

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 18 JULY 2016**

Present: Councillor R Chambers (Chairman)
Councillors T Goddard, E Hicks and S Morris

Officers in attendance: M Chamberlain (Enforcement Officer), J Jones
(Licensing Officer), M Perry (Assistant Chief Executive – Legal), A
Rees (Democratic and Electoral Services Officer) and A Turner
(Licensing Team Leader)

Also Present: Mr B Drinkwater, Mr I Cronshaw, the applicant in relation to Item
3, the driver and her manager in relation to item 4 and the driver in relation to
Item 5.

LIC18 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

**LIC19 DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE AND
SEVEN HACKNEY CARRIAGE VEHICLE LICENCES – CROWN CARS**

The Enforcement Officer produced an email from the operator (Mr Asif), which
requested that the item was adjourned as he had not received the report and
background papers in the post and had been given insufficient notice of the
meeting in order to arrange legal representation.

RESOLVED that the matter was adjourned until the extraordinary
Committee meeting on 18 August.

Mr Drinkwater and Mr Cronshaw left the meeting.

LIC20 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.

**LIC21 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE – ITEM 3**

The Chairman read out the procedures for determining private hire/hackney
carriage driver's licences.

The Licensing Officer presented her report. The applicant had applied for a
private hire driver's licence in November 2015. On the application form

applicants were required to disclose all previous convictions, both spent and unspent. The applicant attached an enhanced DBS check dated 14 April 2014 and disclosed a conviction for Conspiracy to Pervert the Course of Justice in 2003 for which he was sentenced to 12 months imprisonment. The Council was required to obtain an enhanced DBS check for each applicant. The Check dated 6 June 2016 revealed an offence of Conspiring/Committing Act/ Series Acts with Intent to Pervert the Course of Justice.

The applicant did not meet the Council's licensing standards, as although all of his convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, the Council's licensing standards stated that drivers must have "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".

The Licensing Officer explained that the applicant had submitted a statement along with his application. In the statement the applicant explained that his son-in-law had been involved in a traffic accident in September 2002. His daughter asked him to state that he had been with his son-in-law at home at the time of the accident, which he did. Neither he, nor his daughter, were aware of the circumstances surrounding the accident. When he became aware that his son-in-law had been involved in a traffic accident which had resulted in the death of a pedestrian he admitted to the Police that he had made a false statement.

His judgement had been impaired at the time as he was facing persecution due to his religious beliefs in Pakistan, had faced prolonged isolation from his family. Following this, his step-daughter in Germany and father-in-law in Pakistan had both passed away. Additionally, his daughter was pregnant at the time of the accident and he was worried about the future of her marriage if he did not give a false statement.

The applicant served 4 months of his 12 month sentence and for the remaining 8 months he was released with an electronic tag. He had no convictions since 2003.

The Chairman invited the applicant to speak. The applicant said that the conviction was a misfortune and that it had been 13 years since the conviction. When he had lived in Pakistan he had worked for various law firms. When he moved to London he held a taxi licence, but did not use it. Instead he worked for a number of solicitors. After he moved to Stevenage he was granted a licence to work as a passenger assistant and worked on school contracts which dealt with disabled children. He wanted a licence so that he could help to serve the community. Lastly he referred to his previous submissions to the Council which detailed the circumstances surrounding the conviction.

The Assistant Chief Executive – Legal explained that the applicant did not meet the Council's licensing standards and therefore the burden of proof was on the applicant to prove that they were a fit and proper person to hold a licence.

There were four factors the Committee should have regard to when deciding whether they should make an exception to policy. These were; the nature of the

sentence; the severity of the offence; the length or severity of the sentence; the passage of time since the conviction.

The Assistant Chief Executive – Legal informed the Committee that under the Council's previous licensing policy the applicant would have met the Council's licensing standards as the conviction would have been spent under the un-amended version of the Rehabilitation of Offenders Act 1974.

The Enforcement Officer, the Licensing Officer and the applicant left the room at 10.20am so the Committee could consider its decision. They returned at 10.35am.

DECISION

The applicant has applied to this council for the grant of a joint hackney carriage/private hire driver's licence. On the application form he was asked to list all convictions, both spent and unspent. The applicant attached an enhanced DBS certificate which was out of date but disclosing one conviction for conspiracy to pervert the course of justice in March 2003 in respect of which he was sentenced to 12 months imprisonment. This conviction was confirmed by the DBS check carried out by the council in connection with the application.

