

1 July 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 9 July 2014 at 7.45pm 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 a 15 minute presentation for members by Essex Fire and Rescue Service.

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

1	Apologies for absence and declarations of interest.	
2	Minutes of the meetings held on 4 March, 5 March, 20 March, 14 April, 6 May, 20 May, 2 June and 18 June 2014 (attached).	p.4
3	Matters arising.	
4	Chairman's remarks (verbal report).	

5	Recommendation from the Licensing Task Group.	p.44
6	Deregulation Bill 2014.	p.87
7	Exercise of delegated powers.	p.91
8	Items for future agendas.	
9	Any other items which the Chairman considers urgent.	

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.

FACILITIES FOR PEOPLE WITH DISABILITIES

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- You should proceed calmly, do not run and do not use the lifts.
- Do not stop to collect personal belongings.
- Once you are outside, please make your way to the flagpole near the visitor car park. Do not wait immediately next to the building.
- Do not re-enter the building until told to do so.

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

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

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

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

LIC58 **APOLOGIES FOR ABSENCE**

No apologies for absence were received

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

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Chief Executive – Legal said that the driver had surrendered his licence to the Council and therefore the report was withdrawn.

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

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

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

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

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

The Enforcement Officer said that Mr Alam was being prosecuted.

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

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

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

LIC61

EXCLUSION OF THE PUBLIC

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

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

DECISION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting ended at 4.35pm.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES SAFFRON WALDEN at 7.30pm on 05 MARCH
2014**

Present: Councillor D Perry (Chairman)
Councillors J Davey, M Lemon, J Salmon and A Walters

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

Also Present: Les Davidson (ULODA – Treasurer), Barry Drinkwater
(ULODA – Vice Chair), Richard Ellis (ULODA – Vice Chair), Andy
Mahoney (24x7 Ltd)

LIC62 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Asker, Hicks,
Loughlin, Morson and Ranger.

LIC63 **MINUTES OF THE PREVIOUS MEETINGS**

The Chairman signed the minutes of the meetings on 16 October, 19
November and 4 December 2013, 14 January and 5 February 2014 as a
correct record.

LIC64 **MATTERS ARISING**

**(i) Minute LIC30 (Meeting 16 October 2013) – Consultation on the
future of personal alcohol licenses**

The Assistant Chief Executive – Legal said that a response had been sent
off to the Government. No reply had been received.

**(ii) Minute LIC42 (Meeting 19 November 2013) – Determination of a
private hire/ hackney carriage driver's licence**

The Assistant Chief Executive – Legal said that no appeal was made.

**(iii) Minute LIC49 (Meeting 4 December 2013) – Application to vary
a premises licence – Saffron Walden Football Club**

The Assistant Chief Executive – Legal said that no appeal had been
made.

(iv) Minute LIC51 (Meeting 14 January 2014) – Budget 2014/15

Councillor Perry said that he wanted all future agendas to have an item
relating to the budget.

The Assistant Chief Executive – Legal said that the situation relating to the budget surplus had not changed.

(v) Minute LIC52 (Meeting 14 January 2014) – Determination of a private hire driver’s licence

The Assistant Chief Executive – Legal said that no appeal had been made.

(vi) Minute LIC54 (Meeting 5 February 2014) – Determination of a combined hackney carriage/ private hire driver’s licence

The Assistant Chief Executive – Legal said that no appeal had been made.

PUBLIC SPEAKING

Mr Drinkwater said that the recommendations in Item 6 were sensible. They would benefit all parties involved. The recommendations outlined in Item 7 would reduce the burden upon both Council Officers and members of his trade. The public’s safety would not be affected. ULODA looked forward to continuing dialogue with Officers in relation to Licence Fees. ULODA’s Chairman had contacted the Assistant Chief Executive – Legal about the high cost of enforcement. The Council had a duty to positively educate operators, proprietors and drivers about the relevant regulations. This would lower offence rates. Progress was being made on the grading of prestige vehicles. Market intelligence was being gathered about waiting charges for hackney carriage vehicles.

Mr Mahoney, in relation to Item 7, supported the proposal.

Mr Ellis said that ULODA were experiencing difficulty in developing the correct criteria for identifying prestige vehicles.

Councillor Perry thanked the speakers for their contributions. He also thanked Members who attended Extraordinary Licensing and Environmental Health Committee meetings. This committee was the hardest working at the Council.

LIC65

SKY LANTERNS

The Assistant Chief Executive – Legal said that the report was based on a letter from the Country Land Association (CLA). The CLA were concerned about lanterns causing hazards. The letter was factually incorrect with regard to the Vale of White Horse District Council. Conditions had not been imposed on all entertainment licenses. The Council had not received any reports of lanterns causing damage within the district. He had considered guidance issued by the Civil Aviation Authority which said that lanterns could travel to unpredictable heights and could create debris on an airport’s runways. Organisers of events using lanterns within ten miles

of an airport should be informed of the risks. Members could seek an amendment to the policy. This would require a consultation.

Councillor Perry asked whether lanterns could be considered a form of firework.

Councillor Davey said that there were a lot of thatched houses in the district. Could the lanterns become a fire hazard?

The Assistant Chief Executive – Legal said that they contained no explosives. Therefore, they were not considered fireworks. Lanterns fell from the sky when the fire within them died out.

Councillor Perry said that the Council’s Licensing Department was made aware of the situation. He proposed that the situation continue to be monitored.

RESOLVED that the situation surrounding sky lanterns continue to be monitored.

LIC66

AMENDMENTS TO THE REHABILITATION OF OFFENDERS ACT 1974 (“THE ACT”)

The Assistant Chief Executive – Legal said that under the Act certain convictions were seen as spent after a certain period of time had elapsed. However in the case of fitness to hold a licence Members were entitled to have regard to spent convictions. The new rehabilitation periods were significantly different to the previous ones. They were as follows.

Sentence	Old Rehabilitation Period	New Rehabilitation Period
Custodial sentence for more than 30 months but not more than 48 months	N/A	7 years
More than 6 months but not more than 30 months	10 years	48 months
6 months or less	7 years	24 months
A fine	5 years	12 months from date of conviction
A compensation order	N/A	The date upon which payment is made in full
A community order	5 years	12 months from the last date on which the order was to have an effect
Conditional discharge	1 year, or the end of the period of discharge or bind over, whichever is	12 months

	the earlier	
Conditional Caution	N/A	3 months, or sooner if the caution ceases to have an effect
Absolute discharge or caution	6 months	The date of the discharge or caution

Members should consider whether they would as a matter of course wish to take into account certain spent convictions. Members could propose an amendment to Council policy, or set up a task group to report back.

Councillor Perry said that shortening rehabilitation periods could mean that the Council would fail in its duty to protect the public. A task group should be set up.

Councillor Lemon said the shortening of rehabilitation periods was too drastic.

Councillor Walters asked what powers the Council had to deal with cases where spent convictions were involved.

The Assistant Chief Executive – Legal said that the Council had always had the power to look at spent convictions on a case by case basis. The policy was not currently in accordance with Government legislation.

Councillor Salmon asked which of the Committee members should form the task group.

The Assistant Chief Executive – Legal said that members not on the task group would still be able to attend its meetings. Task group recommendations would be discussed at the Committee’s meetings.

Councillor Perry proposed that a task group be set up comprising of the members present at the meeting.

RESOLVED to set up a task group in relation to the amendment to the Rehabilitation of Offenders Acts, comprising of the following members: Councillors Davey, Lemon, Perry, Salmon, Walters. The terms of reference of the task group are to advise the Committee as to what length of time should elapse after a conviction or expiration of sentence before the Council would be prepared to disregard it in determining whether an applicant or driver is a fit and proper person and whether different criteria should be applied in respect of different types of offences. The task group is to report back to the next meeting of the Committee.

CARRIAGE AND PRIVATE HIRE TRADES

The Assistant Chief Executive – Legal said under the Council’s policy drivers who committed minor offences (such as failing to wear their badge) were usually given a formal caution for that offence. Accepting a caution meant that the driver no longer met the Council’s licensing standards and the driver therefore had to appear before the Committee to satisfy it that he remained a fit and proper person. A number of drivers had appeared before the Committee for that purpose but no licenses had been revoked. The volume of work this generated was demonstrated by the fact that eight drivers had been referred to the Committee since the last full meeting. The proposal meant that such cases would no longer be put before this Committee although the Assistant Chief Executive – Legal had power to refer cases to Committee if he considered it appropriate to do so.

Councillor Perry proposed the recommendations outlined in paragraph two of the report.

RESOLVED to:

- (i) 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.
- (ii) 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”.

LIC68

LIMITED DRIVERS LICENSES FOR DRIVERS WHO ARE VEHICLE TESTERS

The Assistant Chief Executive – Legal said that currently a full licence was required to operate a private hire vehicle regardless of the purpose for doing so. A similar restriction applied to hackney carriages although there was an exception for hackney carriages which permitted them to be driven by a mechanic for the purpose of road testing. However there was no provision which allowed mechanics to drive licensed vehicles for the purpose of collecting them for and returning them after repair or servicing. The recommendation was that limited license should be granted for the purposes of vehicle testing and collecting and returning vehicles for the purpose of repair, servicing or testing. Limited licenses would not permit passengers to be carried.

Councillor Davey said that the proposal was sensible. Qualified engineers would have a better understanding of how the vehicle should operate.

Councillor Perry proposed the recommendations outlined in the report.

RESOLVED that:

- (i) 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") ...".
- (ii) 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)"

LIC69

CONSULTATION ON FEES UNDER THE LICENSING ACT 2003

The Assistant Chief Executive – Legal said that under current legislation, licensing fees were determined nationally. The Police Reform and Social Responsibility Act 2011 enabled the Home Secretary to give power to individual licensing authorities to set fees locally. Fees must be set on the basis of cost recovery. The Home Secretary was likely to impose cost caps. Fees were currently paid on the anniversary of the licence. The Government was considering having a single date nationally on which annual fees were paid. The appendix to the report starting on page 71 provided a list of 29 consultation questions and the suggested responses. It was up to members how they wished to respond to the consultation.

Councillor Perry thanked the Assistant Chief Executive – Legal for the questions and suggested responses provided. He proposed that the suggested responses are used to answer the questions asked by the Government.

RESOLVED that the suggested responses outlined in the appendix of the report are used in response to the questions asked by the Government.

LIC70

EXERCISE OF DELEGATED POWERS

The Assistant Chief Executive – Legal said that since the last meeting he had dealt with 18 drivers under delegated powers. He had concerns about

the number of cases that he had dealt with. The case in paragraph 11 was of particular concern because it involved perjury.

Councillor Perry said he shared the concerns of the Assistant Chief Executive – Legal. The Council had done all it could with regard to providing information to drivers. Further education was needed to help with the future enforcement of policy.

Councillor Davey said that he believed it was beneficial for the trade to co-operate with the Council.

The Committee noted the report.

LIC71 **ITEMS FOR FUTURE AGENDAS**

Councillor Perry requested that updates on the Licensing Budget be included on future agendas. He also wanted an item related to the education of the trade to be on the agenda for the next meeting. He said that he would welcome the input of the trade for this purpose and asked ULODA representatives to submit any views they had on the issue to the Assistant Chief Executive – Legal at least 10 days before the next meeting so that he could refer to these in his report.

LIC72 **ANY OTHER URGENT BUSINESS**

Councillor Perry said that the Government had begun consultation about changes to the legislation surrounding small lotteries.

The Assistant Chief Executive – Legal said the consultation was looking at ways that made operating small lotteries easier. Members should consider whether they wished to respond to the consultation and if so whether it wished an extra-ordinary meeting of the Committee or to appoint a sub-committee for that purpose.

Councillor Perry said that this was not an issue of importance. He proposed that no further action should be taken.

RESOLVED to take no further action.

The meeting ended at 8.20pm.

EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COUNCIL OFFICES SAFFRON WALDEN at 2.30pm on 20 MARCH 2014

Present: Councillor D Perry (Chairman)
Councillors E Hicks, V Ranger and A Walters

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

Also Present: The applicants and Mrs Pratt, the Chairman of Takeley Parish Council in relation to Item 2

LIC73 **APOLOGIES FOR ABSENCE**

No apologies for absence were received.

LIC74 **ITEM 2 – APPLICATION FOR THE GRANT OF A PREMISES LICENCE – SUGARS CAFÉ BAR, UNIT 6 PRIORS GREEN, BENNETT CANFIELD**

The Licensing Officer said that the application had been brought to the Committee because of representations made by Takeley Parish Council. The applicant had to state the licensable activities and how the licensing objectives would be met.

The licensable activities were as follows:

Live Music (Indoors Only)

Thursday to Saturday	7pm to 11.30pm
Sunday	12 noon to 10pm

Recorded Music (Indoors Only)

Monday to Wednesday	7pm to 11pm
Thursday and Friday	7pm to 11.30pm
Saturday	12 noon to 11.30pm
Sunday	12 noon to 11pm

The sale of alcohol by retail for consumption both on and off the premises

Monday to Thursday	7am to 11.45pm
Friday and Saturday	7am to 12 midnight
Sunday	7am to 11pm

The hours the premises are open to the public

Monday to Thursday	7am to 12.15am
Friday and Saturday	7am to 12.30am
Sunday	7am to 11.30pm

To meet the licensing objectives the applicants would use CCTV, take a zero tolerance approach to drugs, refuse service to those already intoxicated, operate a Challenge 25 policy, remind customers to be quiet

upon leaving the premises and provide training for new staff. Copies of the application had been served to all nine statutory bodies and no representations had been made. The Council's policy and the Secretary of State's guidance state the applicant had to demonstrate that their operating schedule was sustainable. The Committee could only impose restrictions that would help to meet the licensing objectives.

Mrs Pratt asked if the Committee had visited the site.

The Assistant Chief Executive – Legal said that it was Council policy to not visit the sites of applications for licences.

Mrs Pratt said that the site was part of a new estate which would contain around 800 new houses. Approximately 2/3rds had been built. There was a new school, a licenced convenience shop and a community centre near to the site that shared a car park. This car park was frequently full when parents were taking their children to or collecting them from school as the school had no drop-off/collection point. The site had no noise insulation and was near to housing. This would cause undue noise, exacerbated by late closing times.

In response to questions by the Panel, Mrs Pratt said that activity around the site was likely to be significant. She had received a number of verbal complaints about the proposal, but no written ones.

Mr Hall spoke on behalf of his wife, who was the applicant. He said that currently people had to drive to public houses and bars away from the estate. The aim was to create a bistro styled premises with strong community ties. Both he and his wife had gained personal licenses. New staff would be given assistance in gaining personal licenses. CCTV would be in operation around the premises. On the advice of the police hours late at night had been applied for, but these hours would be used infrequently. When they were used, it would mainly be for private functions.

In response to questions from the panel, Mr Hall said that the premise should be allowed to operate with the applied for schedule and if issues were to arise, the operating schedule should then be altered. The speakers on the premise would be used for background noise. Karaoke nights would only take place when the premise was used for private functions.

The Assistant Chief Executive – Legal drew attention to the case of R. (on the application of Daniel Thwaites Plc) v Wirral Borough Magistrates' Court and others. Licensing decisions had to be based on evidence, not conjecture. The Licensing Act contained a mechanism whereby licenses could be reviewed if there were concerns that the licensing objectives were not being met.

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 applicant, interested parties and the Licensing Officer left the room at 3.05pm so that the Panel could consider their decision. They were invited back into the room at 4pm so that the Panel could give their decision.

DECISION

The Chairman read the following statement. "The Committee has today considered an application for a premises licence in respect of the proposed Sugar Café and Bar at Unit 6 Priors Green Local Centre. The requirement for a hearing arose from objections to the grant of the licence made by Takeley Parish Council. The premises are situated within the parish of Takeley but under the legislation the Parish Council is not a responsible authority. Its representations are therefore made in the capacity of another party.

The premises are on the Priors Green Estate. This is a development in the course of construction which will have approximately 800 dwellings when complete. The chairman of the Parish Council informed the Committee that about 2/3rds of the estate is now constructed. In the middle of the estate is a community area comprising retail units of which Unit 6 is one, a school and a community centre. There is a car park serving this area which has 68 spaces. Apparently, the car park is heavily used by parents taking their children to and collecting them from the school as the school has no drop-off facilities.

In its written representations, the Parish Council opposed the grant of the licence. Its objections were based on all 4 of the licensing objectives. With regard to public safety the Parish Council submitted that any function promoting more than very short stay parking would overburden the already pressurised facilities, which would risk public safety in general. It would also place children at risk from harm which impacts upon the 4th licensing objective. On the issue of the prevention of public nuisance the Parish Council submits that the proposed extended opening hours and resultant late night use of the car park would create a level of noise inappropriate in a densely populated residential area. Today the chairman of the Parish Council also said that the premises had no soundproofing, that noise would emanate from windows and doors causing a nuisance to local residents and that there would be further noise and disturbance caused by patrons smoking outside. With regard to the licensing objective of the prevention of crime and disorder the Parish Council's only submission was that granting an alcohol licence was not appropriate in a densely populated residential area which includes a school.

The applicant's husband explained their business plan. The premises will be run as a bistro. Music will be low key. It is not the intention to make full use of the permitted hours but these had been applied for at the suggestion of the police licensing officer to build in a degree of flexibility. It is anticipated that most of the custom will come from the estate and that patrons will chose to walk to and from the premises rather than use cars. In any event the school had no user rights in respect of the car park. When asked if he could propose any conditions to help allay the Parish Council's concerns he suggested that the licence should be granted as applied for to give everyone a chance to see how it worked.

The Committee's difficulty today is the absence of any evidence that problems would arise if a licence were to be granted. The Parish Council's objections are based upon it's perception of what may occur, not evidence. The Committee's legal adviser drew members' attention to the Thwaites case which underlined that decisions on licensing applications must be based on evidence and not conjecture. The 2003 Act is designed to give a light touch approach to the grant of licences. This is justified because the Act contains a mechanism whereby licences can be reviewed on the application of anyone if there are concerns that any of the licensing objectives are being infringed. The case also suggests that greater weight should be given to representations made by responsible authorities than to those made by others.

The Committee note that none of the responsible authorities have made representations. Indeed local residents who would have been expected to know of the application by virtue of the notice on site and the advertisement in the local paper have not objected the only representations being from the Parish Council.

In the absence of any evidence that granting a licence is likely to adversely impact upon any of the licensing objectives, on the basis of the decision in Thwaites, the Committee has no alternative other than to grant the licence in the terms applied for including the conditions set out by the applicant in the operating schedule. In the event that once the business starts trading evidence arises showing that the any of the licensing objectives is being impinged then a review may be applied for."

The meeting ended at 4.10pm

**EXTRAORDINARY LICENSING AND ENVIRONMENT COMMITTEE
held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN
at 10am on 14 APRIL 2014**

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

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

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

LIC76 **APOLOGIES FOR ABSENCE**

No apologies for absence were received.

LIC77 **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.

LIC78 **CONSIDERATION OF A PRIVATE HIIRE/HACKNEY CARRIAGE
DRIVER'S LICENCE**

The Assistant Chief Executive – Legal said that the driver was licensed by the Council as a private hire driver carrying out school contracts. On 3 April 2014 the Council received information from the driver's operator that a complaint had been made against him. The school was concerned about the safety of a pupil. The issue was referred to Essex County Council's Safeguarding team. It was alleged that the driver pinned a child to a wall whilst shouting at him. The driver has not been suspended by the operator. On 3 April he had suspended the driver's licence with immediate effect on the grounds of public safety. The matter had been referred to Essex County Council's Safeguarding team.

The driver said that he had not pinned the child to a wall. He had been employed for five years and had been carrying out school contracts during that period. Throughout his time executing the contract there had been up to seven children at any time. Their ages had ranged from six years old to fifteen. All the children he transported had special needs. The child in question had been temperamental, especially during the period his parents were separating. He had discussions with his escort about how best to deal with problems caused by the child. On the day in question, the escort was helping a young child, when the child in question ran off after grabbing their bag from the back of the minibus. The driver then shouted at the child to make them return to the minibus and chased after them. The driver put his hand on the

child's shoulder and told him to return to the minibus. The child had run off before, but he had not chased him on other occasions. The driver did not think the incident was of note, so he did not report it. The school had told drivers to report all incidents, but the driver felt that if he did this, no child would end up at school. The incident happened on a Wednesday morning, but he was not made aware of a complaint until Thursday afternoon.

In response to questions by the Committee, the driver said that he did not know why he chased after the child in this instance, as he had not done so before. He did not know of any witnesses to the incident. CCTV did not capture the incident. The escort was busy helping another child at the time of the incident, so they could not keep an eye on the child who ran away. He did not know who had made the complaint. If the school was concerned by his actions, he thought that they would have made a complaint straight away, rather than waiting until Thursday.

The Assistant Chief Executive – Legal reminded the Committee that the burden of proof was with the driver to convince the Committee that he was a fit and proper person to hold a private hire licence.

The driver and his wife left the room at 10.45am so that the Committee could consider its decision. They re-entered the room at 11.45am.

DECISION

Councillor Perry read the following statement. "The driver is licensed by the council as a private hire/hackney carriage driver. He is employed by 24/7 and undertakes school contract work transporting special needs children to and from school. He is accompanied on his school runs by an escort.

On 3 April the driver's operator contacted the council to inform it that a complaint had been received from the school where the driver takes pupils. An allegation had been made that he had pinned a pupil to a wall and shouted at him. Because of this the school had expressed concerns about the pupil's safety and it had referred the matter to the Essex County Council Safeguarding team. Upon receipt of that information the Assistant Chief Executive – Legal suspended the driver's licence with immediate effect in the interests of public safety and referred the matter to the committee today.

The driver denies the allegation. He explained that on the date in question when he arrived at the school the escort had gone to assist one of the passengers leave the vehicle. The other children were asked to remain in the vehicle until they were let out. One pupil got out of the vehicle themselves and ran off. The driver gave chase. He admits shouting at the pupil to stop and admits putting his hand on the pupil's shoulder but denies pinning the pupil to the wall. The driver stated that this pupil had behaved in a similar way on other occasions

but he had not given chase before. He could not explain why he had done so this time. He also acknowledged that he did not log the incident as he should have. He explained that if every incident was logged children would never get to school and that in any event he did not consider this to be an incident which needed to be logged.

The committee's task has been made extremely difficult by the lack of evidence. However 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. The allegation in this case is a serious one. The committee cannot be satisfied that the driver is a fit and proper person whilst the allegation remains outstanding. Therefore the committee feels that it has no alternative other than to suspend the driver's licence until 31 August 2014 when it is due to expire. The committee request that the Assistant Chief Executive – Legal should contact the Essex County Council Safeguarding team to ascertain the progress of its investigation. In the event that the Safeguarding team are satisfied that there are no concerns the committee give the Assistant Chief Executive – Legal delegated power in consultation with the chairman to lift the suspension.

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 meeting ended at 11.50am.

EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at SAFFRON WALDEN TOWN HALL, MARKET SQUARE at 10am on 6 MAY 2014

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

Officers in attendance: M Chamberlain (Enforcement Officer), M Hardy (Licensing Officer), C Nicholson (Solicitor) and A Rees (Democratic Services Support Officer)

Also Present: Michael Eldred (Manager – Walden Ladies Football Club)

LIC79 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor V Ranger.

It was decided that Item 2 would be determined in the absence of Mrs Excell.

Mr Eldred left the room for the consideration of Item 2.

