

**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.