from the CAA officers have passed the letter from the CLA to Stansted Airport for consideration. At the time of preparation of this report no comment has been received.

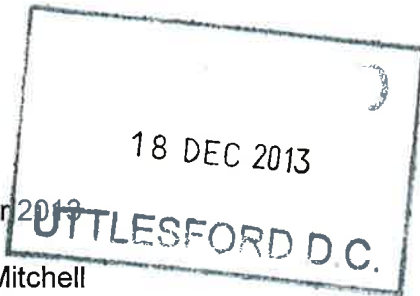
Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
<p>Damage is caused arising from the use of sky lanterns within the district.</p>	<p>1, there is no evidence that this is a widespread effect of the use of sky lanterns.</p>	<p>4, if harm were to be caused potentially this is significant.</p>	<p>None appropriate. The council can only impose conditions if on an application for a new licence or a variation to a licence, representations are made or an application for a review is made on the basis of one of the 4 licensing objectives. Whilst the licensing objective of public safety is engaged, in the absence of any representations members are powerless to impose any conditions regardless of what is stated in the Licensing Policy. In the event that representations were to be made regarding the use of sky lanterns from any particular premises, the absence of a policy on the issue would not prevent members imposing appropriate conditions if the evidence justified such conditions being imposed to further the licensing objectives.</p>

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

-Michael Lemy



December 2013

Mr John Mitchell
Council Offices
London Road
Saffron Walden
Essex CB11 4ER

Dear Mr Mitchell

Please support a ban on sky lanterns through Entertainment Licences

The CLA is appealing for Local Authorities responsible for issuing Entertainment Licences to take action and prohibit the use of sky lanterns (also known as Chinese lanterns).

Sky lanterns are serious fire hazards, they also endanger the lives of grazing livestock as well as other wildlife, and create unnecessary litter. Those releasing lanterns have no idea of the hazard they pose, nor do they consider the implications of releasing a naked flame with absolutely no control over where it will land.

Lanterns that land in fields can get chopped up when farmers mow for silage or hay, resulting in fragments of wire in the forage. Cows, which naturally tend to chew things to check them out, get the wire trapped in their gut, resulting in an agonising, slow death for the animal.

The CLA has been made aware of many incidents involving these flying bonfires. These include:

- a burning lantern landing on the tent in which a 12-year-old boy was sleeping. Fortunately, it was seen and a serious incident was avoided;
- a lighted lantern falling into a crop of wheat in Essex – in this case, the incident occurred as the crop was being combined and it was extinguished;
- a fire starting in a conservation headland after one landed in a Norfolk drainage ditch; and
- reports of straw stack fires and close misses to thatched property.

Councillors from The Vale of White Horse District Council in Oxfordshire have already taken note of growing public opinion, and have added a condition to their Entertainment License policy so new licenses for a venue or event now prohibit sky lanterns. This has been backed up by a ban on Council-owned land.

Councillor Robert Sharp from the District Council told the CLA that adding the banning clause to their entertainment licences the process is then implemented automatically upon licence renewal at no additional cost – eventually the whole district will be covered.

The Royal Parks have a similar ban in place; they search for, and confiscate, sky lanterns brought in by those attending events on their property.

Many countries have already banned the use of sky lanterns, including Austria, Australia, Brazil, Canada, New Zealand, Spain Germany and parts of the USA.

The CLA fear that it is only a matter of time before there is a serious accident, which is why we are asking for your support and implement a ban in this way.

I hope the CLA can count on your support; if you would like to discuss this further, please do not hesitate to contact me at the CLA East office on 01638 590429.

Yours sincerely,

Nicola Currie
CLA Eastern Regional Director

ABOUT THE CLA:

- CLA East covers the counties of Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Lincolnshire, Middlesex, Norfolk, Northamptonshire, Nottinghamshire, and Suffolk.
- As a membership organisation, the CLA supports landowners by advising them on how best to protect and maximise their asset: the land. We are dedicated to supporting landowners and their businesses. Our success is measured by how effectively we do that. We have a team of experts in London and a regional structure able to give local support.
- We have been looking after the interests of our members, as well as promoting the positive aspects of land ownership, land management and rural business activities for the past 100 years. CLA members own or manage approximately half the rural land in England and Wales, and the resulting expertise puts us in a unique position to formulate policies and lobby effectively.