LIC80 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE – MRS EXCELL**

The Enforcement Officer circulated an e-mail sent to him by Mrs Excell, which provided information about her personal circumstances. Mrs Excell was licensed as a private hire/hackney carriage driver with this authority on 1 September 2011. Her license was due to expire on 31 August 2014. On 25 July 2011, Mrs Excell was caught by police using a mobile phone whilst driving. She declined a fixed penalty notice. On 8 December 2011 she was convicted of the offence and received three points on her licence and was ordered to pay £73 plus costs. She failed to disclose this within seven days to the Council and met with the Assistant Chief Executive – Legal on 16 January 2012. It became apparent she had failed to notify the Council of other offences and had made a false statement when renewing her licence. On 4 October 2013 she was carrying out an Essex County Council school contract and was stopped on a routine inspection. She was found to be displaying private hire vehicle plates which expired on 31 August 2013. This was an offence under section 48(6) Local Government (Miscellaneous Provisions) Act 1976. It carried a maximum fine of £1000. On 5 November 2013 she attended the Council Offices for an Interview Under Caution. She confirmed she was driving the vehicle on that day, but was not aware that private hire plates had expiration dates. She had been driving the vehicle since 5 September 2011. Once she was stopped she went to her employer (Excellent Connections Limited T/A Fargolink) and had new plates installed. She accepted the offence but initially did not realise it was an offence. In accordance with the

Council's licensing policy, the Committee prosecuting her for the offence of using a private hire vehicle whilst failing to display a valid private hire vehicle plate. On 8 April 2014, she appeared in front of Colchester Magistrates Court for the alleged offence and pleaded guilty. She was fined £90 with a victim surcharge of £20 and ordered to pay costs of £50. She did not meet the Council's licensing standards as she had an unspent conviction under the Rehabilitation of Offenders Act 1974. Under paragraph 6.16 of the Council's Licensing Policy Relating to the Hackney Carriage and Private Hire Trades, suspension would rarely be suitable. The Committee had to decide whether Mrs Excell remained a fit and proper persons to hold a licence. If she was not deemed a fit and proper persons then her licence should be revoked.

LIC81 **EXCLUSION OF THE PUBLIC**

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

The Enforcement Officer and the Licensing Officer left the room at 10.10am so the Panel could consider their decision. They were invited back into the room, along with Mr Eldred at 10.20am when the Committee gave their decision.

DECISION

Councillor Perry said that the Committee considered Mrs Excell remained a fit and proper person to hold a private hire drivers licence.

LIC82 **APPLICATION FOR THE GRANT OF A PREMISES LICENCE –
WALDEN LADIES FOOTBALL CLUB, CRABTRESS, SAFFRON
WALDEN**

The Licensing Officer informed members that a letter had been sent to the applicant and the objector (Mr Turner) informing them of the time and date of the meeting. The Pavilion was situated on the playing fields at Crabtrees, Saffron Walden. The applicant had had outlined the licensable activities being sought. They were as follows:

Recorded Music (Indoors Only)

Monday to Friday	6pm to 10pm
Saturday	12 noon to 10pm
Sunday	12 noon to 8pm

The sale of alcohol by retail for consumption both on and off the premises

Monday to Friday
Saturday
Sunday

6pm to 10pm
12 noon to 10pm
12 noon to 8pm

The applicant had to demonstrate how the four licensing objectives would be met. Regarding the prevention of crime and disorder, those who became offensive or abusive would be asked to leave. No sales would be made to people already intoxicated. To meet the public safety objective no more than 80 people would be allowed onto the premises at any one time. First Aid facilities would be provided along with a qualified first aider. To prevent public nuisance measures would be taken immediately upon receiving a noise complaint. A Challenge 25 policy would be in place to protect children from harm. The Committee could grant the application, modify the application by inserting a clause, remove a licensable activity from the application, refuse to specify a person in the licence as the designated premises supervisor, or reject the application. Regard should be given to the Council's licensing policy and guidance from the Secretary of State issued in accordance of the Act.

In response to questions from members, Mr Eldred said that money made from the licensable activities was intended to help ensure the football club's future. It was unlikely people would be in the premises at the end of the licensable hours. The intention was to facilitate the football club and the adjacent sporting clubs after they had finished. This would ordinarily be from 4pm until the early evening. Any other fund raising activities would happen early in the day. An environmental health officer had visited the site and said the current arrangements for noise reduction were adequate given the size of the premise. The designated premises supervisor would not be at the premises all the time, however there would always be a responsible person present.

LIC83

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.

Mr Eldred, The Enforcement Officer and the Licensing Officer left the room at 10.45am so the Panel could consider their decision. They were invited back into the room at 10.50am when the Committee gave their decision.

DECISION

Whilst the Committee acknowledges the legitimate concerns of Mr Turner set out in his letter of representation, there is an absence of any evidence that problems would arise if a licence were to be granted. Mr

Turner's objections are based on what he thinks might occur and not evidence.

The Committee are aware of the Thwaites case which underlined that decisions on licensing applications must be based on evidence. The Licensing Act 2003 contains mechanisms where by licences can be reviewed on the application of anyone if there is behaviour that is infringing the licensing objectives. The case also suggested that greater weight should be given to representations made by the responsible authorities than to those made by others.

The Committee note that none of the responsible authorities have made representations.

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

Likewise, in terms of the submissions on the issue of public safety, Members were not satisfied that there is a real likelihood of harm to public safety arising from the anticipated increase in traffic, and therefore it was not necessary or proportionate to take any steps in that regard either by refusing the application, or imposing conditions.

The objection relating to prevention of public nuisance is more relevant, as the Committee note that the premises are very close to residential properties, and the Council's Licensing policy at paragraph 5.7 points to factors that should be considered that might impact on the likelihood of public nuisance, including the proximity to residential areas, hours of activity, the nature of the activities and if activities are outside.

The Committee are of the view, given the very close proximity of the premise to residential properties, that the promotion of the licensing objective of the prevention of public nuisance can be met by conditions tailored to the type, nature and characteristics of the premises, which are proportionate and in this case consider that it would be reasonable to add a condition to the licence in the following terms:

Prominent and clear signage shall be displayed near exits and around the site requesting patrons and guests to leave the premises and area quietly

In the absence of any other evidence or any other obvious areas for concern that the grant of a licence is likely to adversely impact on the licensing objectives, and on the basis of the decision in Thwaites the Committee will grant the licence in the terms applied for with the addition of the condition above, and including the conditions set out in the operating schedule of the application.

Residents, and Mr Turner especially, should note that once the licence is granted and licensable activities are taking place, if evidence arises

showing the licensing objectives being adversely affected then a review may be applied for.

Mr Eldred was advised of his right to appeal against the decision of the Committee by application to the Magistrates Court within 21 days of the written notice of the decision.

The meeting ended at 10.55am

EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at SAFFRON WALDEN TOWN HALL, MARKET SQUARE at 2pm on 20 MAY 2014

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

Officers in attendance: M Hardy (Licensing Officer), C Nicholson (Solicitor) and A Rees (Democratic Services Support Officer)

Others in attendance: Rupert Ainsworth (Property Projects Manager - Rontec), Sabrina Cader (Solicitor - Winckworth Sherwood) and Simon Mercer.

LIC1 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

LIC2 **APPLICATION TO VARY A PREMISES LICENCE – STANSTED SERVICE STATION, 1 CAMBRIDGE ROAD, STANSTED MOUNTFICHET**

The Licensing Officer informed the Committee that a premises licence was first issued under the Licensing Act 2003 after an application to convert an existing Justices Licence on 24 October 2005.

The current premises licence allowed the following licensable activities:

Late Night Refreshment (Indoors and Outdoors)	11pm to 12 midnight Monday to Sunday
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Sale of alcohol by retail for consumption off the premises only	6am to 12 midnight Monday to Sunday
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The holder of the premises licence was Rontec Watford Limited who wanted to vary the permitted licensable activities to the following:

Late Night Refreshment (Indoors and Outdoors)	11pm to 5am
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Sale of alcohol by retail for consumption off the premises only	12 midnight to 12 midnight
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No further risks had been identified. However the following condition had been agreed with Essex Police: The entrance door to the shop would be closed from 12 midnight to 5am. Any sales would have to be made through a night pay window. The operating schedule identified no further risks that needed to be addressed in order to promote the licensing objectives regarding public safety, prevention of public

nuisance and the protection of children from harm. No representation had been made by any of the statutory authorities other than the condition agreed by the applicant and Essex Police. Representation had been made by an interested party relating to the prevention of crime and disorder, the prevention of public nuisance and the prevention of children from harm. The Committee could grant the application, modify the application by inserting conditions or reject the application. Due regard should be given the Council's licensing policy and the Secretary of State's Guidance issued in accordance with the Act. Any additional conditions imposed by the Committee would have to be proportionate to the application and could not replicate existing legislation. Conditions would have to promote the four licensing objectives.

In response to a question by Councillor Davey, the Licensing Officer said that there were 19 premises in the district that were permitted to sell alcohol throughout the entire day. However, none of them were filling stations.

Mr Mercer told the Committee that he believed that by extending the hours in which people could purchase alcohol, people would be encouraged to drive to the site in order to do so. Additionally, people exiting pubs in the local area would go to the filling station to buy alcohol so that they could continue drinking. People would congregate around the filling station and this would create additional noise. There was limited street lighting around the area and a variation in the premises licence would cause an increase in crime. There was not an established police presence in the village, so underage people could not be deterred from purchasing alcohol either by themselves or via a proxy.

Ms Cader said that no issues had been raised in relation to the current premises licence. The Police had added one condition to the applied for variation, as previously discussed at the meeting. The amount of alcohol on sale was small and the main reason for the proposed variation was to match the trading hours. As the shop door was closed, people were unlikely to congregate on the premises. Rontec was aware it's responsibility to protect children from harm and had other premises throughout the country that had been granted licences to sell alcohol 24 hours a day. All staff were given training every six months and this included how to deal with underage and proxy sales. A refusals log was kept in the premises. The application should not be refused on the basis of what might happen. Staff were encouraged to refuse service if they felt the alcohol sold would be consumed by people under the age of 18. Cashiers were fined if they served an underage person. This encouraged them to exercise caution when selling alcohol.

The Licensing Officer said any review of the licence would be against Rontec and not the individual involved. The Committee could add a

condition that the premises operated a "Challenge 25" policy if deemed prudent. Ms Cader explained that the Challenge 25 condition should already be on the licence as it was included in a previous variation application.

In the response to questions, Mr Ainsworth and Ms Cader said that the night pay desks had panic alarms in case of emergency. Employees were permitted to take short breaks if needed. The site was secure so there was no chance of a break in. Whilst it would be possible to increase the amount of alcohol on sale at the site, this would not happen since it would cause issues with the Police and would also create planning issues.

LIC3

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, Mr Ainsworth, Ms Cader and Mr Mercer left the room at 2.50pm so that the Committee could reach a decision. They returned at 3.10pm.

DECISION

Councillor Salmon read out the following statement. "The Committee has heard everything that has been said by the Applicant and Mr Mercer and whilst the Committee acknowledges the legitimate concerns of Mr Mercer set out in his letter of representation, there is an absence of any evidence that problems would arise if a variation to the licence were to be granted. Mr Mercer's objections are based on what he fears might occur.

The Committee were not satisfied that there was likely to be a significant problem of crime and disorder, and subject to the proposed condition suggested by the Police, do not consider it is necessary or proportionate to take any steps in that regard either by refusing the application or imposing additional conditions. The Committee considered likewise in respect of the prevention of public nuisance.

The Council's policy at paragraph 5.4 states that in the case of shops and stores selling alcohol and the Licensing Authority will normally permit the hours to match the normal trading hours unless there are exceptional reasons relating to disturbance or disorder, and the Secretary of State guidance at paragraph 10.13 is that shops should be free to allow off sales at any time the outlet is open for shopping, unless there are good reasons for restricting those hours.

