

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN CB11 4ER, on
TUESDAY, 17 APRIL 2018 at 9.00 am**

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey and E Hicks

Officers in attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic Services Officer) and C Nicholson (Solicitor)

Also Present: The driver in relation to item 3, B Drinkwater (ULODA – representing the driver in relation to item 3), D Perry (ULODA - representing the driver in relation to item 3) and A Schiller (Solicitor for the driver in relation to item 3).

LIC57 EXCLUSION OF THE PUBLIC AND PRESS

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.

LIC58 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Chairman welcomed all present and introduced the panel. The procedure for determining a private hire/hackney carriage licence was read to the driver.

The Committee considered the Enforcement Officer's report.

The driver had been called before the committee due to historical allegations made by his ex-partner relating to assault by beating. The first allegation related to an incident in November 2016; the second incident allegedly occurred in January 2017. The driver received neither a conviction, nor a caution, in relation to these allegations.

The Enforcement Officer tabled a letter from Suffolk Police. For legal reasons, the letter could not have been provided to anyone but Mr Schiller in advance of the panel hearing.

The Chairman adjourned the meeting at 9.20am to allow those present to read the document.

The meeting was re-adjourned at 9.25am.

The Chairman invited Mr Schiller to question the Enforcement Officer regarding his report.

Mr Schiller asked whether the Enforcement Officer had taken the police investigation at face value, and if he had any contact with the Crown Prosecution Services regarding this case.

The Enforcement Officer said he had taken the investigation at face value, and he had not been in contact with the Crown Prosecution Services.

Mr Schiller asked whether the Enforcement Officer was aware that the driver's ex-partner had a record of dishonest convictions.

The Enforcement Officer confirmed he was unaware of this.

Mr Schiller asked whether the Enforcement Officer had verified the order of events set out in the police report.

The Enforcement Officer said he had not.

Mr Schiller described his client's version of events to the panel. He told Members that the historical allegations made by his client's ex-partner followed his client's own complaint against the ex-partner to the police. He asked the Enforcement Officer whether he could disprove this version of events.

The Enforcement Officer confirmed that he could not.

The Chairman invited the panel to question the Enforcement Officer regarding the details set out in the report.

Councillor Barker asked the Enforcement Officer to expand on his account of the meeting held on 21 September 2017, when the driver refused to discuss the alleged incident that had occurred in January that year.

Mr Drinkwater, who had attended the meeting and taken notes, gave an account of the conversation that took place between the driver and Enforcement Officer. The driver had said at the meeting that he would not comment on the alleged incident that had occurred in January, as he had voluntarily attended the meeting to discuss an alleged incident which had occurred in November 2016.

The Enforcement Officer said the account was an accurate reflection of the conversation that took place.

The Chairman invited Mr Schiller to address the panel to put forward his client's case.

Mr Schiller said his client was a fit and proper person and had not breached the terms of his licence. He said his client had been licenced for twelve years and had not incurred any penalty points in that time. He was a trusted driver and his customers were prepared to vouch for him; he had not had any complaints made against him in the twelve years he had been driving.

Mr Schiller explained the order of events as his client said they had occurred. He said the police had not investigated the alleged incident of January 2017 and this

was a closed matter. Of the alleged incident that had occurred in November 2016, the Crown Prosecution Services had reviewed the file and decided that the trial was not to take place. The driver had accepted a restraining order and wanted no more contact with his ex-partner. There had been no problems since and Mr Schiller reminded the panel that it was the driver himself who had brought this matter to the attention of the licensing officers.

Testaments of the driver's customers were tabled. Mr Drinkwater read a statement put forward by the driver's employer.

Mr Schiller invited questions from the panel.

The Chairman said this case had been difficult for the Enforcement Officer as the police had been slow in responding to his enquiries and had not provided all the information requested due to fears of breaking the data protection act.

Mr Schiller said he accepted this and he had only been made aware of the ex-partner's convictions as he, the legal defence, had the prerogative to know the prosecution's background.