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

5

Title: Amendments To The Rehabilitation Of Offenders Act 1974 (“The Act”)

Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416

Item for decision

Summary

1. This report is to inform members of amendments to the Act which will come into effect on the 10 March 2014.

Recommendations

2. Members consider whether they wish to revise the licensing standards for drivers in the light of the amendments to the legislation.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	Under the Act convictions covered by a rehabilitation period are deemed to be spent and in general may not be referred to. This will not impact upon applications for driver’s licences where members may legally take into account spent convictions in determining whether or not a driver may be considered to be a fit and proper person. However, the new schedule of spent convictions will be applicable to other areas of law (e.g. personal licences under the Licensing Act 2003 and scrap metal

	dealers licences under the Scrap Metal Dealers Act 2013).
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. The Act provides that in certain circumstances where someone has been convicted of an offence, that conviction is deemed to be spent after the passage of a period of time.
7. Some offences would never be deemed to be spent under the Act. Essentially these were where the offender had been sentenced to a term of imprisonment of 30 months or more. The main rehabilitation periods are currently as follows:

Sentence	Rehabilitation Period
Custodial sentence for more than 6 months but not more than 30 months	10 years
Not exceeding 6 months	7 years
Fine	5 years
Community Order (e.g. probation, community service etc)	5 years
Conditional discharge or binding over	1 year or the end of the period of discharge or bind over whichever is the later
Absolute discharge	6 months

8. All of the above mentioned periods of rehabilitation are calculated from the date of conviction.
9. Section 139 Legal Aid Sentencing and Punishment of Offenders Act 2012 contains provisions amending the rehabilitation periods. The provisions are due to take effect on a date to be appointed by the Secretary of State. At the date of preparation of this report, no commencement order had been published but the government had announced its intention that the amendments should take effect with effect from 10 March 2014.
10. The main amendments to the rehabilitation periods are set out below.

11. The length of sentence which can qualify for rehabilitation has been increased from 30 months to 48 months.
12. Rehabilitation periods in respect of custodial sentences will in future commence not from the date of conviction but from the date of completion of the sentence. Where a prisoner is released early having been given remission for good behaviour, the release date is the date of completion of sentence. Where however, a prisoner is released early on licence, the sentence is not deemed to be completed until the end of the licence period.
13. The main periods of rehabilitation will be as follows:

Sentence	Rehabilitation Period
Custodial sentence for more than 30 months but not more than 48 months	7 years
Not more than 6 months but not more than 30 months	48 months
6 months or less	24 months
A fine	12 months from date of conviction
A compensation order	The date upon which payment is made in full
A community order	12 months from the last date on which the order was to have effect
Conditional discharge	12 months
Conditional caution	3 months or sooner if the caution ceases to have effect
Absolute discharge or caution	The date of the discharge or caution

14. Members will note the significant reduction in the period for rehabilitation for fines and community punishments from 5 years to 12 months from date of conviction. Many offences are dealt with by way of fine or community punishment including offences involving dishonesty, indecency or violence (all of which are expressly recognised as being a ground for revocation of a driver's licence under the 1976 Act). The Council's Licensing Policy Relating to the Hackney Carriage and Private Hire Trades states that drivers would not normally be considered to be fit and proper persons if they have unspent convictions. That policy was adopted in the light of the law as it stood at the time of adoption set out at paragraph 7 above. Members may wish to consider whether they would be happy licensing individuals with convictions for offences which are just over 12 months old which were dealt with by way of a fine or community punishment.

15. If Members wish to review their policy with regard to spent convictions Members may consider it appropriate to appoint a task group to look at the situation. Any policy to have regard to spent convictions as a matter of course would require justification

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
A person who is not considered fit and proper is allowed to retain his or her licence.	3, where a driver has a recent but spent conviction for certain types of offence this may put the public at risk	4, licensing unsuitable drivers may lead to damage to property, personal injury or even death.	Members consider whether to revise licensing standards to take account of spent convictions in certain circumstances.