The Committee are aware of the Thwaites case which underlined that decisions on licensing applications must be based on evidence. The

Licensing Act 2003 contains mechanisms where by licences can be reviewed on the application of anyone if there is behaviour that is infringing the licensing objectives. The case also suggested that greater weight should be given to representations made by the responsible authorities than to those made by others.

The Committee note that only the Police made representations on the grounds of crime and disorder and that their concerns have been met with an agreed condition and no other responsible authorities have made representations

In the absence of any other evidence that the variation of the licence is likely to adversely impact on the licensing objectives, and on the basis of the decision in Thwaites the Committee will grant the application in the terms applied for with the addition of the condition agreed by the Police, and including the Challenge 25 condition as suggested by the Applicant.

Residents, and Mr Mercer especially, should note that once the licence is granted and licensable activities are taking place, if evidence arises showing the licensing objectives being adversely affected then a review may be applied for.”

The Licensing Officer informed the applicant and objector of their right to appeal within 21 days of receiving a notice of the decision.

The meeting ended at 3.15pm.

**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

**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.

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.

LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE TASK GROUP held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 5pm on 3 APRIL 2014

Present: Councillor D Perry (Chairman)
Councillors M Lemon and A Walters

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

LTG1 APOLOGIES FOR ABSENCE

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

LTG2 AMENDMENTS TO THE REHABILITATION OF OFFENDERS ACT 1974

The Assistant Chief Executive – Legal said the Council's Licensing Policy provided that persons who had unspent convictions would not normally be granted drivers licences. Amendments to the Rehabilitation of Offenders Act 1974 significantly reduced the periods for rehabilitation. The Licensing and Environmental Health Committee had appointed the Task Group to examine the implications and report back. The first question for members was therefore whether they were satisfied that the amended Act afforded sufficient protection to the public. Members were unanimously agreed that the Act did not.

The Assistant Chief Executive – Legal then suggested that if members were of the view that spent convictions should be considered routinely then it would be sensible to consider revising the Council's policy to indicate what convictions would be taken into consideration. The existence of a policy would be helpful to potential applicants and would make it easier to defend appeals as if an appeal is made the magistrates must apply the Council's policy and can only depart from it if there are good reasons for doing so. He asked whether members considered whether the type of sentence should be taken into consideration (i.e. custodial/non-custodial) rather than the length of sentence as under the old legislation.

Members agreed that a custodial sentence was more serious than a non-custodial sentence. They noted that under the Local Government (Miscellaneous Provisions) Act 1976 a driver's licence could be revoked if after the grant of the licence a driver was convicted of an offence of dishonesty, indecency or violence. For drivers therefore these offences were clearly serious ones. Members considered that where an applicant had been convicted of such an offence and had received a custodial sentence (including a suspended sentence) he or she should not meet licensing standards as a matter of policy. Where a

driver had been convicted of such an offence and had received a non-custodial sentence then he or she should not meet licensing standards for five years after the date of conviction. Members considered that the existing provisions relating to discharges and cautions should be carried forward.

The Assistant Chief Executive – Legal explained that for operators the position was different. Operators did not deal with the public face to face as frequently as drivers and therefore posed less of a risk. The only offence the LG(MP)A listed as a ground for revocation of the licence was an offence under the Act. Under the new regime such convictions would always be deemed spent after 12 months as they could only be dealt with by way of a fine. However offences under the Act were serious being operating without a licence, using an unlicensed driver or using an unlicensed vehicle. Members considered that to disregard such convictions after only 12 months did not give the public sufficient protection and that where an applicant for an operator's licence had been convicted of such an offence he should not meet licensing standards for five years after the date of conviction.

The Assistant Chief Executive – Legal asked whether members considered that offences of dishonesty should be taken into consideration for operators given that they had access to information as to when homes are likely to be empty which could be valuable to the criminal fraternity. Members felt that an operator with convictions for dishonesty did pose a particular risk to the public and felt that an applicant who had received a custodial sentence for such an offence should not meet licensing standards and an applicant who had received a non-custodial sentence for an offence of dishonesty should not meet licensing standards for five years from the date of conviction.

In all other cases convictions would only be taken into consideration as a matter of course if they were deemed not spent under the Rehabilitation of Offenders Act as amended.

The Assistant Chief Executive – Legal pointed out that the fact that an applicant did not meet licensing standards did not mean that they could not be given a licence. It created a presumption that the applicant was not a fit and proper person. If an applicant could satisfy the Committee that notwithstanding the fact they did not meet licensing standards they were a fit and proper person to hold a licence then a licence should be issued. He suggested that it may be helpful for the policy to indicate what factors would be taken into consideration in reaching that decision. Members considered that the nature of the offence, the seriousness of it, the nature and length of the sentence imposed and the passage of time since the date of conviction were all relevant factors which should be referred to in the policy.

The Assistant Chief Executive – Legal said the trade should be consulted with regard to proposed amendments to the policy. The policy should not be applied retrospectively so that if a driver held a licence at present he or she should not be deemed to not be a fit and proper person under the new policy. For that reason it was not necessary to consult with drivers, as the changes in policy would not affect them. Only ULODA and other operators needed to be consulted. Operators were affected because it may impact upon the drivers they could employ. The Assistant Chief Executive – Legal said that a meeting of the Task Group had been arranged for members to consider the responses to the consultation for 23 June 2014. Members agreed that the trade would be invited to that meeting.

AGREED that

1. The Assistant Chief Executive – Legal draft revisions to the Council’s Licensing Policy to provide that:-
 - a. Drivers with convictions for offences of dishonesty, indecency or violence for which a custodial sentence (including a suspended sentence) had been imposed would never meet licensing standards.
 - b. Drivers with convictions for such offences for which a non-custodial sentence had been imposed would not meet licensing standards for 5 years from the date of conviction.
 - c. Operators with convictions for offences of dishonesty for which a custodial sentence (including a suspended sentence) had been imposed would never meet licensing standards.
 - d. Operators with convictions for offences of dishonesty for which a non-custodial sentence had been imposed would not meet licensing standards for 5 years from the date of conviction.
 - e. Operators with convictions for offences under the Local Government (Miscellaneous Provisions) Act 1976 would not meet licensing standards for 5 years from the date of conviction.

2. The Assistant Chief Executive – Legal shall consult with ULODA and licensed operators with regard to the proposed amendments and report back to the meeting of the Licensing Task Group to be held on 23 June 2014 and that representatives of the trade be invited to attend that meeting to give their views.

The meeting ended at 5.20pm.

**LICENSING TASK GROUP MEETING held at COUNCIL OFFICES
LONDON ROAD SAFFRON WALDEN on 23 JUNE 2014 at 2.00pm**

Present: Councillor D Perry (Chairman)
Councillors J Davey, M Lemon, and J Salmon.

Also present:
Mr Richard Ellis, Vice Chairman, ULODA.

Officers in attendance: M Perry (Assistant Chief Executive – Legal), R Dobson (Principal Democratic Services Officer).

LTG3 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor A Walters.

LTG4 MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on 3 April 2014 were received and signed by the Chairman as a correct record.

**LTG5 LICENSING POLICY OF THE COUNCIL RELATING TO THE HACKNEY
CARRIAGE AND PRIVATE HIRE TRADES**

The Assistant Chief Executive-Legal referred to the minutes of the previous meeting, which set out the Task Group's intentions for amending the Council's policy for the hackney carriage and private hire trades.

The Assistant Chief Executive – Legal said there was no report as no representations had been received from the Trade. An invitation to attend and to make representations had been sent to all licensed operators and proprietors in the district, inviting them to make written representations, and inviting them also to attend today's meeting in order to comment. The Assistant Chief Executive-Legal said he had not extended the invitation to comment to Drivers because the revised policy would not be retrospective and would therefore have no prejudicial effect on current drivers.

The Assistant Chief Executive-Legal went on to say whilst an indication had been received from the former Chairman of ULODA that a response to the consultation was being prepared by ULODA, no such response had been submitted. However, Mr Ellis was in attendance today to represent the views of the Trade.

Members considered the draft amendments to the policy.

The Assistant Chief Executive-Legal said Mr Ellis would address the Task Group on the draft amendments to the policy. Mr Ellis was asked to confirm whether his views were those of a majority of the membership of ULODA, or of the executive committee.

Mr Ellis said the views he intended to express today were his personal view only, and that of Mr Drinkwater, the previous Chairman of ULODA. He said the Trade had fallen short in failing to make representations, but he suspected this was partly because the proposals were likely to have generated a sense that these changes would be inevitable; if they were right for the public, then they were right for the Trade.

The Chairman asked Mr Ellis whether he had any serious concerns about the proposals. Mr Ellis said he did not, although he commented that the draft amendments seemed to take a “catch all” approach, which could if taken at face value prevent a wide range of people from entering the Trade.

The Assistant Chief Executive-Legal said it was the relaxing of the limits of the Rehabilitation of Offenders Act which had led to the need for this Task Group to consider the Council’s policy. In any event he would refer to members any determination of licence where despite the Council’s standards being met, there were reasons such as the person having received a custodial or suspended sentence for serious offences, which members would wish to have the opportunity to consider in determining if the applicant was a fit and proper person. Conversely, where someone did not meet the licensing standards, members might consider the applicant was fit and proper, and again in those circumstances the Assistant Chief Executive-Legal would refer the matter to the Committee for determination, rather than exercise delegated powers. Therefore the policy was not set in stone.

Councillor Salmon asked when the amended policy could come into effect.

The Assistant Chief Executive-Legal said the Task Group’s recommendation to adopt the policy would be brought to the next scheduled meeting of the Licensing and Environmental Health Committee, which was on 9 July, and acceptance of the recommendation would mean the amended policy would come into force from that date.

The Trade would have a further opportunity to make representations at the Committee meeting during the public speaking session, if they gave notice to do so.

The Chairman asked that the draft proposals be circulated to all members of the Committee. The Assistant Chief Executive-Legal said the document would be included in the agenda papers for all members.

AGREED to recommend to the Licensing and Environmental Health Committee the adoption of the amended licensing policy of Uttlesford District Council relating to the hackney carriage and private hire trades.

The meeting ended at 2.20pm.

**LICENSING POLICY OF UTTLESFORD DISTRICT COUNCIL RELATING TO THE
HACKNEY CARRIAGE AND PRIVATE HIRE TRADES**

1. Introduction

- 1.1. The law relating to the hackney carriage and private hire trades is largely contained in 2 statutes, the Town Police Clauses Act 1847 which is exclusively concerned with hackney carriages and the Local Government (Miscellaneous Provisions) Act 1976 which deals with both the hackney carriage and private hire trades. The object of the legislation is to ensure the safety and wellbeing of the public.
- 1.2. The power to regulate the private hire trade under the 1976 Act is adoptive. The Council resolved to adopt those powers in 1992 and has regulated the private hire trade since.
- 1.3. Under the legislation the Council is responsible for licensing hackney carriages and private hire vehicles, drivers of those vehicles and operators of private hire vehicles.
- 1.4. The aim of this policy is to set out the approach the Council will take in dealing with the grant of licences; the Council's conditions and the approach taken with regard to enforcement of conditions and the legislation.

2. Licensing of Drivers

- 2.1. The Council has a duty to grant a driver's licence to anyone who applies for a licence who holds a full driving licence (or is otherwise authorised to drive under the Road Traffic Act 1988) and who has held such a licence or authorisation for at least 12 months. However the Council must not grant a licence unless it is satisfied that the driver is a fit and proper person to hold such a licence.
- 2.2. In determining whether someone is a fit and proper person councils are entitled to have policies. The Council's policy in the form of its Licensing Standards – Drivers is attached as Appendix A. It sets out the standards expected of those who apply for, or hold, licences to drive hackney carriages and/or private hire vehicles.
- 2.3. The policy is not binding upon the Council. However applicants who do not meet all the licensing standards will only be granted a licence if there are good grounds for departing from the Council's policy. The burden of proof is upon the applicant to satisfy the Council that he or she is a fit and proper person.