The council's licensing standards state that an applicant must have "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. A conspiracy to pervert the course of justice is an offence of dishonesty for which the applicant was given a custodial sentence. He therefore does not meet the council's licensing standards.

The applicant was interviewed regarding his conviction. He stated that his son-in-law had been involved in a road accident in September 2002. His daughter asked the applicant to say that his son-in-law had been at home with him at the time. The applicant did this. He maintains that neither he nor his daughter were aware of the circumstances surrounding the accident and that he did not ask his son-in-law why he had asked him to lie for him. He states that he was not aware of the true situation and he was arrested in October 2002 by which time he had discovered that his son-in-law had been the driver of a vehicle which was involved in a fatal road traffic accident. Immediately the applicant was told about the accident he admitted to having made a false statement.

Where an applicant wishes the committee to make an exception to policy the burden of proof is upon the applicant to satisfy the committee on the balance of probabilities that there are good grounds for doing so. In considering such an application the council's Licensing Policy requires the committee to have regard to four factors, namely the nature of the offence, the severity of the offence, the length or severity of the sentence and the passage of time since conviction. An offence of perverting the course of justice is clearly one of dishonesty. A conviction of an offence of dishonesty is one which Parliament singled out as being a ground for revocation of a driver's licence and it follows therefore that Parliament gave great weight to such convictions when passing the legislation. With regard to the severity of the offence conspiracy to pervert the course of

justice is a serious matter but the committee note that it was not committed for personal gain and that the applicant made a full admission once the circumstances were drawn to his attention. With regard to the length or severity of the sentence 12 months for a first offence would normally be regarded as being severe but the committee take note of the fact that the sentence was probably increased by virtue of the fact that the applicant was engaged in the legal profession at the time the offence was committed. The main fact in the applicant's favour is the passage of time since conviction. This is the only offence of which the applicant has ever been convicted. It is now 13 years old and he has shown his remorse. The committee do not believe that there is a likelihood that the applicant will re-offend. In the circumstances, the committee are satisfied that he is a fit and proper person to hold a driver's licence and his licence will be granted.

LIC22

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS' LICENCE – ITEM 4

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Enforcement Officer presented his report. The driver had been licensed by the Council since 24 July 2015 and her licence had expired on 30 June 2016. On her renewal application dated 3 June 2016, when asked "have you in the last year been convicted of, or cautioned for, any offence (including motoring offences), been issued with a fixed penalty notice or is there any prosecution pending against you?" she answered "No".

The Council carried out an online driver check of DVLA records as part of the renewal process on 13 June 2016. This showed she had received an SP30 speeding offence on 21 October 2015 for which she received three penalty points.

The Enforcement Officer informed the Committee that making a false statement to obtain a licence was an offence under the Local Government (Miscellaneous Provisions) Act 1976. The driver attended an Interview Under Caution under 29 June 2016. At this meeting the driver confirmed that she had completed the renewal form herself. At the time of completing the application she had just had a cancer scare and had not been concentrating properly. She had remembered the speeding offence and ought to have amended her answer before her manager submitted the form to the Council, but it was too late by time she thought of it. She did not contact the Council as she thought it would just go away. This was her first speeding offence in 30 years. She thought her manager would contact Hampshire County Council as she drove on their contracts. It did not occur to her to notify Uttlesford District Council.

The Enforcement Officer said the matter had been reviewed by one of the Council's solicitors, who had authorised a prosecution for the offence of making a false statement in order to obtain a licence. As a result of the pending prosecution the driver now fell below the Council's licensing standards.

The Chairman invited the driver to speak. The driver said that she had completed the renewal form at the same time that she had a cancer scare, which would have been the reoccurrence of throat cancer which she had successfully undergone treatment for a couple of years ago. She had not read the renewal form properly and had missed the part which asked for motoring convictions. Her family all worked as drivers and prior to being a driver herself, she had worked in their office so she should have been more careful when completing the form. The omission of the offence was not malicious, it was just a mistake. She explained that she had no convictions of any other kind.

The driver's manager said that he was aware of the speeding offence and should have noticed that it had not been included on the renewal form. He did not believe that the driver would have deliberately failed to disclose the offence.

The driver clarified the circumstances surrounding her diagnoses with cancer in response to a question by Councillor Goddard. She explained that she had first been diagnosed with throat cancer a couple of years ago. Before she completed her renewal form she had been experiencing pains in her throat and had thought that the cancer might have returned.