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

6

Title: Proposed Amendment To The Licensing Policy Of Uttlesford District Council Relating To The Hackney Carriage And Private Hire Trades

Author: Michael Perry, Assistant Chief Executive Legal, 01799 510416

Item for decision

Summary

1. This report is to suggest a minor amendment to the Licensing Policy adopted by the council in March 2013.

Recommendations

2. Members agree to vary the Licensing Policy as follows:
 - In the policy document amend clause 2 by inserting a new clause 2.8 (the remaining paragraphs to be renumbered) as follows. “The Assistant Chief Executive – Legal may refer a driver or operator to the committee at any time for the committee to consider the revocation of a licence where in the opinion of the Assistant Chief Executive – Legal there are grounds to consider that the driver may not be a fit and proper person. The Assistant Chief Executive – Legal may take such action notwithstanding the fact that the driver meets the licensing standards set out in appendix A to this policy.
 - Paragraph 7 of appendix A be amended to read “No official cautions (save for cautions administered by Uttlesford District Council) for any offences within the last 12 months”.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	ULODA have been notified of the proposed amendment to the policy but have not been formally consulted as the proposed amendments to the policy merely state the existing position and the amendment to the
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	standards does not adversely affect members of the trade.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. The council adopted a Licensing Policy relating to the hackney carriage and private hire trades in March 2013.
7. Prior to the adoption of the policy where a driver had committed a minor offence this was generally dealt with by way of a short suspension of the driver's licence under delegated powers, rather than by way of a prosecution.
8. The policy contained a change of approach in such circumstances. At paragraph 6.8 the policy states that "without detracting from the delegated powers and discretion of the Assistant Chief Executive – Legal, it is the policy of the council that where the matter complained of constitutes an offence under the legislation the offender should usually be the subject of a formal caution or prosecution and that a suspension would only be given as an alternative in exceptional circumstances."
9. Consistent with this change of policy, where drivers have been found to have committed minor offences (typically failing to wear their badge) they have been interviewed under caution and following their admission of the offence a formal caution has been administered by the council.
10. Unfortunately, being cautioned for an offence immediately takes the driver outside of the council's licensing standards paragraph 7 of which provides that a driver should have "no official cautions for any offences within the last 12 months". A driver who has received a caution therefore inevitably has to appear before the committee to satisfy members that the driver remains a fit and proper person to hold a licence.
11. In practical terms, it is highly unlikely that the committee would take any action with regard to a driver who has failed to wear his or her badge on one occasion. Paragraph 6.16 of the policy states that "with regard to drivers, operators and proprietors, where a matter has been dealt with through the criminal justice system it is the view of the council that a suspension of the licence would rarely be suitable. Any punishment which the offender deserved would have been imposed by the

courts and a further punishment by way of suspension (which would cause loss of income) would be inappropriate. However, the Licensing and Environmental Health Committee should consider whether in the light of a conviction or a caution the driver or operator remains a fit and proper person to hold a licence. If the committee is not satisfied that the driver or operator does remain a fit and proper person then the licence should be revoked ...”

12. The suggestion therefore is that to avoid members of the committee sitting to hear cases in circumstances where no action would be the inevitable consequence a council imposed caution should not automatically take a driver outside of licensing standards.
13. With regard to the proposed amendment to the policy, whilst strictly this is not necessary as I can refer a driver to the committee at any time if I consider it appropriate to do so it is desirable to make this change so that drivers are not taken by surprise if following a caution from the council they are in a particular case referred to the committee for consideration. In practice I consider it unlikely that this will occur as if a matter is sufficiently serious to warrant consideration by the committee it will probably be too serious to warrant a caution and a prosecution would therefore be brought.

Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
A person who is not considered fit and proper is allowed to retain his or her licence.	1, where there is any doubt as to whether a driver remains a fit and proper person it has always been the practice to refer such a driver to the committee for consideration.	4, licensing unsuitable drivers may lead to damage to property, personal injury or even death.	None required in the context of this report.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

7

Title: Limited Drivers Licenses For Drivers Who Are Vehicle Testers

Author: Michael Perry, Assistant Chief Executive Legal, 01799 510416

Item for decision

Summary

1. This report is to seek the view of members as to whether it may be appropriate to licence drivers as hackney carriage/private hire drivers in certain circumstances without requiring the standard DBS check and medical examination.

Recommendations

2. That members agree to vary paragraph 2.5 of the council's Licensing Policy relating to the hackney carriage and private hire trades by adding the following at the commencement of that paragraph "Save for drivers who are prepared to accept conditions on their licence that (1) they may not carry passengers and (2) that they will drive hackney carriage/private hire vehicles only for the purposes of road testing or for the purpose of collecting the same from and returning it to an operator or proprietor before and after the vehicle has been submitted for the purposes of repair, servicing or testing ("a limited licence") ...".
3. That appendix A be amended by inserting after paragraph 4 "and (save for limited licences as referred to in paragraph 2.5 of the policy):-"

Financial Implications

4. None.

Background Papers

5. None.

Impact

- 6.