- 2.4. 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. Conversely there will be cases where someone does not meet the licensing standards but nevertheless the Council is satisfied that he or she is a fit and proper person so that a licence can be issued. Each case is decided upon its merits. Where an applicant does not meet the Council's medical standards the application will be considered on a risk basis and a licence may be granted if the Council is satisfied that the applicant will be safe to drive.
- 2.5. Save for drivers who are prepared to accept conditions on their licence that (1) they may not carry passengers (2) they will drive hackney carriages/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") all applicants for a driver's licence will be required to have an enhanced Disclosure and Barring Service ("DBS") check at the time of the first application for a licence and thereafter on every 3rd renewal of the licence. Applicants will also be required to undergo a medical at the time of the first application for a licence and generally at every 3rd renewal of the licence although the Council may request medical certificates more frequently if there are reasons to be concerned about a driver's medical fitness to drive.
- 2.6. The Assistant Chief Executive - Legal has delegated authority to grant licences where applicants meet the Council's licensing standards. However there will be occasions when he feels that the decision would be better taken by Members (e.g. the number or nature of spent convictions; police intelligence revealed by the enhanced DBS check; false statements made by an applicant on the application for the licence etc.). In such cases he may refer the application to the Licensing and Environmental Health Committee for determination.
- 2.7. The Assistant Chief Executive - Legal also has delegated authority to refuse licences where applicants do not meet the Council's licensing standards. The Assistant Chief Executive - Legal cannot grant a licence in such cases but if

he considers the circumstances are such that an exception to policy could be made he may refer the application to the Licensing and Environmental Health Committee for determination.

2.8. The Assistant Chief Executive – Legal may refer a driver or operator to the Licensing and Environmental Health Committee at any time to consider the revocation of a licence when in the opinion of the Assistant Chief Executive – Legal there are grounds to consider that the driver or operator may not be a fit and proper person. The Assistant Chief Executive – Legal may take such action notwithstanding the fact that the driver or operator meets the licensing standards set out in Appendix A or Appendix B to this policy.

2.9. Where a decision is taken to grant or refuse an application for a licence which is contrary to the Council's policy clear reasons for that decision will be given.

2.10. Where applications for licences are refused the applicants have a right of appeal against that decision. Details of the appeal procedure will be given to unsuccessful applicants along with the written notice of the decision.

3. Licensing of Operators

3.1. Private hire vehicles are not permitted to ply or stand for hire and must be pre-booked through an operator. Operators are required to be licensed under the 1976 Act.

3.2. The only qualification for a private hire operator is that the Council must be satisfied that he or she is a fit and proper person to hold such a licence. Again the Council has a policy to guide it in its determination as to whether an applicant is a fit and proper person in its Licensing Standards – Operators which is attached as Appendix B.

3.3. The standards for operators are not as strict as for drivers. The policy does not take into account conditional discharges after they are deemed spent (whereas for drivers a conditional discharge will be taken into consideration even if spent for 12 months after the date of sentence) or cautions. This is a pragmatic view as the Council is not entitled to request an enhanced DBS check for operators. Only a standard check is permitted which will not reveal spent convictions or cautions. It is highly unlikely therefore that such matters would come to the attention of the Council. However if such matters were to

come to light the Council could have regard to them in determining whether the applicant was a fit and proper person.

- 3.4. The standards for operators also ignore the applicant's driving record save for convictions for no insurance. This is because the driving record of an operator does not impact upon his or her suitability as an operator of vehicles and drivers. If an operator also wishes to act as a driver he or she would need to obtain a driver's licence and on that application would need to meet the Licensing Standards – Drivers. The exception to this policy is for offences of driving or using a vehicle without insurance. As the operator is primarily responsible for ensuring that vehicles he or she operates are properly insured the Council take a view that a conviction for such an offence goes to the issue as to whether that person can be said to be fit and proper.
- 3.5. In addition to the Licensing Standards – Operators, following the decision in *R. (on the application of Newcastle City Council) v Berwick-upon-Tweed BC* it is the policy of the Council not to licence any operators who do not carry on business predominantly in the District of Uttlesford.
- 3.6. Paragraphs 2.3 – 2.8 above apply to operators' licences in the same way as they apply to driver's licences.

4. Licensing of Vehicles

- 4.1. Unlike licences for drivers and operators (where the Council must grant a licence if certain criteria are met), the grant of a licence for a vehicle is discretionary.
- 4.2. The Council has policies for vehicles which it is prepared to licence – Licensing Standards – Hackney Carriages and Licensing Standards – Private Hire Vehicles which are attached at Appendices C and D. Whilst every case will be determined on its merits it is unlikely that the Council would licence a vehicle which did not meet its Licensing Standards. Where a vehicle proprietor wishes to licence a vehicle which does not meet the standards he or she will be encouraged instead to put forward a case for modification of the Standards. The Council has in the past agreed to modify its standards to permit licensing of vintage cars, stretch limousines, smaller vehicles for school contract use only and Smart Cars.

- 4.3. In addition to the Licensing Standards for Hackney Carriage and Private Hire Vehicles, following the decision in R. (on the application of Newcastle City Council) v Berwick-upon-Tweed BC it is the policy of the Council not to license any hackney carriage which will not be used predominantly in the District of Uttlesford.
- 4.4. Proprietors of vehicles have a right of appeal against a refusal of a vehicle licence. Details of the appeal procedure will be given to unsuccessful applicants with the notice of the decision to refuse the grant of a licence.

5. Conditions

- 5.1. The legislation gives local authorities power to impose conditions on licences for all vehicles, operators and private hire drivers. A copy of the Licence Conditions – Hackney Carriage Vehicles is attached at Appendix E, a copy of the Licensing Conditions – Private Hire Vehicles is attached at Appendix F, a copy of the Licensing Conditions – Drivers is attached at Appendix G and a copy of the conditions for Licence Conditions – Operators is attached at Appendix H.
- 5.2. These conditions do not replicate the legislation. Drivers, operators and proprietors are expected to know the law as it relates to them and observe it. Although not set out in the licensing conditions licence holders should be aware that there are a number of offences which can be committed and will be dealt with in accordance with the Council's policy with regard to enforcement set out at paragraph 6 below. These offences include:-
- 5.2.1. Using unlicensed vehicles
 - 5.2.2. Plying for hire (unless a hackney carriage)
 - 5.2.3. Using unlicensed drivers (for operators and proprietors)
 - 5.2.4. Failing to display the licence plate on the vehicle
 - 5.2.5. Failing to produce a vehicle for inspection when required to do so (for proprietors)
 - 5.2.6. Failing to notify the council that a licensed vehicle has been involved in an accident within 72 hours (for proprietors)
 - 5.2.7. Failing to produce a licence for inspection when requested to do so
 - 5.2.8. Failing to wear a driver's badge

- 5.2.9. Failing to keep records of bookings of private hire vehicles (for operators)
- 5.2.10. Giving the Council false information or omitting to give material information on an application for a licence (including an application to renew)
- 5.2.11. Failing to return a driver's badge upon request on the suspension, revocation or non-renewal of a licence
- 5.2.12. Failing to carry an assistance dog for a disabled passenger without making an extra charge for doing so
- 5.2.13. Overcharging (for hackney carriages)
- 5.2.14. Failure to display no smoking signs in vehicles
- 5.2.15. Smoking in workplace vehicles

6. Enforcement

- 6.1. The Council expects the legislation relating to the hackney carriage and private hire trades and the conditions attached to licences to be observed and will take action in respect of any breaches. Drivers or operators who cease to meet the Council's Licensing Standards are likely to have their licences revoked.
- 6.2. The Council has an enforcement team which has a mission statement "To prevent and detect crime and breaches in regulatory legislation. To achieve compliance by education, negotiation and where necessary by enforcement action."
- 6.3. The enforcement team's role covers a wide spectrum. In addition to the hackney carriage and private hire trades it includes benefit fraud; environmental crime; licensing under the Gambling Act 2005, licensing under the Licensing Act 2003 and planning.
- 6.4. In many of these areas the enforcement team are not dealing with professionals and an explanation of legal obligations (education) is all that is necessary to secure compliance. In other cases (particularly in the field of planning) a negotiated compliance can be achieved.
- 6.5. The Council takes a view that these approaches are generally not suited to the hackney carriage and private hire trades. Whilst council officers are always willing to give general advice and assistance upon request it is not the

role of the Council to provide detailed training to members of the trade. As previously stated, drivers, operators and proprietors are expected to know the law that applies to them and the conditions attached to their licences. Where there is a breach of the law or licence conditions education is not an appropriate option. Equally where there has been a breach by a licence holder a negotiated compliance would not normally be appropriate.

6.6. The policy of the Council therefore is that where there is a breach of the legislation or of a condition there should normally be a sanction imposed. A sanction should fulfil 2 functions. It should be punitive to mark the Council's disapproval of the conduct of the licence holder. It should also be a deterrent to the licence holder and others in the trade to prevent such conduct being repeated.

6.7. The Assistant Chief Executive - Legal has delegated power to suspend the licence of a driver for up to 14 days where there has been a breach of condition or there has been an allegation of an offence and in the opinion of the Assistant Chief Executive - Legal a prosecution would not be appropriate.

6.8. 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.

6.9. With regard to breaches of condition attached to drivers licences the Council consider that a suspension of the licence is generally an appropriate sanction. The Council notes with concern that prior to the adoption of this policy suspensions did not appear to have had a deterrent effect.

6.10. Suspensions will be dealt with in accordance with the Council's Protocol for Dealing with the Suspension, Revocation and Non-Renewal of Driver's Licences which is attached at Appendix I. However without fettering the discretion of the Assistant Chief Executive - Legal or the Licensing and Environmental Health Committee to impose a longer or shorter suspension if the circumstances of a particular case require it the policy of the Council is that the starting point for a suspension for a first case of a breach of condition should be 5 days.

- 6.11. Where a driver has breached a condition on 2 occasions within a 3 year period or has been convicted of an offence (but his licence was not revoked as a result of such conviction) any further breach of condition should be referred to the Licensing and Environmental Health Committee to determine whether it is satisfied that the driver remains a fit and proper person to hold a licence or whether the licence should be revoked. On such a reference the Committee may take no action, suspend the licence or revoke it.
- 6.12. With regard to operators the Council recognises that the suspension of an operator's licence, even for a short period of time, is likely to be disproportionate. It is also likely to impact upon innocent parties as the effect of a suspension of the operator's licence is to deprive the drivers working for that operator of an income for the period of the suspension. The Council's policy is therefore that where an operator has committed an offence a suspension should not be imposed and a prosecution should be brought even for a first offence.
- 6.13. Vehicle licences can be suspended or revoked on the grounds that the vehicle is unfit; that the proprietor has committed an offence under the legislation or for any other reasonable cause.
- 6.14. Vehicle licences will be suspended if they are unfit. If the vehicle is not put back into proper condition then the licence is likely to be revoked.
- 6.15. Without prejudice to the general scope of the power, a vehicle licence may be suspended, revoked or not renewed for any other reasonable cause. Examples include where the Council has evidence to suggest that a hackney carriage is being predominantly used outside of the district or if a private hire vehicle is not being controlled by a licensed operator.
- 6.16. 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. For offences committed by proprietors the Committee should consider whether as a result of the conviction the vehicle licence should be revoked for any other reasonable cause.

6.17. Where there is or has been an investigation into the conduct of a driver, operator or proprietor which has not resulted in a formal caution or conviction the licence may nevertheless be suspended, revoked or not renewed if there are reasonable grounds for doing so. The Council is subject to a lower standard of proof (the balance of probabilities) than the criminal courts (beyond reasonable doubt) when dealing with factual issues. Where the fitness of a driver or operator is called into question the burden of proof is upon the licence holder to establish that he or she is a fit and proper person.