In response to a further question by Councillor Goddard about her family's history as private hire drivers, she said her father had been a black cab driver. Her brother had been working as a private hire driver on and off for the last 15 years.

The Assistant Chief Executive – Legal clarified that if the Committee were minded to renew the driver's licence they would have to consider what punishment, if any, the driver should receive for her failure to notify the Council in writing within seven days. If they suspended the driver they needed to have regard to any financial impact the suspension would have in order to ensure it did not cause her undue hardship.

In response to questions about her earnings, she disclosed that she was not paid during the school holidays, but during school time she worked 20 hours a week and was paid £7.20 per hour. She also worked at a supermarket which would give her additional hours when other staff were on holiday.

The Assistant Chief Executive – Legal explained that the driver did not meet the Council's licensing standards and therefore the burden of proof was on the driver to prove that they were a fit and proper person to hold a licence.

There were four factors the Committee should have regard to when deciding whether they should make an exception to policy. These were; the nature of the offence; the severity of the offence; the length or severity of the sentence; the passage of time since the conviction.

He added that the driver was obliged to notify the Council of any fixed penalty notice she received within seven days. She had admitted that she had not read the licensing conditions properly and had thought the Hampshire should be notified instead of Uttlesford.

The Enforcement Officer asked whether the Committee should have any regard to the fact the driver may not meet Group 2 medical standards. In response, the Assistant Chief Executive – Legal explained that the driver had met the standards previously and the Committee could not go behind this fact.

The Enforcement Officer, the driver and her employer left the room at 11.10am so the Committee could consider its decision. They returned at 12pm.

DECISION

The driver has been licensed by this council as a joint private hire/hackney carriage driver since July 2015. Her last driver's licence expired on 30 June 2016. She has applied to renew it. The application form for renewal contains a question "have you in the last year been convicted of, or cautioned for, any offence (including motoring offences), been issued with a fixed penalty notice or is any prosecution pending against you?" The driver answered this question "no".

As part of the renewal process the council carries out an online driver check of DVLA records. The check in respect of the driver revealed a fixed penalty for a speeding offence on the 21 October 2015 for which she was endorsed with 3 penalty points. Making a false statement to obtain a licence is an offence under s.57(3) Local Government (Miscellaneous Provisions) Act 1976. The driver was interviewed under caution by two enforcement officers. The driver confirmed that she completed the renewal form. She stated that at the time of completing the form she had a cancer scare and was not properly concentrating. She said that she remembered the speeding offence and felt that in hindsight she should have amended the answer after she had sent it to her manager but before he submitted it to the council but it was too late by the time she thought of this. The driver did not contact the council after the form was submitted as she thought the matter would go away.

Under the conditions of her licence, the driver ought to have notified the council of the fixed penalty notice in writing within 7 days of receipt of the same. The driver said she told her manager about the points in October 2015 and thought that he would tell the relevant council which she thought to be Hampshire as she was driving on their contacts. She said it never occurred to her to notify Uttlesford District Council.

In the absence of the Assistant Chief Executive – Legal, a solicitor in the Legal Services team exercising delegated powers authorised a prosecution of the driver for making a false statement to obtain a licence. As a result of this pending prosecution the driver does not meet licensing standards.

On the renewal of a licence the committee should only refuse a licence if it is satisfied the applicant is not a fit and proper person. Having heard of the driver's personal circumstances the committee is not satisfied that this is the case. Her licence will therefore be renewed. However the committee does take a very dim view of both her failure to notify the council of the fixed penalty notice in writing within 7 days and her failure to disclose the notice in her application to renew.

With regard to the breach of condition the driver says she did not think Uttlesford was the appropriate council to inform of the fixed penalty notice and that she had notified her employer believing that her employer would notify the council concerned. She said it would not have occurred to her to notify Uttlesford. The committee regard this explanation as being wholly unacceptable. The application form for her licence was on paper headed with the Uttlesford logo. The covering letter sending her the licence was on Uttlesford headed paper. Her driver's licence bears the Uttlesford logo. She can be under no illusion who she is licensed by. The conditions of the licence are crystal clear that fixed penalty notices must be reported by the driver, not the operator, to the council, in writing within 7 days of being received. It appears to the committee that either the driver did not read the conditions or did not read them properly despite the fact that she would have signed an acknowledgement of receipt confirming that she was to be bound by such conditions.

The committee do regard breach of this condition as a serious matter and the council's licensing policy provides that a breach of condition should normally be dealt with by a suspension the starting point for which is 5 days. This may be increased or decreased depending on whether there are aggravating or mitigating circumstances.