Communication/Consultation	The council has sought the views of ULODA. No views have been expressed at the date of preparation of this report.
Community Safety	None.
Equalities	None.
Health and Safety	None.

Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

7. Under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 only those licensed by the council as hackney carriage or private hire drivers may drive licensed vehicles. There is one minor exception that a person carrying out a road test on a hackney carriage does not require such a licence. This exception does not extend to private hire vehicles.
8. Members will recall that the council agreed some years ago that vehicle testing could be carried out by approved garages. There are a number of these within the district. Some of these garages offer a service to their customers whereby they will collect a vehicle from the customer for the purpose of repair, servicing or testing and return the vehicle to the customer once the job has been completed. Such a service could not be legally provided under the legislation unless the drivers concerned were licensed by this council as hackney carriage and/or private hire drivers.
9. Under the council's policy all applicants for new driver licences are required to undergo a DBS check and medical at their expense. Such checks need to be renewed at 3 year intervals. The cost of this is an impediment to garages being able to offer a collection and return service to its customers. It also discriminates against garages that do not have rolling roads for the purpose of vehicle tests who cannot carry out road tests on private hire vehicles unless their mechanics are licensed as drivers by the council. Whilst the council cannot waive the requirement for drivers to be licensed it can reduce the burden of obtaining licences in such circumstances.
10. The purpose of the legislation governing the hackney carriage and private hire trades is primarily to secure the safety of the public. If the proposal were to be accepted, drivers would still need to meet the council's licensing standards regarding their driving ability contained in appendix 8 of the policy. Paragraphs 5 to 10 of appendix A are primarily aimed at protecting fare-paying passengers. If the licence were to be subject to conditions which prevented drivers from carrying passengers and also limited the purposes for which the vehicles could be driven this degree of protection would not be required.

Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
A person who is not considered fit and proper is allowed to retain his or her licence.	1, where there is any doubt as to whether a driver remains a fit and proper person it has always been the practice to refer such a driver to the committee for consideration.	4, licensing unsuitable drivers may lead to damage to property, personal injury or even death.	In the event that members are prepared to allow the grant of licences to individuals without undergoing DBS and medical checks, appropriate conditions are imposed on the licence.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

8

Title: Consultation On Fees Under The Licensing Act 2003

Author: Michael Perry, Assistant Chief Executive Legal, 01799 510416

Item for decision

Summary

1. This report is to inform members of a government consultation concerning shifting the power to set fees under the Licensing Act 2003 from central government to licensing authorities.

Recommendations

2. That members consider whether and if so how they wish to respond to the consultation.

Financial Implications

3. The proposal is that fees should be set at a level which is self-financing. At present the nationally set fees do not cover the cost of the council in administering the Licensing Act 2003 and the outcome of the reform is therefore likely to be that there is a financial gain to the council.

Background Papers

4. None.

Other papers referred to by the author of this report in connection with this preparation:

5. Home Office "A Consultation on Fees under the Licensing Act 2003 available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/279706/locally_set_fees_consultation_v4.pdf

Impact

- 6.

Communication/Consultation	As the council formulates its own response to the government consultation it is not appropriate for the council to consult others.
Community Safety	None.
Equalities	None.

Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

7. The Licensing Act 2003 established a fees regime for licensing. Under the Act fees are set nationally. With regard to premises licences and club premises certificates a fee is paid upon application. Once a licence or certificate has been granted, an annual fee is then payable. Fees are also payable for variations to licences and certificates and on transfers of licences. Fees are also charged for temporary event notices. With regard to personal licences these are granted for a period of 10 years. A fee is payable upon each grant of a licence (including its renewal). However, the government has indicated its intention to abolish the need to renew personal licences so that they will last for the life of the licence holder or until forfeiture or surrender. It has also consulted on the possibility of removing the need for personal licences altogether. The outcome of that consultation is not yet known.
8. The Police Reform and Social Responsibility Act 2011 contained provisions enabling the Home Secretary to give power to individual licensing authorities to set fees locally. Many commentators consider that the current fees regime is not compatible with European legislation and these reforms are long overdue. The government is now consulting on how to transfer the fee setting responsibility to licensing authorities.
9. All functions under the Licensing Act 2003 are to be performed by the council and most by virtue of the Act are automatically delegated to the Licensing Committee. Once the reforms have gone through the Licensing Committee will therefore become responsible for setting licensing fees under the 2003 Act.
10. Licensing authorities will not have carte blanche to set fees at any level they consider appropriate. The fees must be set on the basis of cost recovery and the Home Secretary is likely to impose a cost cap which cannot be exceeded.
11. At present annual fees are payable on the anniversary on the grant of a licence. Holders of multiple premises licences find this inconvenient and would prefer a single date upon which all annual fees are payable nationwide. The government is seeking views on this proposal.
12. At present there is no power for local authorities to exempt applicants from the payment of fees. The government does not intend to change that approach but is intending to deregulate certain activities. This will obviously avoid the need for payment of a fee. The government is also introducing a new form of authorisation, the “community and ancillary sales notice”, which will reduce the burden on

community groups that sell small amounts of alcohol and on businesses such as small accommodation providers that only sell limited amounts of alcohol alongside a wider service. Licensing authorities will also be enabled to deregulate late-night refreshment in their area.

13. The government does not intend to amend the additional fees for large events at the present time. It has however, indicated that it will revisit the topic after licensing authorities have developed expertise in setting fees under the 2003 Act.
14. The consultation document was issued on the 13 February and the consultation runs for 8 weeks. Accordingly if the committee wish to respond, any response must be made by the 10 April.
15. Attached is a list of the questions posed by the government with suggested responses

Risk Analysis

16. There are no risks associated with this report.

CONSULTATION QUESTIONS

	Question	Suggested Response
1	<p>Currently fees for premises licences and club premises certificates are calculated by reference to the rateable value of premises. The government's intention is that cost recovery should be achieved without cross subsidisation and that unless there is evidence that one class or type of fee payer leads to higher average costs than others, everyone should pay the same. The first question is whether the committee agrees or disagrees that the use of national non-domestic rateable value bands as a criterion for variable fee amounts should be abandoned?</p>	<p>In terms of granting licences, the amount of work required by officers is not affected by the rateable value of the premises. Arguably smaller premises with lower rateable values will have weaker management structures and therefore cause more difficulty to licensing authorities. There is no justification for retaining the differential based on rateable value.</p>
2	<p>If it is the opinion of the licensing authority that higher rateable values cause higher cost to the licensing authorities, what is the reason for that opinion?</p>	<p>Not applicable.</p>
3	<p>There are alternative types of premises for which different fee amounts could be charged. By way of example the government suggests that licensed restaurants or premises that close early consistently may result in lower costs than premises used mostly for drinking or those which open until late. It is proposed that licensing authorities should be able to prescribe what would be a late terminal hour but that it should be within the period from midnight to 6am.</p> <p>The government's proposal is to limit the distinction of types of premises to (a) premises which are authorised to provide licensable activities until a late terminal hour and (b) premises which are used exclusively or primarily for the sale of alcohol for consumption on the premises. The consultation asks whether the committee agrees or disagrees that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?</p>	<p>In terms of the grant of a licence or a variation seeking an extension of hours, premises which open later will be likely to attract more representations. Bearing in mind however that only one representation is needed to trigger a hearing, it is not clear as to how much this would be reflected in costs. Once a licence has been granted the costs incurred by the licensing authority in administering the licence will be governed not by the authorised hours but by the extent to which use is made of those hours. A large number of premises in the district have extended opening hours which are not used in practice.</p>
4	<p>What evidence is there in support of the answer above?</p>	<p>As above.</p>

