

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 2pm on 18 JUNE 2014**

Present: Councillor D Perry (Chairman)
Councillor J Davey, D Morson and J Salmon

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

Also Present: The driver and his friend in relation to Item 2.

LIC7 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC8 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.

LIC9 CONSIDERATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee was informed by the Assistant Chief Executive – Legal that the driver had been licensed as a private hire driver by the Council since 2010. He was employed by 24/7 Limited undertaking school contract work. On 5 June 2014, The Council was informed that on 23 May 2014 the driver had allegedly hit a schoolboy on the shoulder whilst carrying out a school contract. The school had reported it as a safeguarding concern and the County Council was investigating it. The driver had been suspended with immediate effect by the Council and relieved of school contract work by the operator. The operator interviewed the driver without prior warning and noted he was defensive when asked about the incident. The operator reported that the driver's recollection was that the boy was in an agitated state when entering the vehicle. The boy swore and the driver told him to not use such language. The driver said the boy came at him, so the driver put his hand up to protect himself. The driver reported the incident to the boy's adult sister as his mother was not available. The driver told the operator that the incident happened whilst the vehicle was in motion, whilst the escort present in the vehicle said that it took place before the vehicle left the school. The operator reported that the driver admitted to putting his hand on the child, but would not demonstrate how. The driver's licence could not be suspended indefinitely, but could be suspended until the licence expired and the Committee could refuse to renew it. Delegated powers could be given to the Assistant Chief Executive – Legal and Councillor Perry to lift the suspension and/ or

renew the licence depending on the outcome of the County Council's investigation. The licence could also be revoked.

The Committee was told that the driver had asked for a record of the meeting with 24/7, but they had refused to provide this. As the interview took place nine days after the incident, the driver was surprised at the subject of the interview, he was not defensive. The escort had said the vehicle was in the school's premises, not that it was stationary.

In response to questions by the Committee, the driver said there had been no previous incidents between him and the boy throughout the three years he had been transporting him. It was standard procedure for all the private hire vehicles to keep their hazard lights on until all the vehicles were ready. Once the vehicles had begun moving, the incident occurred and he put the handbrake on before putting his hand up to protect himself. He hadn't reported the incident to 24/7 because he hadn't considered it to be a serious issue. However, the escort had recorded the incident.

The driver and his friend left the room at 2.45pm so that the Committee could consider its decision. They returned at 3.40pm.

DECISION

Councillor Perry read the following statement. "You have been licensed by this council as a private hire driver since 2010. Throughout that period you have worked for 24/7 performing school contract work.

On the 5 June 2014 the council received information that on the 23 May an incident occurred when you were transporting a schoolchild home from school. The allegation was that you had hit the schoolboy on the shoulder. The incident was reported to his school who in turn reported it as a safeguarding issue and Essex County Council are conducting an investigation.

In the light of that the Assistant Chief Executive – Legal suspended your licence with immediate effect in the interest of public safety.

Further enquiries were made of your operator. Your operator stated that you had been interviewed without prior warning as to the reason for the interview. You failed to offer any explanation regarding the incident until you were prompted to do so. Your operator reports that you recalled the incident. You stated that the schoolboy arrived at your vehicle in a very agitated state and swore as he took his seat in the front of the vehicle. You challenged the schoolboy and stated that he should not use such language. You then alleged that the schoolboy came at you and admitted raising your left hand to prevent the schoolboy from striking you. You stated that this was the end of the incident and that the schoolboy sulked for the rest of the journey. You also told your operator that you had wanted to report the incident to the

schoolboy's mother but on arrival at the address you were only able to tell the schoolboy's adult sister. You further told your operator that the incident occurred while the vehicle was in motion and that you therefore felt justified in placing a hand on the child. However your escort said the incident took place before the vehicle left the school. Your operator reports that other than confirming that the incident occurred before the vehicle moved off, the escort was vague as to what she could see or hear from the rear passenger cabin. Your operator states that you admitted that you laid a hand on the child but would not demonstrate how this was done nor would you describe how much force was used.

Before the Committee today you denied the allegation. You stated that the child concerned is autistic and you have transported him for 3 years. In that period there have been no significant incidents but you say that he is frequently reluctant to get into the vehicle as he prefers to stand and speak to other boys. You stated that he is more difficult to deal with on Wednesdays although this incident took place on the Friday before half term so that is not relevant to the allegations.

You explained that you are the lead driver for the school and that the procedure is that when vehicles park to collect children they must have their hazard warning lights on. When the vehicles are ready to depart, that is that all the passengers have boarded, their seat belts are fastened and the doors are closed, the driver will switch off the hazard lights to indicate that he or she is ready to go. Only when all hazard warning lights are switched off do the vehicles leave.

On the day in question you stated that the boy concerned was agitated. You said that he got into his seat and swore and started punching the seat next to him, that is the seat between the front passenger seat and the driver's seat. You said that you had pulled away and as this happened you stopped, reapplied the handbrake and held up your hand with the flat of your hand towards the boy to defend yourself. You do not agree with the account given by your operator. However from what you have told the Committee today about the pickup procedure and from your account of the incident the Committee find that the boy was in the front passenger seat wearing his seat belt when the incident occurred. The Committee struggle to accept that the boy would have had sufficient mobility in the circumstances to pose a threat to you or other passengers on the vehicle.

The committee may not licence a driver unless the committee is satisfied that he is a fit and proper person. The burden of proof in these circumstances is on the driver to show that he is fit and proper not for the Council to prove that he is not. The Committee has had regard to testimonials submitted on your behalf but by their nature testimonials are not evidence of particular events and if events did unfold as alleged there is a risk of repetition. The allegation in this case is a serious one. The committee cannot be satisfied that you are a fit and proper person whilst the allegation remains outstanding. Therefore the committee

feels that it has no alternative other than to suspend your licence until 30 June 2014 when it is due to expire. The nature of the allegation is such that the committee consider that it is in the interests of public safety that the suspension should have immediate effect and therefore so directs.

The Committee notes that an application to renew the licence is pending. That application is refused under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause as the Committee is not satisfied that you are a fit and proper person. When the investigation by Essex County Council has been concluded you may make a fresh application for a licence should you wish to do so. The Committee asks that the Assistant Chief Executive – Legal should contact Essex County Council and enquire as to the progress of the investigation. Any application for a licence will be considered upon its merits at the time it is made. However the Committee would point out that if you are convicted of or cautioned for any offences arising from this incident that would mean that you would not meet the Council's licensing standards and unless there are good reasons to depart from its policy an application for a licence is likely to be refused. If you are not convicted of or cautioned for any offence that is not a guarantee that a licence will be granted. The Committee considering any application will look at all the facts and decide whether it is satisfied that you are a fit and proper person."

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

The meeting ended at 3.45pm.