In this case there are aggravating factors. The first of these the ignorance displayed by the driver of her licence conditions. The committee expect all licensed drivers to be aware of the conditions of their licence and to observe them. The second aggravating factor is that the driver did not disclose the conviction on her application to renew. This is an offence for which she is facing prosecution.

The committee consider it desirable to deal with both matters by way of suspension. It therefore directs the Assistant Chief Executive – Legal to discontinue the prosecution against the driver. In determining the length of the suspension the committee must have regard to the financial impact of a suspension upon the driver. The driver earns £7.20 an hour from her employer for a 20 hour week. This equates to £144 per week. However she does not do any work during school holidays and the impact of any suspension will also be mitigated by the fact that she may have the opportunity of additional hours with another employer for which she works. In the circumstances the committee considers the appropriate length of the suspension would be 31 days.

The committee therefore suspend the driver's driver's licence for 31 days under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause namely breach of a condition on her licence and the offence of making a false statement on her application to renew.

The committee also wish to express its disapproval of the conduct of the operator with regard to this matter. The driver's manager who is here today acknowledges that he was aware of the fixed penalty notice. However it seems that he did not advise the driver that her conditions of licence required her to report the notice in writing to Uttlesford within 7 days. The committee expect operators to be aware of the conditions which apply to their drivers and to assist

their drivers comply with them. Further it is accepted that the completed application form was sent to the operator to be forwarded to Uttlesford. Clearly no proper check was made as to the accuracy of the form as had that occurred the driver would have amended it before submitting it. Questions may be raised in the future as to whether operators who fail to give proper support to their drivers are fit and proper persons to hold operators' licences.

The Assistant Chief Executive – Legal explained that there was a right to appeal the decision within 21 days of having been deemed to have received a notice of the decision. If no appeal was lodged the suspension would take place after the appeal period had elapsed.

LIC23

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE – ITEM 5

The Chairman read out the procedures for determining driver's licences.

The Enforcement Officer presented his report. The driver had been licenced by the Council since 7 December 2010, with his licence due to expire on 30 November 2018. He had been carrying out school contract work, but was no longer permitted to do so. Therefore, he was now carrying out traditional private hire work.

On 29 June 2016, the Council received an email from Essex County which asked whether the Council was aware of the allegations made against the driver. The Council had not been made aware so the allegations were forwarded.

On 4 February, the operator was notified by the County Council that the following allegations had been made about the driver; three children who had been interviewed separately said he had told them to "stop being little bitches"; one of the parents said the driver makes inappropriate comments about the clothes the girls wear and made fun of one of the girls voices; another parent alleged that the driver called her daughter a "sexy beast".

Following this, the driver was interviewed by his operator. The driver was apparently distraught at the allegations and denied them. Often the children could be rowdy and he often had to stop during journeys as children often threw things. The operator was of the opinion the children probably misheard what was said.

The Enforcement Officer explained that on 20 April 2016, the County Council concluded there was not enough evidence to proof the allegations, but did remove the driver from that contract. He was still able to carry out other County Council contracts.

On 14 June 2016, the County Council received a safeguarding report the Local Authority Designated Officer (LADO) about an incident at a school for children with social, emotional and mental health issues where the driver had been asked to take a group of students to Chelmsford Museum. The driver had

experienced some trouble with one of the children a couple of weeks before and told the boy he wasn't allowed in the vehicle. He opened the door for the other children, but he told the remove that if he got on the vehicle he would remove him. The boy got in the vehicle so the driver grabbed him by the arm to try and pull him out. At this point a teacher interjected and told all the students to exit the vehicle. The driver was asked to leave and another vehicle was called.

The Enforcement Officer explained that as a result of this the driver was removed from all County Council contracts. The driver then sent in a letter to the County Council to give his version of events. The boy had stolen the safety hammer from the vehicle the previous week. He banned the boy from the vehicle at that time. The boy had used offensive language so he jumped onto the bus to remove him. It was at this point the teacher intervened and told the driver he was not needed.

The Council had received two incident reports from staff at the school. The first report stated that when the driver arrived, he jumped out of the vehicle and said he would not allow the boy in the vehicle as he had stolen the hammer the previous week. The staff tried to reason with the driver but he would not listen. When the boy tried to enter the vehicle, the driver grabbed his arm tightly. They told the driver to let go, but he wouldn't listen. They had to pull the driver off the boy. Two other members of staff had to calm down the children as they were upset. The driver was asked to leave and told that he would be reported.