5	Is the criteria whether or not a premises is authorised to provide licensable activities to a late terminal hour sufficiently practical to implement?	It is open to premises licensed and club premises certificate holders to seek different permitted hours on different days of the week. It is not clear at what point the requirement for a higher fee would kick in.
6	What are the reasons for the committee's views?	It would appear irrational and inequitable to charge the same fee for a premises licence/club premises certificate which is authorised to open late say on Friday and Saturday only as for other premises which are authorised to open late 7 days a week. Further the comment above regarding costs relating to the use of the premises rather than the hours authorised should be repeated.
7	Does the committee agree that licensing authorities should be able to determine the hours which trigger payment of a higher fee between the hours of midnight and 6am?	This question appears poorly worded and seems to relate to the concept of whether the hours within which the local authority can specify the higher fee is payable should be within the period within midnight to 6am and not whether or not the licensing authority should be able to determine the terminal time which triggers the higher fee. There is no evidence to suggest that an earlier time for payment of the higher fee would be appropriate.
8	Does the committee wish to specify alternative hours if it disagrees with the midnight to 6am suggestion?	No comment.
9	Should licensing authorities have a discretion to dis-apply higher fees to premises only authorised to open late on special occasions such as New Year's Eve or St Patrick's Day?	If the ability to charge a higher fee is to be linked to authorised hours it would be reasonable to expect premises that did not wish to pay the higher fee to limit their authorised hours accordingly and to use temporary events notices for special occasions.
10	What are the reasons for the view expressed above?	As above.

11	Should the fees payable be variable depending on whether the premises are primarily used for drinking?	In terms of costs of granting licences and dealing with applications for variations, there would appear to be no difference. Typically for such premises, it is the entertainment aspect of the licences which causes most controversy rather than the sale of alcohol. In terms of dealing with applications for the grant and variation it is the terminal hour of the premises which attracts representations rather than the use to which the premises are being put. Premises primarily used for drinking which have a terminal hour at or before midnight are marginally more likely to generate complaints and request reviews than premises not so used. There can be some difficulty in determining whether or not premises are primarily used for drinking although there is precedent for this in the existing fee regulations which apply a higher charge to such premises if they fall within bands D or E for rating purposes.
12	What evidence is there in support of the answer above?	Officers can provide details of the nature of the premises which have generated complaints and requests for reviews in the past.
13	Are the criteria for determining whether premises are exclusively or primarily used for the sale of alcohol for consumption on the premises sufficiently practical to implement?	This is a very grey area. There is no case law to assist an interpretation. Whilst the government guidance under the Act deals with suspension of fees and additional fees for large scale events it does not address the issue of exclusive or primary use for the supply of alcohol. It is therefore open to interpretation as to whether this should be based upon the number of customers using the premises for consumption of alcohol as opposed to other uses, turnover or some other criteria.
14	What are the reasons for the view given above?	As above.
15	Should there be discretion to apply higher fee amounts only where both criteria apply in combination (i.e. the premises have a late terminal hour and are primarily or exclusively used for supply of alcohol)?	Where premises have a late terminal hour, complaints after that time will normally be based upon noise nuisance caused either by entertainment being provided at the premises or by the behaviour of patrons leaving. Whether or not the premises are used exclusively or solely for the supply of alcohol would appear to be irrelevant to this situation. Higher fees should relate therefore to either of the criteria not both in combination.

16	<p>Should licensing authorities have discretion to exclude certain types of premises from the higher fee amount (e.g. accommodation providers, theatres and cinemas, bingo halls, community amateur sports clubs and community premises? If members agree the regulations would need to specify each premises type that could be excluded. The licensing authority would then have discretion to exclude any of those types of premises if they have evidence linking them to lower costs. The consultation paper suggests that such a discretionary power of exclusion may be used as an alternative to but not in conjunction with the “combined criteria” approach above.</p>	<p>It would be sensible to have a discretion to exclude some types of premises from the higher fee regime. In particular hotels and guest houses which are only authorised to sell to residents and bona fide guests of residents after midnight are unlikely to generate any additional cost to the authority and should be exempt. However, this discretion should be in addition to, and not in substitution for, the “combined criterion” approach if that is adopted by the government.</p>
17	<p>What type of premises should be specified in the regulations as being potentially excluded classes?</p>	<p>Members are views are sought on the suitability of those cited by the consultation paper and as to any other types of premises which members consider could be included in the list.</p>
18	<p>Are there any alternative options which should be available to the licensing authorities to apply different fee amounts within their area?</p>	<p>In order to avoid cross-subsidisation it would be appropriate to require an increased annual fee from premises which have been the subject of an application for a review.</p>
19	<p>The consultation sets out proposed fee caps in accordance with the table attached and asks whether the committee agrees or disagrees that these will enable the licensing authority to recover costs.</p>	<p>Generally the fees quoted are adequate. It is noted from paragraph 8.5 of the consultation document that fees under the Act are intended to recover the cost of licensing authorities but not the cost of inspection, monitoring of compliance or enforcement that arise “in respect of the wider duties of responsible authorities under other legislation”. By implication, cost of inspection, monitoring of compliance and enforcement arising under the Licensing Act 2003 will be recoverable. On that basis the suggested cap of £740 for an annual fee is insufficient and a cap of £1,500 should be substituted. With regard to the fee for notification of interest of a freeholder etc. in premises whilst £50 would cover the cost of registering the freeholder’s interest it would not cover the cost of notifying the freeholder of any changes to the licensing register. It is suggested that the cap for this be £250 to enable licensing authorities to recover the cost involved.</p>

