

## Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 27th March, 2007.

**Present:** Cllr Mrs K F Nelson (Chairman), Cllr Coombs, Cllr K Dixon, Cllr P Kirton, Cllr C Leckonby, Cllr K Leonard, Cllr L Narroway, Cllr Mrs K F Nelson, Cllr R Rix, Cllr F G Salt, Cllr Mrs J Wade and Cllr B Woodhead.

**Officers:** P Edwards, S Forsythe, M Vaines (DNS); P K Bell, J Nertney (LD).

**Also in attendance:** Item 7 - K.C.P, Mr J Nixon (Solicitor representing K.C.P); Item 8 - D.D, AK (Partner); Item 9 - S.A, Mr P Wishlaid (Solicitor representing S.A), Two SBC Parking Attendants.

**Apologies:** Cllr Cherrett, Cllr Johnson, Cllr Trainer and Cllr Woodhouse.

### 1116 Declarations of Interest

Councillor Coombs declared a personal, non prejudicial interest in respect of agenda item no.6 - Review of Group 2 Medical Requirements For Hackney Carriage and Private Hire Drivers as he was a Member of Diabetes UK.

Councillor Mrs Nelson declared a personal, non prejudicial interest in respect of agenda item no.6 - Review of Group 2 Medical Requirements For Hackney Carriage and Private Hire Drivers as she was a Member of Diabetes UK.

Councillor Mrs Wade declared a personal, prejudicial interest in respect of agenda item no.9 - Combined Driver - Mr S.A as he was a friend of Mr P Wishlade who was representing Mr S.A.

### 1117 Minutes

The minutes of the meeting held on 13th February 2007 were signed by the Chairman as a correct record.

### 1118 Changes to Hackney Carriage and Private Hire Legislation in the Road Safety Act 2006

Consideration was given to a report that informed Members of changes to the hackney carriage and private hire legislation introduced in the Road Safety Act 2006 to reduce what had been considered to be significant safety risks.

The Department of Transport had written to local authorities advising of the commencement dates for changes in the legislation dealing with 'taxi licensing' introduced in the Road Safety Act 2006. A copy of this letter was attached to the report.

Previously a hackney or private hire driver (outside London) could continue to work as a licensed driver whilst appealing to the Magistrates Court against a decision by the local licensing authority to suspend or revoke his driver's licence.

Section 52 of the Road Safety Act 2006 gave licensing authorities the power to suspend or revoke a hackney carriage or private hire drivers licence with immediate effect where they were of the opinion that the interests of public safety require such a course of action.

The Department of Transport had not issued any guidance on the use of this new power and had suggested that it was a matter for individual local licensing authorities to determine how they would make use of it.

This new power came into force on 16th March 2007 and therefore Members would be advised of this course of action being an option in reports to the Committee when appropriate.

At present in England and Wales (outside London) a vehicle was exempt from the requirement to be licensed as a private hire vehicle if it was used in connection with a funeral or wedding, or if it was used for contracts lasting not less than seven days.

Ministers decided that “the contract exemption” posed a significant safety risk and should be repealed. Section 53 of The Road Safety Act 2006 repeals this contract exemption and will be commenced in January 2008, when all such vehicles, their drivers and operators must then be licensed. The only exemptions from licensing would then be for vehicles used solely for weddings and funerals.

The Hackney Carriage and Private Hire trade had been informed of these changes in a trade newsletter sent out early in March 2007.

RESOLVED that the report be noted.

**1119 Disability Discrimination Act 2005 - Impact on Hackney Carriage and Private Hire Trade**

Consideration was given to a report that advised Members of the Disability Discrimination Act 2005 and its associated Regulations and Codes of Practice and the potential impact on the taxi trade.

