

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 10am on 2 JUNE 2014**

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

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

Also Present: Megan Ockenden (Applicant in relation to item 2) and Brenda Marshall.

LIC4 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC5 DETERMINATION OF A PRIVATE HIRE OPERATORS LICENCE

The Licensing Officer outlined the report. The applicant did meet the Council's current licensing standards but in view of the circumstances surrounding the application, officers had decided not to grant the application under delegated powers. Mrs Ockenden had applied for an operator's licence for Vectio Limited of whom she was the sole director. In the future she may apply for a licence for a company known as Vargo Transport Services Limited. Both companies would operate from Unit 10 Heathview, Pond Land, Hatfield Heath. This was also the operating address for A2B Contract Cars. The Operator's Licence in respect of this company was granted to a Philip Hudson on 20 March 2014. He also took over the Essex County Council School Contracts from Car Service Travel Limited which had its licence revoked on 4 March 2014. Mrs Ockenden had worked at Car Service Travel Limited in an administrative role and was aware of the incidents that led to the revocation of Car Service Travel Limited's Operators Licence, as well as the subsequent conviction at Colchester Magistrates Court on 8 April 2014. Mrs Ockenden was co-habiting with Mr Lawson, the former director of Car Service Travel Limited, but insisted he would not be involved in the operation of any of Mrs Ockenden's future business ventures. If the application was successful, Vectio would only tender for Essex County Council School Contracts when the rounds of tendering began for the September 2014 term. Only drivers and vehicles licensed by the Council would be used. Mrs Ockenden did not currently hold any school contracts. She would share the offices with A2B Contract Cars and expected to be at the offices two days a week. She currently held a Combined Hackney Carriage/ Private Hire Driver's Licence issued by the Council on 31 December 2014. When the licence was last renewed, Mrs Ockenden indicated she was driving on behalf of Car Service Travel Limited.

Mrs Ockenden told the Panel that she had worked at Car Service Travel Limited for 4 years. The first three years were as a driver. The last year was as a driver and an administrator. Her responsibilities included the maintenance of the payroll, invoicing and PAYE returns. She did as she was instructed by Mr Lawson, who was in charge of the day to day running of the operator. The new company would be run exclusively by her. She had experience running a number of businesses.

In response to questions by members, Mrs Ockenden said she could only give assurances that Mr Lawson would not be involved in the operation of the company. She was not initially aware of Car Service Travel Limited using Mr Alam's services. He was not included on the company's payroll. Vectio's records would be kept at the company's offices in Hatfield Heath.

The Assistant Chief Executive – Legal asked Mrs Ockenden a number of questions. Was she aware that Mr Lawson's daughter was listed as the sole director of Car Service Travel Limited? How involved was Mr Lawson's daughter in the day to day running of the company? A2B Contract Cars would be tendering for Essex County Council School Contracts. Mrs Ockenden would be in direct competition with them for this work and yet they shared the same offices. The company would operate at least five days a week, but Mrs Ockenden intended to be in the office for only two of these. How would she effectively run the company in her absence? How would the company fulfil its contracts when its own drivers were unavailable?

In response to the questions by the Assistant Chief Executive – Legal, Mrs Ockenden responded by saying that although she aware Mr Lawson's daughter was legally the owner of Car Service Travel Limited, Mr Lawson was in control of the company on a day to day basis. She had been working with A2B Limited as a driver and in an administrative role. Her new company would share the premises with A2B Contract Cars and she had a good relationship with Mr Hudson, the company's owner. A2B operated mainly in Epping and their focus was not school contracts. A2B had taken 15 of the 20 schools contracts previously held by Car Service Travel Limited. Although there would be some competition, she had a good relationship with the owner of A2B. She could be contacted on her mobile phone when she was not at the office, although how often she would go to the office would depend on the number of school contracts the company was given. The County Council provided a list of back-up drivers and operators that could be used in cases where the company's drivers could not be used. Essex County Council permitted subcontracting to these drivers and operators for up to 3 days or longer if permission was given. The Assistant Chief Executive – Legal then asked if one of her drivers could not undertake a school contract at short notice would she be prepared to use a driver licensed by another authority, for example

East Herts, and not licensed by this council. Mrs Ockenden said provided they were on the approved list she would.