20	Asks for any other comments on the proposed cap levels?	We should strongly urge the government to abandon the concept of annual fees in favour of an annual renewal of the licence. There are strong arguments that the concept of an annual fee (as opposed to an annual renewal) is not compatible with European legislation regarding charging for administering regulatory regimes. An annual renewal would prevent a potential challenge.
21	The consultation document suggests a cap of £100 for temporary events notices compared to the present fee of £21. The consultation asks whether this cap would enable the licensing authority to recover its costs of dealing with temporary event notices.	£100 would appear to be adequate but not by a significant margin.
22	What evidence is there in support of the answer above?	No comment.
23	The consultation document asks a range of questions concerning the fee setting procedure. It asks whether we agree or disagree that (a) fees should be published before implemented (b) the basis of calculation should be published (c) the measures taken to keep costs down should be published (d) comments should be invited from interested parties.	I would suggest that the committee agree with paragraphs (a) (b) and (d). With regard to (c) the council overall strives for efficiency and it is difficult to identify particular steps taken with regard to setting licensing fees in isolation.
24	What steps can licensing authorities take to secure efficiency?	Continuous monitoring of costs.
25	The consultation document refers to “safeguards against excessive costs and gold plating”. The government intends to issue guidance to guard against this. The consultation asks whether these areas should be included in the guidance as being a particular risk and excessive costs or gold plating. a. Notification of residents individually of licensing applications in their area by letter. b. Central re-charges e.g. from Legal Services, HR, IT etc. it being suggested these should relate to costs actually incurred in the delivery of functions under the Act and not a standard percentage of central costs. c. Costs of discharging statutory functions arising under other legislation.	a. This council introduced a policy of notifying by letter those living adjacent to, opposite and behind premises which were the subject of applications. This was in response to complaints being received that neighbours were not aware of applications for premises. It has been well received and is considered to be a good but not “gold-plated” service. b. It is the practice of this authority that the cost of central services (e.g. Legal, HR, IT etc) are shared between the other council departments pro rata based on the use of those services. It is considered this is a reasonable approach. To require central services to effectively invoice the licensing authority for particular items of work done would be unreasonable in the context of overall administration and disproportionate. c. This would be appropriate to be included in the guidance.
26	Are there other activities that present a	There are none.

	particular risk of excessive costs or “gold-plating”?	
27	Do we agree there should be a single national payment date for annual fees in England and Wales?	This would impose a huge burden upon licensing authorities. Where a licence fee is not paid the local authority has a duty to suspend the licence. At present the monitoring of payment of annual fees and consequential suspensions of licences are spread during the course of the year. To require a licensing authority to undertake this task with regard to all of its licences once a year would impose a huge demand on the service to the detriment of other service users.
28	Do we have any comments on the impact assessments prepared in connection with the consultation?	None.
29	Do we have any comments on the methodologies or assumptions used in the impact assessment?	None.

PROPOSED CAP LEVELS

Table 1: proposed cap levels				
Question	Fee Category	Proposed cap	Current fee or maximum fee (for information only)	Agree/ disagree/ don't know
processes that can result in hearings or include review hearings				
19 (a)	Application for the grant of a premises licence	£2,400	£1,905*	
19 (b)	Application for a provisional statement	£2,400	£315	
19 (c)	Application to vary a premises licence	£2,400	£1,905*	
19 (d)	Application to vary premises licence to specify designated premises supervisor	£105	£23	
19 (e)	Application to vary a premises licence to remove requirement for a designated premises supervisor	£105	£23	
19 (f)	Application for the transfer of a premises licence	£65	£23	
19 (g)	Interim authority notice	£114	£23	
19 (h)	Annual fee payable by premises licence holder	£740	£1,050*	

13 That is, they are based on the licensing authorities whose reported average cost over the year was highest for each process. They do not reflect the highest possible cost of administrating a single application or notice.