In response to a Member question, the Solicitor said the ex-partner's history of convictions were a matter of record; the panel did not need to look behind these convictions.

In response to a question from the Enforcement Officer, Mr Schiller said the markings and bruising found on the body of his client's ex-partner were considered by the Police, who could not determine whether they were a result of the surgery she had been through or something else.

Councillor Hicks asked whether the restraining order received by the driver was a breach of licensing standards.

The Solicitor said it was not an admission of guilt and was neither a conviction, nor a caution and therefore was not a breach of licensing standards.

At the invitation of the Chairman, Mr Schiller made a closing statement to the panel. He said the police and prosecution services were satisfied that his client had not committed the alleged crimes he was accused of. He said his client's driving record, and the reported high level of customer satisfaction, demonstrated that he was a fit and proper person who was not a threat to public safety.

At 10.15 the Committee withdrew to make its determination.

At 10.50 the Committee returned and the Chairman read the decision to those present.

Decision

The driver has held a hackney carriage / private hire driver's licence from Uttlesford since 2007.

He had previously come before this committee, in August 2012 to consider the fact that he had received a caution for a violent act against his then partner. Members considered at that stage that the behaviour was out of character, and aggravated by his partner's actions.

The driver is before the committee today as a result of being informed by the driver, in accordance with the licensing conditions, that he was charged and being prosecuted for an offence of assault by beating against his former partner. The committee have heard how when the matter came to court, the prosecution offered no evidence, so the driver was acquitted. However, a post acquittal restraining order was obtained, which prevented the driver from contacting the victim for a year.

The committee understands that the restraining order is not an admission of guilt of any offence, and that in this particular case is clearly limited to contact only. The committee only have evidence from the police setting out the nature of the offence, and a short description of the events. There is no evidence from the alleged victim of the nature of the incident.

In respect of the November 2016 incident, he admits that he and his partner argued, but does not accept that there was any violence. The incident was only referred to the police by the driver's ex-partner, some time after the event, following complaint by the driver about his partner's behaviour during an argument in January 2017. The driver and his partner split up at this time.

The Committee takes account of the information provided by Mr Schiller regarding the prosecution case in respect of the November 2016 incident, and the fact that once the evidence was reviewed prior to trial, the CPS considered there was not strong enough or credible evidence to take the matter further to trial.

The committee notes that no action has been taken in respect of the January 2017 incident by the police following his interview. Members note the circumstances set out by Mr Schiller of that event, and the police conclusions.

It is accepted in case law, and in particularly in *McCool v Rushcliffe Borough Council* 1998, that a local authority licensing committee were allowed to take into account circumstances and incidents where a driver has not been convicted, or has been acquitted of an offence, and hearsay evidence of those matters. It is also established in the case of *R v Maidstone Crown Court ex p Olson*, that the local authority needed only to satisfy the civil standard of proof in determining whether the incidents complained of took place.

However, unlike the cases of *McCool*, and *Olson* referred to, the Council does not have any complainant or third party evidence, other than what the police have provided by letter. The account from the driver gives a version of events where no violence was committed, and explains that the complaints made against him were made only after they had split up, and after he made the complaint himself.

The Council has to consider what weight to give to the evidence before it of the police emails, and summons in respect of the two incidents, and what inference, if any, can be taken from that, as against the evidence offered by the driver, and the fact that the police took no action against the January 2017 incident, and offered no evidence in respect of the November 2016 incident when the matter got to court.

Members note that Mr Schiller has demonstrates the driver's exemplary driving history over the last 12 years, and have read the testimonies provided on his behalf, and are clear that the driver meets licensing standards. The driver himself notified the Council of the charge and court appearances in respect of the November 2016 incident.

Members primary concern is the safety of the travelling public, and Members consider that there is no evidence before them that would leave them to believe that the Driver is no longer fit and proper.

In this matter Member's decision is that they need to take no further action, but would reiterate that they do expect the highest standards of behaviour from their licensed drivers, and would not wish to see the driver here again.

The meeting ended at 10.55.