The other staff member had stated she had previously requested that the driver should not transport their pupils as he had previously made inappropriate comments. When the driver saw the boy he told he was not getting in the taxi. The staff member said the boy had not been banned and the hammer he had stolen was returned after 30 seconds. As the boy went to sit down the driver grabbed his arm. Staff intervened and asked the driver to leave. They photographed the child's arm which had red marks and light red scratch marks.

The Enforcement Officer said that on 18 July, he carried out a telephone interview with the driver. When asked about calling the girls "silly little bitches" the driver explained that the children were mucking about and fell into him. He told then asked them "why did you do that as I could have gone in a ditch?" He denied the other allegations and said he had a letter which said they were not proven.

Regarding the incidents at the school, the driver explained that he told a teacher that he would not transport the boy again when the boy took the hammer from the vehicle. The teacher had said that he would deal with the incident.

The following week as he arrived at the school, the boy swore at him, so the driver said the boy was not allowed on the vehicle. He explained to the teacher present that he could ban passengers himself as a PSV driver. The driver explained the boy jumped into the vehicle. The driver only grabbed the boy by the hand, and not by the arm. He did not leave any scratch marks. The teacher had only entered the vehicle as the whole party had walked to Morrisons and

realised the child was not there. The teacher had not told him that the other children were upset and as a result they had decided to walk.

The Chairman invited the driver to give his account of the events. The driver began by speaking about the incident at the school. He said that all the teachers went off to Morrisons and left him alone with the boy. It was only after they realised that the boy was not in their group that they returned.

The driver then spoke about the first incident. He explained that he had carried out the contract for two years. Some of the boys used to make fun of one of the girls because she had a squeaky voice. As a result there was an agreement with the school that she would sit at the front. This was part of a bus monitor scheme. Another girl was sitting at the front because it was her birthday and she had asked to sit at the front. They started pushing each other and one of the girls fell into the driver. This caused him to say "Why did you do that as I could have gone in a ditch?" which the girls had misheard. The head teacher of the school was not aware of the bus monitor scheme and lacked knowledge of its procedures. He was exonerated of all the claims made against him.

Prior to working on school contracts, he was a coach driver and worked across a number of different countries.

Councillor Morris asked the driver about the age range of the pupils at the school in Finchingfield. The driver explained that the school had children from ages 5-16. In response to further questions by Councillor Morris, he explained that he had felt it necessary to have the girl in the front of the vehicle with him. The school had agreed to this. His work only entailed driving the children to and from school. He had developed a good relationship with one of the girls and had offered to drive her to an appointment as her parents were not able to.

The driver then answered questions about the incident at the school whilst he was working as a PSV driver. He explained that the work was not contracted. The pupils were often abusive towards both the teachers and the general public, but the teachers were unable to do anything as they could not touch the pupils.

The hammer contained within the vehicle had to be signed off every day and the Police needed to be notified if it was lost. If the hammer was lost he would be fined by VOSA. Parts of the teacher's stories were made up. They were aware that the child had been banned from the vehicle.

The driver said that he had worked as a driver for 47 years. When he was first given his private hire licence he had been told to report all instances which occurred on his vehicle, which he did. The work as a PSV driver was not on an Uttlesford licensed vehicle so he did not report it to the Council.

The Assistant Chief Executive – Legal said that the Committee could only consider whether the driver was a fit and proper person to hold a licence. The driver currently met licensing standards so the Committee would have to be satisfied on the balance of probabilities that the driver was not a fit and proper person if they were minded to revoke the licence.

The Enforcement Officer and the driver left the room at 12.50pm so the Committee could consider its decision. They returned at 1.10pm.

DECISION

The Chairman said that the Committee were not satisfied that the driver was not a fit and proper person to hold a private hire/hackney carriage driver's licence and therefore no further action would be taken.

The Chairman said that it was the Assistant Chief Executive – Legal's last meeting before he retired. On behalf of the Committee, the Chairman thanked the Assistant Chief Executive – Legal all of his work during his time at the Council. The Chairman said he hadn't always agreed with him, but always appreciated and respected the advice that was given.

Councillor Hicks spoke as a former chairman of the Committee. He said the Assistant Chief Executive – Legal had been an enormous help during his time as chairman and had learnt a great deal about licensing whilst he had been on the Committee.

The meeting ended at 1.15pm.