7. Accountability

7.1. The Council wishes to be transparent in the application of this policy and in particular with regard to enforcement action taken under it.

7.2. The Assistant Chief Executive – Legal will report on the number of cases in which he has exercised his delegated powers to suspend licences and the outcome in those cases at each meeting of the Licensing and Environmental Health Committee. Generally these reports will be in writing and all reports will be minuted. The reports and minutes will be available on the Council's website. For Data Protection Act and Human Rights Act considerations drivers' names will not appear in these reports.

7.3. Cases dealt with by the Licensing and Environmental Health Committee may be held in private or public. The Committee is subject to the Council's Access to Information Rules which permit the exclusion of the press and public when matters relating to an identifiable individual are discussed. Where the press and public are excluded the officer's reports are not published or otherwise accessible to the public.

7.4. Although the exemption can be applied it should only be used when the public interest in applying the exemption outweighs the public interest in making the information available. The Council's view is that the public have a clear interest in knowing the type of person which it is prepared to license.

Against that however individuals have rights under the Data Protection Act 1998 and individuals and companies have rights under the Human Rights Act 1998. These conflicting interests need to be balanced. In general where information is already in the public domain the cases will be dealt with at a public meeting of the Committee. There will however be cases where the right to privacy is more important than the public interest in knowing the type of person the Council may licence. Examples are where the Committee is considering suspension or revocation of a licence on medical grounds or where publication of the report would involve disclosure of spent convictions or police intelligence. In such cases the press and public will be excluded from the meeting. In such circumstances whilst the report will not be published minutes of the meeting giving details of the case, the decision and the reasons for it will be published but the driver's name will not be given.

7.5. Where a meeting to consider individual cases is held in public the press and public will be excluded under the Access to Information Rules while the Committee considers its decision but will be re-admitted when the decision is announced.

APPENDIX A

LICENSING STANDARDS – DRIVERS

1. No more than 9 points endorsed on a driver's licence within the last 3 years.
2. No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence.
3. Where a driver has been disqualified from driving for any reason a licence will not normally be granted for 3 years after the disqualification has expired or 12 months after the date the driver's licence is re-issued whichever is the later.
4. For the purposes of paragraph 3 above where a driver has accumulated 12 or more points in a 3 year period but has not been disqualified at the discretion of the court he or she will be deemed to have been disqualified at the date of the hearing when the magistrates exercised their discretion not to disqualify and the deemed disqualification shall be taken as having expired on that date.

And (save for limited licences as referred to in paragraph 2.5 of the policy):-

5. No criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed
6. No criminal convictions within the last 5 years for an offence of dishonesty, indecency or violence in respect of which a non-custodial sentence was imposed
- 5-7. No other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974.
- 6-8. No conditional discharges for any offence within the last 12 months.
- 7-9. No official cautions (save for cautions administered by Uttlesford District Council) for any offences within the last 12 months.
- 8-10. No pending prosecutions for any criminal or motoring offence.
- 9-11. Not to have had a hackney carriage and/or private hire driver's licence revoked within the last 3 years.
- 10-12. To meet group 2 medical standards as published by the Department of Transport.

44.13. To have a reasonable command of the English language sufficient to enable the driver to perform the functions of a hackney carriage/private hire driver

APPENDIX B

LICENSING STANDARDS – OPERATORS

1. No criminal convictions for an offence of dishonesty in respect of which a custodial sentence (including a suspended custodial sentence) was imposed
2. No criminal convictions for an offence of dishonesty in respect of which a non-custodial sentence was imposed or convictions under Part II Local Government (Miscellaneous Provisions) Act 1976 within the last 5 years
- 1.3. No other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974.
- 2.4. No pending prosecution for any criminal offence (other than motoring offences not referred to in paragraph 3 below).
- 3.5. Not to have been convicted of or to have accepted a fixed penalty notice in respect of an offence of driving or using a motor vehicle without insurance in the last 3 years.
- 4.6. Not to have had a hackney carriage proprietor's licence or private hire operator's licence revoked within the last 3 years.

APPENDIX C

LICENSING STANDARDS – HACKNEY CARRIAGES

- 1 To be less than 12 years old.
- 2 To be safe comfortable and suitable in type size and design for use as a hackney carriage.
- 3 To be a standard right-hand drive car or minibus type vehicle with a minimum of 4 doors.
- 4 To have a rear internal body width of at least 4 foot 3 inches measured from 6 inches below the top of and 6 inches in front of the rear back rest with both rear doors closed.
- 5 To have at least 8½ inches leg room for rear passengers measured from the rear door pillar to the nearest point of the rear seat squab.
- 6 To have all doors capable of being opened from both the inside and outside of the vehicle to an angle of at least 60° or in the case of sliding doors to be capable of providing an open unrestricted minimum width of 2 feet 10 inches.
- 7 To be fitted exclusively with safety glass.
- 8 In the case of estate cars or hatch-back cars to be fitted with a guard rail or other device approved by the council to separate the rear loading from the passengers.
- 9 To be fitted with suitable tyres of the same type and size.
- 10 To carry a suitable spare wheel or manufacturer's approved temporary repair kit or to be fitted with run flat tyres.
- 11 To be fitted with an internal rear-view mirror.
- 12 To be fitted on both sides with external rear-view mirrors.
- 13 To be fitted with an illuminated roof sign bearing the word "TAXI".

APPENDIX D

LICENSING STANDARDS – PRIVATE HIRE VEHICLES

- 1 To be less than 12 years old or (in the case of wheelchair accessible vehicles or vehicles used for school contracts only) less than 20 years old.
- 2 To be safe comfortable and suitable in type size and design for use as a private hire vehicle.
- 3 To be:-
 - a. a standard right-hand drive car or minibus type vehicle with a minimum of 4 doors,
 - b. a wheelchair accessible vehicle with a minimum of 3 doors,
 - c. an extended wheelbase vehicle modified by the manufacturer or by a specialist converter approved by the manufacturer
 - d. a Smart Car.
- 4 To have a rear internal body width of at least 4 foot 3 inches measured from 6 inches below the top of and 6 inches in front of the rear back rest with both rear doors closed.
- 5 To have at least 8½ inches leg room for rear passengers measured from the rear door pillar to the nearest point of the rear seat squab.
- 6 To have all doors capable of being opened from both the inside and outside of the vehicle to an angle of at least 60° or in the case of sliding doors to be capable of providing an open unrestricted minimum width of 2 feet 10 inches.
- 7 To be fitted exclusively with safety glass.
- 8 In the case of estate cars or hatch-back cars to be fitted with a guard rail or other device approved by the council to separate the rear luggage area from the passengers.
- 9 To be fitted with suitable tyres of the same type and size.
- 10 To carry a suitable spare wheel or manufacturer's approved temporary repair kit or to be fitted with run flat tyres.
- 11 To be fitted with an internal rear-view mirror.

12 To be fitted on both sides with external rear-view mirrors.

APPENDIX E

CONDITIONS OF LICENCE – HACKNEY CARRIAGE VEHICLES

Proprietors of the vehicle will:-

- 1 Keep the vehicle in a clean and well maintained condition at all times.
- 2 Produce the vehicle for inspection by officers of the council or by a garage authorised by the council to carry out inspections of hackney carriages when requested to do so.
- 3 Display in the vehicle in a position which is clearly visible to passengers:-
 - 3.1 The number of the licence
 - 3.2 The number of passengers prescribed by the licence
 - 3.3 The Table of Fares currently in operation
 - 3.4 A statement that “complaints should be referred to the proprietor in the first instance and, if necessary, then to the Assistant Chief Executive - Legal, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex CB11 4ER quoting all the facts including the number of the hackney carriage licence”.
 - 3.5 The name of the proprietor.
- 4 Display at all times the vehicle licence plate provided by the Council in a prominent position at the rear and on the exterior of the vehicle
- 5 Ensure that the roof “TAXI” sign is displayed at all times except when:-
 - 5.1 The vehicle is on hire for a wedding
 - 5.2 Removal of the sign is necessary to enable passenger’s luggage to be carried on a roof rack
 - 5.3 The vehicle is being used by the proprietor for social domestic and pleasure purposes providing the proprietor holds a licence issued by the Council which authorises him or her to drive a hackney carriage
 - 5.4 With the prior written approval of the Assistant Chief Executive – Legal
- 6 Ensure the roof sign is illuminated during the hours of darkness when the vehicle is plying for hire.

- 7 If the vehicle is being driven by any person other than the proprietor, to hold a copy of the driver's hackney carriage driver's licence at all times when that driver is driving the vehicle and to record details of the licence in the register which the proprietor shall keep for that purpose.
- 8 Upon being requested to do so to remove any third party advertising from the interior or exterior of the vehicle which in the opinion of the Assistant Chief Executive - Legal is offensive, harmful to health or unsuitable.
- 9 In the event that a vehicle is more than 5 years old to produce the vehicle to a council authorised tester for inspection at 6 month intervals.
- 10 Ensure that the vehicle is fitted with a taxi meter visible to passengers recording the fare payable in accordance with the Table of Fares which shall from time to time be approved by the council or (if lower) the Table of Fares charged by the driver.
- 11 Notify the Assistant Chief Executive - Legal in writing of any conviction recorded against him or (if the proprietor is a company) against any of the company's directors or senior managers within 7 days of such conviction.
- 12 Notify the Assistant Chief Executive - Legal in writing of any change of residential or business address during the period of the licence within 7 days of such change taking place.

APPENDIX F

CONDITIONS OF LICENCE – PRIVATE HIRE VEHICLES

Proprietors of the vehicle will:-

- 1 Keep the vehicle in a clean and well maintained condition at all times.
- 2 Produce the vehicle for inspection by officers of the council or by a garage authorised by the council to carry out inspections of private hire vehicles when requested to do so.
- 3 Display in the vehicle in a position which is clearly visible to passengers:-
 - a. The number of the licence
 - b. The number of passengers prescribed by the licence
 - c. A statement that “complaints should be referred to the proprietor in the first instance and, if necessary, then to the Assistant Chief Executive - Legal, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex CB11 4ER quoting all the facts including the number of the private hire vehicle licence”.
 - d. The name of the proprietor.
- 4 Display at all times the vehicle licence plate provided by the Council in a prominent position at the rear and on the exterior of the vehicle
- 5 If the vehicle is being driven by any person other than the proprietor, to hold a copy of the driver’s private hire driver’s licence at all times when that driver is driving the vehicle and to record details of the licence in the register which the proprietor shall keep for that purpose.
- 6 Upon being requested to do so to remove any third party advertising from the interior or exterior of the vehicle which in the opinion of the Assistant Chief Executive - Legal of UDC is offensive, harmful to health or unsuitable.
- 7 In the event that a vehicle is more than 5 years old to produce the vehicle to a council authorised tester for inspection at 6 month intervals.
- 8 If the vehicle is more than 12 years old (unless the vehicle was constructed or has been adapted to be accessible for wheelchairs) to use the vehicle for school contracts only

- 9 If the vehicle is an extended wheelbase vehicle to use the same only for private parties, corporate entertainment or other corporate purposes.
- 10 Notify the Assistant Chief Executive - Legal in writing of any conviction recorded against him or (if the proprietor is a company) against any of the company's directors or senior managers within 7 days of such conviction.
- 11 Notify the Assistant Chief Executive - Legal in writing of any change of residential or business address during the period of the licence within 7 days of such change taking place.