LIC6

EXCLUSION OF THE PUBLIC

RESOLVED that under section 100I of the Local Government Act 1972, the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

The Licensing Officer, Mrs Ockenden and Mrs Marshall left the room at 10.30am so that The Committee could consider its decision. They returned at 12:25pm.

DECISION

Councillor Perry read the following statement. "Mrs Ockenden, you have applied to the Council for a private hire operator's licence. Under the legislation the Council is to grant an operator's licence upon application but shall not grant an operator's licence unless it is satisfied that the applicant is a fit and proper person. In determining whether applicants are fit and proper the Council has licensing standards. It is right to say that you meet those standards. This creates a presumption in favour of granting you a licence. However the Council's licensing policy states that the fact that someone meets the licensing standards is not a guarantee that a licence will be granted. There may be reasons why an applicant may be considered not to be a fit and proper person even though he or she meets licensing standards. Each case is decided on its merits.

Where an applicant meets licensing standards the Assistant Chief Executive- Legal has delegated authority to grant the licence but may refer cases to the Committee if he considers it appropriate. He declined to grant the licence in this case as he had concerns as to who would in reality be running the business if a licence was granted and he therefore referred the matter to us today.

The background behind his concerns is that the Council formerly licensed a company, Car Service Travel Limited (which I shall refer to as CST), as an operator. That company was engaged solely in fulfilling school contracts for Essex County Council and was based at Unit 10 Heathview Hatfield Heath. In November 2013 the Council received a report from a contract monitoring officer employed by Essex County Council that a CST car was being driven by a driver not wearing an Uttlesford licensed driver's badge. On investigation it became apparent that the driver concerned was not licensed by this authority. Shortly after this it became apparent that a CST licensed vehicle had been involved in a collision which should have been reported to the Council within 72 hours but no such report was made. Both of these matters constituted offences under the Local Government (Miscellaneous

Provisions) Act 1976. CST was therefore invited to send a representative for an interview under caution.

A Mr Lawson attended the interview on behalf of CST. Mr Lawson is your partner in the personal if not the business sense of the word. In the interview under caution Mr Lawson said that he previously owned CST but that he had transferred the ownership of the company to his daughter who was then sole director. However he described himself as the manager of the company with day to day control and authority to sign licensing documents on the company's behalf. He admitted that he had knowingly used a driver not licensed by this Council to undertake a school contract run. Although Mr Lawson said this was only on 1 day evidence from the driver concerned indicated that he had done this on a number of occasions and you have confirmed today that this is the case.

As a result of the offences CST were referred to the Committee on 4 March 2014. Having heard the evidence the Committee were not satisfied that CST remained a fit and proper person to hold a licence and the licence was therefore revoked for any other reasonable cause. The company was notified of the decision and of the right to appeal but no appeal was lodged. The Council also brought criminal proceedings against the company for both offences. The company failed to attend the hearing and the charges were proved in the company's absence resulting in severe fines.

Following the revocation of the licence a company with its main centre of operations in Epping, A2B, sought to acquire the Essex County Council contracts which had been serviced by CST. You told the Committee today that there were about 20 such contracts and that about 15 had transferred to A2B. However the Committee note from the report presented to it on 4 March 2014 that CST had 16 licensed vehicles and 15 drivers. Unless some drivers were able to carry out 2 contracts a day (something the Committee considers unlikely) the inference is that all of CST's business transferred to A2B. When A2B applied to this Council for an operator's licence officers probed the applicant to ensure that the application was not merely a front for Mr Lawson. On the evidence before officers they were satisfied at the time that it was not. In hindsight however we are not so sure.