14 Outliers are defined here as those falling outside two standard deviations from the mean.

15 Application for the grant of a licence and application to vary a licence to specify a designated premises supervisor, respectively.

25 A consultation on fees under the Licensing Act 2003

19 (i)	Application for the grant of a certificate	£2,400	£635*	
19 (j)	Application to vary a certificate	£2,400	£635*	
19 (k)	Annual fee payable by club premises certificate holder	£720	£350*	
19 (l)	Application for grant or renewal of a personal licence	£114	£37	
other processes under the 2003 Act				
19 (m)	Application to replace stolen, lost etc. premises licence	£46	£10.50	
19 (n)	Notification of change of name or address of premises licence holder	£46	£10.50	
19 (o)	Application for minor variation of a licence	£244	£89	
19 (p)	Application to replace stolen, lost etc. certificate	£46	£10.50	
19 (q)	Notification of change of name or change of rules of club	£46	£10.50	
19 (r)	Notification of change of address of club	£46	£10.50	
19 (s)	Application to replace stolen, lost etc. temporary event notice	£38	£10.50	
19 (t)	Application to replace stolen, lost etc. personal licence	£59	£10.50	
19 (u)	Notification of change of name or address of personal licence holder	£59	£10.50	
19 (v)	Notification of interest of freeholder etc. in premises	£50	£21	

*denotes current maximum fee, where fee level is variable

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

9

Title: Exercise Of Delegated Powers

Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416

Item for information

Summary

1. This report is to inform members of the exercise of my delegated powers since the last meeting of this committee.

Recommendations

2. That members note the contents of this report.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	Drivers who have their licences suspended or revoked have a right of appeal to the Magistrates Court. In the event that an appeal is lodged they may continue to drive until such time as an appeal is abandoned or determined unless the suspension or revocation is expressed to take immediate effect.
Sustainability	None.
Ward-specific impacts	None.

Workforce/Workplace	None.
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Situation

6. Since the last meeting of this committee I have dealt with 18 drivers under delegated powers.
7. Ten of these cases involve not notifying the council of fixed penalty notices and one not notifying the council of a motoring conviction within seven days. In five cases there were no mitigating or aggravating factors and a five day suspension was therefore imposed in accordance with policy. In four cases there were mitigating factors which led to shorter periods of 2-3 day suspensions being imposed. In another case the driver had failed to notify us of two separate fixed penalty notices within seven days. He had not however previously been suspended for failure to notify such matters. The breach of the condition on two occasion justified longer suspension and I suspended his licence for eight days. In a further case the driver failed to make contact despite being asked to attend an interview on two occasions. There is reason to believe that this particular driver is not currently working and a suspension would not therefore have a financial impact. I therefore suspended him for the maximum allowed under delegated powers namely 14 days.
8. Three cases involved failing to inform the council that the driver had been involved in an accident. For two of these drivers, there were no aggravating or mitigating factors and five day suspensions were imposed. The other driver did have valid mitigation and was only suspended for two days.
9. In another case information was received by the council which cast doubt upon the driver's medical fitness to drive. His licence was suspended with immediate effect in the interest of public safety and a committee date set. By the time the matter came before committee the driver had undergone a driving assessment and further medical examination. In light of the information before the committee, the committee revoked the licence with immediate effect on the basis that it was not satisfied that the driver was a fit and proper person.
10. Two cases I dealt with did not involve existing drivers but applicants for new licences. Both of these applicants did not meeting licensing standards due to unspent convictions. I could see no grounds upon which a departure from policy would be justified and therefore refused the applications under delegated powers.
11. The final case concerned a driver who applied to the council for a licence supported by a DBS check obtained on behalf of another local authority and a statutory declaration in which he declared that since the date of that DBS check he had not been charged with any criminal offences nor had he been investigated for any criminal offences. Having granted the licence the council received an anonymous tip-off which indicated that the driver had been convicted for a serious offence of dishonesty. Enquiries revealed that at the time he made the declaration he had not been convicted (the conviction followed later) but that he had been investigated for the offence and charged

and was at the time of the declaration awaiting trial. The offence of which he was convicted was a serious one for which he was given a two year suspended sentence and fined £10,000. That coupled with the offence of perjury for making a false statutory declaration led me to conclude he was not fit and proper and I therefore revoked his licence in accordance with my delegated powers.

Risk Analysis

12. There are no risks attached to this report.