**CONDITIONS OF LICENCE – HACKNEY CARRIAGE AND/OR PRIVATE HIRE
DRIVERS LICENCES**

Drivers will:-

1. Be polite
2. Wear smart clothing
3. Attend to collect pre-booked hirers punctually unless prevented from doing so by some unforeseeable cause
4. Give reasonable assistance to passengers with luggage
5. Not eat or drink in the vehicle during the course of a hiring
6. Not play any radio, tape recorder, CD/DVD player or similar device during the course of a hiring without the hirer's permission
7. Not use equipment of the type referred to in paragraph 6 above so as to cause a nuisance either to passengers in the vehicle or to others
8. Take all reasonable steps to ensure the safety of passengers
9. Not carry more than the number of passengers specified in the licence for the vehicle
10. Not carry any passengers other than the hirer without the hirer's permission
11. Not carry any animals during the course of a hiring other than animals belonging to the hirer
12. Ensure any animals carried in the vehicle are adequately restrained and are kept in such a position so as not to be a distraction to the driver or to cause a danger or nuisance
13. Not to demand from a hirer a fare greater than has previously been agreed with the hirer (applicable to the use of private hire vehicles only – hackney carriage fares are controlled by legislation)
14. Issue written receipts for fares paid when requested to do so
15. Search the vehicle at the end of each hiring for lost property
16. Take reasonable steps to return lost property promptly to its owner and if this cannot be done to report the matter to the police as soon as reasonably practicable and in any event within 24 hours

17. Carry a copy of these conditions at all times when driving a licensed vehicle and produce them for inspection upon request by a hirer, police officer or officer of UDC

18. Notify UDC in writing of:-

- a. Any change of address within 7 days of the change of address occurring
- b. Any change in the driver's physical or mental condition which may affect his or her ability to drive within 48 hours of the driver becoming aware of such change
- c. Any convictions, cautions or fixed penalty notices (save for in respect of civil parking fixed penalty notices which cannot result in the endorsement of points upon the driver's licence) within 7 days of the date of conviction, caution or the issue of a fixed penalty notice
- d. Any investigations being carried out into the activities of the driver by the police or a regulatory authority of which the driver is aware within 7 days of the driver becoming aware of the investigation
- e. Any damage caused to a licensed vehicle or any accident the driver may have been involved in whilst in charge of a licensed vehicle within 72 hours of the damage or accident occurring

**DRIVERS WHO FAIL TO OBSERVE THESE CONDITIONS MAY HAVE
THEIR LICENCE SUSPENDED OR REVOKED**

APPENDIX H

CONDITIONS OF LICENCE – PRIVATE HIRE OPERATORS

- 1 The operator shall keep a register of all private hire vehicles which the operator operates containing the following information:
 - a. The make and type of vehicle.
 - b. The vehicle registration number.
 - c. The name and address of the owner of the vehicle.
 - d. The private hire licence number.

- 2 The operator shall keep a record of every booking of a private hire vehicle invited or accepted on behalf of the operator including:
 - a. The time and date of the hiring.
 - b. The name of the hirer.
 - c. The name of the driver.
 - d. The start and end points of the journey.
 - e. The fare paid.
 - f. The private hire licence number of the vehicle.

- 3 The register and records referred to in paragraphs 1 and 2 above shall be kept in either paper format or electronically in a format which permits immediate inspection in response to a request made under section 56(3) Local Government (Miscellaneous Provisions) Act 1976 and in the case of records kept in an electronic format, must be capable of printed onto paper forthwith.

- 4 Records required by these conditions must be retained for at least one year.

- 5 Forthwith upon being requested to do so by any authorised officer of the council to provide a printed copy of any electronic records kept by the operator in accordance with these conditions.
- 6 The operator must notify the Assistant Chief Executive – Legal of the council in writing within 7 days of:
 - a. Any conviction, fixed penalty notice (save for in respect of civil parking fixed penalty notices which cannot result in the endorsement of points upon the driver's licence) or Police caution.
 - b. Any change of his or her residential address.
 - c. Any change of his or her business address.
 - d. Any additional addresses within or outside of the district from which the operator intends to carry on the business as a licensed private hire vehicle operator during the continuation of the licence.
- 7 The operator shall provide a prompt and efficient service to members of the public and in particular:
 - a. Ensure that unless delayed or prevented by some cause outside the control of the operator, vehicles attend appointments punctually.
 - b. Any premises to which the public has access for the purposes of booking or waiting are clean, adequately heated, adequately ventilated and well lit.
 - c. Ensure that any waiting area has adequate seating facilities.
- 8 The operator shall notify the Assistant Chief Executive – Legal of Uttlesford District Council of any complaints made against the operator or any driver used by the operator within two working days of receipt of the complaint.

PROTOCOL FOR DEALING WITH THE SUSPENSION, REVOCATION AND NON-RENEWAL OF DRIVERS' LICENCES

Introduction

Uttlesford District Council licenses drivers of hackney carriages under Section 46 Town or Police Clauses Act 1847 and also licenses private hire vehicle drivers under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976. Under Section 61 of the 1976 Act both hackney carriage and private hire vehicle driver's licences may be suspended or revoked or the local authority may refuse to renew the same on the grounds that since the grant of the licence the driver has been convicted of an offence involving dishonesty, indecency or violence or has been convicted of an offence under or has failed to comply with the provisions of either the 1847 Act or the 1976 Act. A licence may also be revoked or suspended or may not be renewed for any other reasonable cause.

Any other reasonable cause

This expression is not defined in the legislation. However, it is not limited to matters which arose after the grant of the licence. Examples of what may be considered 'any other reasonable cause' would include (but are not limited to):

- Where information comes to light which suggests that had the information been known at the time of application, a licence would not have been granted or renewed.
- Where a driver ceases to meet the council's licensing standards.
- Where the driver has breached a condition of his or her driver's or vehicle licence.
- Where the driver has committed a minor offence for which he or she is not prosecuted.
- Where information comes to light which suggests that the driver may no longer be a fit and proper person to hold a licence.

Appeals

Whenever a decision is taken to suspend, revoke or not to renew a licence or where conditions are imposed upon a private hire vehicle driver's licence that the driver is not satisfied with there is a right of appeal to the magistrates' court. Normally a decision to suspend, revoke or not to renew a licence takes effect 21 days after the driver has been given notice of the decision. The driver may continue to drive during that period and if he or she lodges an appeal within that time may continue to drive until such time as the appeal has been disposed of or has been abandoned. However when a licence is suspended or revoked and it appears to the council that the interests of public safety require the suspension or revocation to have immediate effect and notifies the driver accordingly, then whilst the driver may still appeal, he or she may not drive once he or she has been notified of the decision.

Delegated Powers

The Assistant Chief Executive - Legal and those authorised by him have delegated powers to deal with certain types of case. These are as follows:

1. When the Assistant Chief Executive - Legal believes that a licence should be suspended with immediate effect on grounds of public safety he may do so. The Assistant Chief Executive - Legal will arrange for a special meeting of the Licensing and Environmental Health Committee to be convened as soon as is reasonably practicable for the purpose of determining whether the suspension should be confirmed or the licence revoked.
2. The council has a policy of granting or renewing licences in some circumstances where the driver provides a statutory declaration as to his or her character pending receipt of a clear Criminal Records Bureau check. If upon receipt of the DBS check it transpires that the applicant has made a false declaration the Assistant Chief Executive - Legal has power to revoke the licence.
3. The Assistant Chief Executive - Legal also has power to suspend licences for up to 14 days where there has been a breach of condition or where in his or her view a prosecution would be disproportionate.

Any other decisions concerning the revocation, suspension or non-renewal of a driver's licence must be referred to the Licensing Committee. In addition, the Assistant Chief Executive - Legal may refer cases at his discretion to the Committee instead of dealing with them under his delegated powers.

Procedure – Decisions under delegated powers

Where the Assistant Chief Executive - Legal is considering exercising his delegated powers the following procedure will apply:

1. The Assistant Chief Executive - Legal or those authorised by him will write to the driver requesting that he or she make an appointment to meet with the Assistant Chief Executive - Legal. The letter will contain the following:
 - a. Details of the allegations which have been made against the driver or other matters which may lead to the suspension of his licence.
 - b. A statement that the Assistant Chief Executive - Legal may consider suspending the driver's licence for up to 14 days.
 - c. A statement that the driver may be accompanied by his or her operator, a trade union representative or a friend.
 - d. A statement that in the event that the Assistant Chief Executive - Legal decides to suspend the licence that there is a right of appeal.
2. The meeting between the Assistant Chief Executive - Legal and the driver and his or her representative (if present) shall take the form of a discussion within which the Assistant Chief Executive - Legal will seek the driver's comments upon the allegations made against him or her. If the Assistant Chief Executive - Legal considers it necessary to make further enquiries he will explain this to the driver and adjourn the meeting to enable such enquiries to

be made. In the event that following such enquiries the Assistant Chief Executive - Legal decides that no further action is required (or that the only action which may be required is that which has been discussed with the driver at the meeting) then the Assistant Chief Executive - Legal will write to the driver accordingly. In any other case the Assistant Chief Executive - Legal will reconvene the meeting.

3. At the conclusion of the meeting or any adjournment thereof, the Assistant Chief Executive - Legal will inform the driver whether or not he considers the allegations have been made out and in the latter event what sanction (being a suspension of not more than 14 days) the Assistant Chief Executive – Legal intends to impose.
4. In the event the Assistant Chief Executive - Legal decides that the licence should be suspended the Assistant Chief Executive - Legal will inform the driver of his or her right of appeal to a magistrates court and (save for in cases where an immediate suspension is required in the interest of public safety) shall inform the driver of his or her right to continue to drive until the time for lodging an appeal has lapsed or (if an appeal is lodged within that period) until such time as the appeal has been determined or abandoned.
5. As soon as is reasonably practicable after the meeting the Assistant Chief Executive - Legal will notify members of the Licensing and Environmental Health Committee of the suspension by e-mail and write to the driver
 - a. Confirming the decision
 - b. Confirming the sanction.
 - c. Giving reasons for a. and b. above.
 - d. Giving details of the appeal procedure and the fee payable to the court on appeal.
 - e. Unless the suspension is taking immediate effect on the grounds of public safety, informing the driver of his or her right to drive during the period within which an appeal may be lodged, if an appeal is lodged within that period to drive until such time as the appeal has been disposed of or abandoned and informing the driver of the dates the suspension will be effective in the event that an appeal is not lodged.

Procedure - Decisions by the Licensing Committee

Where a decision would fall outside of the delegated powers of the Assistant Chief Executive - Legal or where the Assistant Chief Executive - Legal considers that his delegated powers would not be sufficient to deal with an allegation or that for other reasons the decision should be taken by members, then the matter will be determined by the Licensing and Environmental Health Committee and the following procedures will apply:

1. At least 4 members of the Licensing and Environmental Health Committee will be requested to attend a meeting of the Committee for the purpose of considering the allegations.
2. Usually, the committee meetings will be held in public although consideration of matters which would not otherwise be in the public domain (e.g. consideration of a driver's medical condition, details of spent convictions etc.) would require the committee meeting to be held in private.
3. The driver will be given written notice of the time and date of the committee meeting at least 10 working days prior to the meeting taking place and at the same time will be provided with a copy of the officer's report which will be presented to the committee along with any supporting documents.
4. The letter notifying the driver of the time and date of the meeting shall also inform him or her of his or her right to be represented at the meeting by his or her operator, a trade union representative or a friend.
5. Having considered the officer's report, any evidence which the officer wishes to tender in support of his report (which shall have been disclosed in advance to the driver), any evidence from the driver, any evidence from witnesses called by or on behalf of the driver and any submissions made by the driver and/or his or her representative, the committee will retire to consider its decision and will upon returning announce its decision to the driver.

6. The committee shall give verbal reasons for its decision and in the event that the committee decide to suspend, revoke or not to renew a licence the lead officer of the committee shall explain to the driver his or her right to appeal to a magistrates court and (save for in cases where an immediate suspension is required in the interest of public safety) shall inform the driver of his or her right to continue to drive until the time for lodging an appeal has lapsed or (if an appeal is lodged within that period) until such time as the appeal has been determined or abandoned.