The Disability Discrimination Act 1995 placed responsibilities on hackney carriage proprietors and drivers in relation to the transportation of people with disabilities with sections 3 to 39 of Part V of the Act specifically addressing taxis. The 1995 Act made provision for Regulations to be made in relation to vehicle specifications so that all hackney carriages would eventually be required to be wheelchair accessible. It was initially anticipated that wheelchair accessible vehicles would be phased in over a 10-year period between 2002 and 2012. This date was then put back to between 2010 and 2020 and first phase local authorities were determined for the introduction of such vehicles. Stockton Borough Council was named as a first phase authority. Private Hire Vehicles, however, were excluded from the 1995 Act.

In accordance with the requirements of Section 37 of the 1995 Act, Regulations were subsequently made in relation to the carriage of assistance dogs. From 31 March 2001 hackney carriage drivers/proprietors had been required to carry assistance dogs, e.g. guide dogs, travelling with passengers with disabilities and such animals must be carried without extra charge. There was however the provision of an exemption from this requirement subject to medical

confirmation that the driver suffered from a medical condition that was exacerbated by the presence of dogs. To date no such exemptions had been applied for.

Initially the requirement to carry assistance dogs was restricted to the hackney carriage trade, however, following a Private Member's Bill the 1995 Act was amended to include Section 37(A), requiring private hire drivers to carry such animals and also private hire operators to accept bookings for fares involving such animals. This took effect from 31 March 2004 and the medical exemption was extended to private hire drivers, again no exemptions have been applied for.

On 7 April 2005, The Disability Discrimination Act 2005 received royal assent. The purpose of the 2005 Act was to amend the 1995 Act and extend its scope. The 1995 Act had excluded private hire vehicles and had exempted a range of providers of transport services from its requirements. The 2005 Act required these providers to make "reasonable adjustments" to enable disabled persons to use their services and brings private hire vehicles, drivers and operators into the scope of the legislation.

The legislation required that a transport provider must not discriminate against a person with disabilities when providing or not providing such a person with a vehicle or with services when that person was travelling in a vehicle. It makes it unlawful for transport providers to refuse to/deliberately not provide a service that was available to the general public, to provide a poorer service or a service on less favourable terms. It was also unlawful not to make reasonable adjustments so that as a result it was very difficult or impossible for a person with disabilities to access their services.

Although Regulations had not yet been made to provide access standards for taxis to ensure full disabled access it was the intention of Central Government that these would be made when appropriate vehicle specifications had been determined. The Regulations were expected to focus on ensuring that people with disabilities could safely access these vehicles and travel in safety and comfort. Furthermore, wheelchair users should be able to expect to access and travel in these vehicles while remaining in their wheelchairs. The Regulations may therefore consider size of door openings, floor and headroom areas of passenger compartments, the availability of suitable restraining devices to safely secure the wheelchair and the provision of equipment to ensure correct access to the vehicle e.g. wheelchair ramps.

The Disability Rights Commission had produced a statutory Code of Practice in relation to the provision and use of transport vehicles and this document provided clarification relating to the duties of providers in relation to the 1995 Act, as amended by the 2005 Act, its Codes of Practice and Regulations, (with effect from 4 December 2006). This Code supplements the "Part 3 Code" that dealt, in terms of transport provision, with the services ancillary to the provision of the vehicle, e.g. waiting areas, timetables etc. Although both Codes did not place any legal obligations on providers they had been approved by Parliament and could be cited in any legal proceedings pertaining to this legislation. The supplementary Code was also a useful guidance document on good practice for transport providers.

The supplementary Code of Practice provided examples of both discriminatory behaviour and positive approaches in terms of specific transport providers. It gave as one example the refusal of a taxi driver to pick up a person with disabilities at a taxi rank and another of a taxi driver refusing a fare because the person with disabilities was abusive and disorderly rather than because of his/her disability.

The Code also provided advice to providers on their liability for their employees and the defence of due diligence. The Code advised on the steps needed to comply with the requirements of the legislation including consulting with relevant representative groups and customers, drawing up a policy, providing information and training for staff, introducing "reasonable adjustments", setting up monitoring procedures, dealing with breaches, ensuring a complaints system was in place and regularly reviewing their provision.