The position today is that you are seeking a private hire operator's licence to enable you to run a business operating school contracts. You have given the Committee assurances that Mr Lawson will have no involvement in the business. However the Committee has doubts as to how much reliance it can place on those assurances. As mentioned you and Mr Lawson are partners. Mr Lawson has been engaged in the private hire trade for in excess of 30 years, firstly licensed as an operator in Epping and later in Uttlesford. You have been engaged in the private hire trade for 4 years, 3 as a driver and 1 as a driver undertaking administrative duties such as payroll, invoicing and VAT returns. You did not say that you have been engaged in tendering for

contracts or the day to day management of contracts and the Committee therefore draws an inference that you have little or no experience of such matters.

You told the Committee that you are your own person and that you would take your own decisions. However when questioned about the use of the unlicensed driver and the fact that payments were not made through the payroll you said you just did what you were told. This indicates that Mr Lawson does indeed exercise a considerable influence over you in business matters.

If a licence is granted then it is your intention to operate out of Unit 10 Heathview Hatfield Heath. These are the premises which were used by CST and are used by A2B. You are currently working for A2B as a driver and assisting in the administration of the Company. You are therefore carrying out the same functions as you did for CST. If an operator's licence is granted to you, you intend to tender for school contract work with Essex County Council. This would be in direct competition with A2B. You told us that A2B are aware of your application for an operator's licence and of your intention to seek school contracts. It is inconceivable that a company would employ someone intent on going into competition with it when that person would have access to trade information in the normal course of business. Such conduct on the part of the employer is only consistent with a prior agreement that A2B would look after CST's schools contracts until other arrangements could be made. The Committee infer that these other arrangements include your application being considered today.

The Committee's view therefore is that your application is on the balance of probabilities being made by you on behalf of Mr Lawson. Mr Lawson is known to have used a nominee in the past in that his daughter was the owner and sole director of CST and yet as you acknowledged took no part in the management or day to day operation of the company. Although CST was the licence holder in reality Mr Lawson was the controller of the business. When the Committee concluded that CST was not a fit and proper person that decision was on the basis of Mr Lawson's conduct and had he applied for an operator's licence the overwhelming probability is that the Committee would have refused it on the basis that he was not fit and proper. Where someone applies for a licence on behalf of such a person that applicant also cannot be considered fit and proper because they are in effect merely acting as a nominee. The Committee are not satisfied by what you have told us today that you are not a nominee for your partner, Mr Lawson and for that reason alone would not be satisfied that you are a fit and proper person to hold a licence.

However there are other reasons. The Assistant Chief Executive – Legal asked you some questions which he felt may assist the Committee. In particular he asked what you would do in the event that a driver was unable to fulfil a contract at short notice and you could not

cover that contract yourself or by using another of your drivers. Your reply was that you believed that there was an approved list issued by Essex County Council with the names of drivers and operators where you could subcontract for up to 3 days without permission and for longer with consent. You were asked if you would use such a driver if he was not licensed by this Council but was licensed by another authority such as East Herts. You responded that providing the driver was on the approved list you would do so.

This answer shows an ignorance of the law relating to private hire vehicles which is not consistent with being a fit and proper person to hold an operator's licence. Under the legislation as consistently interpreted by the courts the driver, operator and vehicle must all be licensed by the same council. It is an offence for an operator licensed by this authority to subcontract a job so that it is carried out by a driver or by using a vehicle licensed elsewhere. Your lack of awareness of this provision is all the more surprising because the question put to you was the exact situation which led to the revocation of CST's licence. CST could not fulfil a contract at short notice so delivered one of its cars to a driver licensed by another council and not by Uttlesford to undertake the booking.

The Committee are also concerned that if a licence were granted you intend being present at the offices only 2 days a week. Although you say you have a mobile phone the Committee does not consider this is sufficient to enable you to properly control a business that is running at a minimum 5 days per week.

As the Council must be satisfied that you are a fit and proper person to hold an operator's licence before it could grant one it follows that the burden is on you to satisfy us of that. You have not discharged that burden. For the reasons given, the Committee is not satisfied that you are a fit and proper person and the application is refused."

The Assistant Chief Executive – Legal informed Mrs Ockenden of her right to appeal the decision within 21 days of receiving a notice of the decision.

The meeting ended at 12.30pm