7. As soon as is reasonably practicable after the committee meeting, the lead officer to the committee shall write to the driver confirming
 - a. the committee's decision
 - b. any sanction imposed.
 - c. the committee's reasons for a. and b. above.
 - d. Giving details of the appeal procedure and the fee payable to the court on appeal.
 - e. Unless the suspension is taking immediate effect on the grounds of public safety, informing the driver of his or her right to drive during the period within which an appeal may be lodged, if an appeal is lodged within that period to drive until such time as the appeal has been disposed of or abandoned and informing the driver of the dates the suspension will be effective in the event that an appeal is not lodged.

Principles to be applied in decision making

The express aims of the licensing regime are the safety and comfort of the public. Safety extends not only to fare paying passengers but also to other road users and pedestrians. When considering the grant of a licence a local authority may not grant a licence to anyone unless they are satisfied that the applicant is a fit and proper person to hold a licence. When an applicant for a licence does not meet the Council's licensing standards he or she would not normally be deemed to be a fit and proper person and the Assistant Chief Executive – Legal has delegated power to refuse the application. Where the Assistant Chief Executive – Legal considers that there may be grounds to find that an applicant is a fit and proper person notwithstanding the fact that the applicant does not meet licensing standards then he

may refer the application to the Licensing and Environmental Health Committee. Factors which will be taken into account by the Assistant Chief Executive – Legal in deciding whether to refer a case to the Committee and to be taken into account by the Committee when determining the application are:-

1. The nature of the offence
2. The severity of the offence
3. The length or severity of the sentence
4. The passage of time since conviction

Where the committee cease to be satisfied for any reason that a driver is a fit and proper person it follows that he or she should not be in possession of a licence and in those circumstances the licence will either be revoked or not renewed on application. There will however be other circumstances where there has been some action or inaction on the part of a driver which has not rendered the driver an unfit person but nevertheless warrants a sanction both as a mark of disapproval of the driver's conduct and as a deterrent to others. In such circumstances, a suspension of the licence would be appropriate. The Council' policy is that the starting point for a suspension should be 5 days. However each case will be determined on its merits. In determining whether to suspend a licence and if so in determining the length of suspension, regard will be had by the Licensing and Environmental Health Committee or by the Assistant Chief Executive - Legal in the exercise of delegated powers to the following factors:

1. Whether the driver fully admitted the matter alleged or whether he or she put forward explanations which were wholly unsustainable.
2. The seriousness of the matter complained of.
3. The driver's past history.
4. Whether the driver has suffered any other penalty in respect of the matters complained of.
5. Any aggravating factors

6. Any mitigation put forward by the driver or his or her representative.
7. The financial effect of any suspension upon the driver acknowledging that he or she will not be able to earn an income from driving during the period of any suspension.

Committee: Licensing and Environmental Health

Agenda Item

Date: 9 July 2014

6

Title: DEREGULATION BILL 2014

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

Item for information

Summary

1. This report is to inform members of pending changes in legislation relating to the work of this committee.

Recommendations

2. That members note this report.

Financial Implications

3. As set out in the body of this report.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	Changes in the duration of drivers and operators' licences will impact upon the requirements for staff.

Situation

6. The government is promoting the Deregulation Bill 2014 to make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals and make provision about the exercise of regulatory functions. Some of the proposals will impact upon the work of this Committee. The Bill has completed all of its stages in the House of Commons and the first reading in the House of Lords was on the 24 June 2014.
7. With regard to the private hire trade the bill amends the Local Government (Miscellaneous Provisions) Act 1976 to permit persons not holding a private hire driver's licence to drive licensed vehicles when they are not being used for hire or are not immediately available to an operator to carry out a booking for hire. Where a private hire vehicle is seen carrying passengers, there will be a presumption that the passengers are hiring the vehicle. In any proceedings the defendant would need to establish that they were not fare-paying passengers. However, local authority officers do not have power to stop private hire vehicles and enforcement will clearly be an issue.
8. The 1976 Act provides that driver licences for hackney carriages and private hire vehicles should be issued for three years or such lesser period as the district council may specify in the licence. Similarly for operators the Act provides for licences to be issued for five years or such lesser period specified in the licence. This council has always licensed drivers and operators on an annual basis. The reason for this with regard to drivers is that the council wishes to monitor drivers licences to ensure that all motoring convictions have been properly reported. Experience shows that a significant percentage of drivers who receive endorsements on their licences fail to report these until the next renewal of the licence. This may lead to unsuitable people driving as private hire/hackney carriage drivers. For operators the rationale was that an up to date register of operators is desirable to assist those considering entering the trade in the district. If licences are issued for five years there is no obligation upon an operator to notify the council that he or she has ceased trading and the register may therefore become out of date. The proposed revisions to the legislation will prevent district council from having blanket policies with regard to the duration of licences. Once the new legislation comes into effect, then licences can only be issued for shorter periods than three and five years if the circumstances of a particular case require it.
9. This will have a significant impact upon the business of the Council. It is not yet known when the legislation will become effective. It is however, a reasonable assumption that it will come into effect at the start of a financial year to enable authorities to budget accordingly. During the first financial year in which the new legislation is applicable it will be very much business as usual for the licensing team as licences will expire as usual during the course of the year. However, new licences issued will be for three and five years for drivers and operators respectively. Whilst a number of new applications may be anticipated in financial years two and three after the issue of three year licences, it is unlikely that these will be substantial in number. The size of the licensing team has been based upon annual renewal. Members will be aware

that with the retirement of one of the licensing officers, there is a vacancy in the team. It is intended that this vacancy shall be filled on a fixed term contract for two years and that thereafter an additional member of staff would be employed on a fixed term contract at three year intervals to cope with the volume of work generated by three-year renewals.

10. It is not considered appropriate that three years should be allowed to lapse before drivers' licences are checked. I will therefore be suggesting when the legislation comes into effect that there should be a condition imposed on drivers' licences that they should produce their licence for inspection annually. I will also be proposing that I should have delegated authority to suspend the driver's licence of any driver who fails to produce his licence immediately in the interest to public safety until the licence is due to expire with power to remove the suspension once the licence has been produced providing that I am satisfied the driver remains a fit and proper person.
11. With regard to medicals and DBS checks, these are carried out at the time of first grant of a licence and thereafter at three year intervals. There will be a number of drivers who had a medical and DBS check either two or three years before they are granted their first three-year licence. It would be unreasonable for these drivers to be required to incur the expense of a further medical/DBS check on the grant of their first three-year licence. I will therefore be suggesting when the legislation comes into effect that the conditions of licence should be varied to provide that drivers will produce a medical and a DBS check at 3-year intervals with delegated power to me to suspend the licence with immediate effect in the interest of public safety in the event that the driver fails to produce a medical or DBS check. The suspension should last until the licence is due to expire with the delegated power for me to lift the suspension if a medical and/or DBS check is produced and I am satisfied that the driver is a fit and proper person.
12. The third proposed amendment to the 1976 Act will permit sub-contracting by operators to operators licensed in other parts of the country. This is unfortunate as different authorities have different licensing standards. The draft Bill relating to the private hire and hackney carriage trades issued by the Law Commission makes provision for national standards for the private hire trade. In the absence of such standards the ability to sub-contract to operators out of district means that passengers using Uttlesford licensed operators may be conveyed in vehicles or by drivers who do not meet Uttlesford standards. However, there is nothing which can be done with regard to this.
13. The fact that the government has decided to press ahead with these amendments prior to consideration of the Law Commission's draft Bill must cast doubt over the government's commitment for a wider reaching review of the law relating to the hackney carriage and private hire trades. The Select Committee on Transport at the start of this Parliament recommended that the government should carry out a wholesale review of the law in this regard without reference to the Law Commission and that it wished to see legislation on the statute book before the end of this parliament. Having referred the

matter to the Law Commission the government has already indicated that it does not intend promoting a bill before the election.

14. The Bill also proposes certain amendments to the law relating to alcohol and entertainment licensing. With effect from 2016 the maximum number of temporary event notices which may be served in respect of particular premises is increased to 15.
15. Although the government has stepped away from abolishing the requirement for personal licences, the requirement for these to be renewed at 10 year intervals has been removed. The council has never budgeted for income from renewals (as the first renewals were not due until 2015/16) and will not now do so. There is therefore no loss of budgeted income to the council.
16. The prohibition of the sale of liqueur confectionery to children is to be repealed.
17. With regard to late night refreshment, the licensing authority will have power to exempt premises from the requirements for a premises licence either by reference to an area, to a type of premises, or by reference to times when a licence would not be required. Regulations will limit the description of premises to which the exemption can apply.
18. The Licensing Act 2003 requires licence holders to report the loss or theft of licensing documents to the Police. This requirement is to be abolished.
19. Community premises are to be exempt from requiring premises licences for the display of films subject to certain conditions including that the entertainment is not provided with a view to profit, that the audience does not exceed 500 persons, that the entertainment takes place between 8 a.m. and 11 p.m. and that the film has appropriate classification and is screened in accordance with that classification.

Risk Analysis

20. There are no risks arising from this report. The risks will arise from the enactment of the legislation and will be addressed at that time.

Committee: Licensing & Environmental Health

Agenda Item

Date: 9 July 2014

7

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 content 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 had their licences suspended 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 has been imposed with immediate effect in the interest of public safety.
Sustainability	None.
Ward-specific impacts	None.

Workforce/Workplace	None.
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Situation

6. Since the last meeting of this committee I have interviewed 14 drivers for various matters.
7. Eight drivers were interviewed on suspicion of failing to inform the council of a conviction or fixed penalty notice within seven days. I took no action in one case as on the facts there had been no breach of condition. In four cases, in the absence of mitigating or aggravating factors I imposed a suspension of five days consistent with the council's policy. A further three cases, I suspended the licence for three days only. These three drivers had mitigating factors. One volunteered the information to the council only just outside the seven day limit for reporting the fixed penalty notice. Another would have suffered great hardship with a longer suspension. The third volunteered the information to the council promptly upon the return of the licence from the Court with the points endorsed.
8. One driver failed to notify the council of a change of address and another failed to notify the council he had been involved in an accident. There were no mitigating or aggravating factors and I therefore suspended both of these drivers for five days.
9. One driver was seen by me by following an allegation that he had behaved inappropriately to a member of the public. I interviewed the driver who denied the allegation. In the light of the conflict of evidence, the complainant was asked whether or not she was prepared to appear before the committee so that committee could evaluate the evidence. The complainant declined to do so and I therefore closed the complaint without taking action.
10. I suspended three drivers with immediate effect in the interest of public safety. All three drivers were engaged in school contract work.
11. With regard to the first of these there was an allegation that the driver had held a child in his care against a wall and shouted at him. The driver concerned appeared before the committee which suspended his licence again with immediate effect in the interest of public safety until the licence expired. I was given delegated authority in consultation with the chairman to lift the suspension if following an investigation by Essex County Council I was satisfied that the driver was a fit and proper person. No evidence has been forthcoming from the driver to date and the licence therefore remains suspended.
12. In another case the driver was alleged to have struck a school child who was a passenger in his vehicle. The matter referred to the committee who again suspended the licence with immediate effect in the interest of public safety until the licence expired. An application to renew the licence was also refused. I had been given delegated authority to remove the suspension and to renew the licence in consultation with the chairman if I am satisfied that the driver is a

fit and proper person. The driver has not supplied any further evidence to date and the licence therefore remains suspended.

13. Finally, I suspended a driver with immediate effect in the interest of public safety who was stopped by the Police driving at speeds in excess of 95 mph with a school child on board. It is understood the driver will be prosecuted for that offence but the nature of his driving was such that I felt the suspension was necessary. At the date of the preparation of this report, the committee has yet to meet to determine what further action (if any) to take with regard to this driver's licence.

Risk Analysis

14. There are no risks associated with this report.