The Code provided helpful information in relation to "reasonable adjustments" and made it clear that the purpose of the Act was to provide, where reasonably practicable, the same provision for people with disabilities as that enjoyed by the general public. In the provision of taxi and private hire services this could range from auxiliary aids (e.g. swivel seats in saloons) to a percentage of a fleet becoming wheelchair accessible. It also provided examples of what should be taken into account when considering "reasonableness", such as the size of the business, financial costs, the level of resources within the business and the availability of funding and other assistance. The Code also reminded transport providers that they must proactively consider adjustments rather than react to a request or situation and should promote any adjustments made to ensure that the information reaches wide audiences.

The Code advised transport providers that the costs of making "reasonable adjustments" should not be passed on specifically to passengers with disabilities, e.g. an extra charge could not be made for carrying a wheelchair. It also reminded providers of the need to ensure that auxiliary equipment was maintained in working order to avoid falling foul of the legislation.

A copy of the Code, which was referred to at the last meeting in the item relating to the review of taxi policies, had been placed in the Members library and could be viewed on E-Genda.

The new legislation impacted on the Taxi and Private Hire Trade with immediate effect. To assist operators and proprietors in meeting their responsibilities under the revised legislation advisory letters, containing relevant websites, would be issued to the Trade following this meeting of the Committee and a copy of the report would be included.

Members were reminded that the Council's policies and conditions relating to the 'Taxi Trade' were currently being reviewed and the consultation document did address these issues.

**RESOLVED** that the report be noted.

## 1120 **Review of Group 2 Medical Requirements For Hackney Carriage and Private Hire Drivers**

Consideration was given to a report that advised Members of new advice in relation to Group 2 medical requirements for insulin treated diabetes and to recommend that the Public Carriage Office (PCO) criteria relating to insulin treated diabetes be adopted when dealing with applicants for Hackney Carriage and/or Private Hire Drivers Licences who suffer from this condition.

The Local Government (Miscellaneous Provisions) Act 1976, at section 57 specifies that the Council may require applicants for hackney carriage or private hire driver licences to produce a certificate signed by a registered medical practitioner that they are physically fit to be the driver of such a vehicle.

In February 1995 the then Government's Transport Select Committee recommended that such applicants should pass a medical examination before a licence was granted. In the same year the guidance document "Medical Aspects of Fitness to drive" was produced and offered guidance to general practitioners in relation to a series of medical conditions including diabetes mellitus for drivers, including heavy goods vehicle and public service vehicle drivers. The guidance also recommended that the Group 2 medical standard that applied to bus and lorry drivers should be extended to cover hackney carriage and private hire drivers and this standard has been applied since that date. This guidance was revised in August 2006. A copy of this guidance document has been placed in the Members library and was available on 'E-Genda'.

The current Group 2 requirement for applicants who suffer from insulin dependent diabetes and which included a list of qualifying conditions for limited Group 2 entitlement had been attached to the report.

In January 2006, following the advice from the Secretary of State for Transport's Honorary Medical Advisory Panel on Driving and Diabetes Mellitus, the Public Carriage Office, (which was responsible for the licensing of hackney carriages and private hire vehicles and drivers in the London Metropolitan Area) revised their criteria for applicants with insulin dependent diabetes. The effect of this was that persons in London whose diabetes was under strict control but who were previously prevented from obtaining employment in the "taxi trade" or trade members whose diabetes control changed from tablets/diet to insulin and were subsequently required to leave the trade were now able to drive hackney carriages and private hire vehicles subject to specific additional requirements.

Their revised criteria, which had been attached at to the report required applicants to provide evidence from a medical specialist in diabetes treatment that insulin treatment had been ongoing for longer than 4 weeks, that a hypoglycaemic episode requiring assistance had not been experienced while driving in the 12 months preceding the application, that the applicant had a history of responsible diabetic control and that there was a minimal risk of a hypoglycaemic attack in the future. The applicant was also required to sign a declaration confirming he would comply with any treatment required by the supervising medical practitioner, immediately report to the Licensing Authority, in writing, any change in the diabetic condition and provide evidence on request that blood glucose monitoring was being undertaken at least twice daily.

This issue had only just come to the attention of officers as an application had recently been received for a licence to drive private hire vehicles from an applicant with insulin dependant diabetes.

In the light of the revised criteria officers had considered the potential impact on the taxi trade in Stockton and in particular the safety of the travelling public. Given the recommendations emanating from the Secretary of State for Transport's Honorary Medical Advisory Panel on Driving and Diabetes Mellitus officers believed that to adopt the revised criteria would not jeopardise the safety of the public.

The impact on applicants was the additional expense of an annual medical (to confirm the absence of hypoglycaemic episodes within each 12 months, the responsible diabetic control and the minimal risk of hypoglycaemic episodes) but this had to be balanced against the opportunity to enter and/or continue a career in the taxi trade, which had previously been denied them. Officers therefore recommended that the revised criteria be adopted for all drivers licensed by the Council.

RESOLVED that:-

1. The revised medical criteria for applicants suffering from diabetes mellitus be noted.
2. The applicants for hackney carriage and/or private hire drivers licences be required to meet the revised criteria, specified in Appendix 2 of the report as part of the Group 2 medical requirements.

#### **1121 Exclusion of the Public**

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

#### **1122 Hackney Carriage/Private Hire Driver - Mr K.C.P.**

Consideration was given to a report on an application for renewal of a hackney carriage and private hire drivers licence from an applicant who had twelve penalty points on his DVLA driving licence for speeding and construction and use offences and who had previously attended the Driver Improvement Scheme and who had not been disqualified by the Courts due to exceptional hardship.

K.C.P was a licensed hackney carriage and private hire driver. He had held a licence since December 1986 and his current licence expired on 28 February 2007.

On his renewal application K.C.P had declared four motoring convictions for which he has received three points each, making a total of twelve points on his licence. These convictions were on 17 April 2004 (speeding), 17 August 2004 (speeding), 26 April 2005 (construction and use) and 7 February 2007

(speeding). A copy of this application was attached to the report.

A copy of K.C.P's driving licence was attached to the report for Members information. This showed that his last offence for speeding occurred on 26 July 2006 and that he was convicted by the courts on 7 February 2007 when he was fined £65 and awarded three penalty points but he was not disqualified as exceptional hardship was found. A copy of the DVLA guide to Endorsement Offence Codes was attached to the report.

Members were advised that K.C.P had previously attended the Driver Improvement Scheme on 1 June 2006, eight weeks before the date of his last speeding offence.

A copy of the Council's Guidance relating to the relevance of convictions was attached to the report for Members information.

Members were reminded that under the provisions of Section 61 (1)(a) of The Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke or refuse to renew the licence of hackney carriage driver or a private hire driver on the following grounds:-

That he has since the grant of the licence:-

(i) been convicted for any offence involving dishonesty, indecency or violence;  
or

(ii) been convicted of an offence under or fails to comply with the provision of the Act of 1847 or of this part of this Act; or

(iii) any other reasonable cause.

Members were also advised of the revisions to Section 61 introduced under the Road Safety Act 2006 as follows:

(2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which the notice is given to the driver under subsection (2)(a) of this section

(2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

K.C.P and his solicitor (J Nixon) were in attendance at the meeting and were given the opportunity to outline their case.

After consideration of the report and to the comments made by K.C.P and his solicitor, the Committee noted that three points would come off K.C.P's licence in April 2007 and therefore decided on this occasion to renew K.C.P driver's licence and to issue K.C.P with a final written warning as to his future conduct.

Members expressed their concern both in relation to K.C.P convictions and to the fact that he had already attended the Driver Improvement Scheme, which was only some eight weeks before K.C.P's last conviction for speeding.

The Committee reminded K.C.P that the granting of his drivers licence with the Council was a privilege and not a right and they expected K.C.P to demonstrate a high standard of driving. Therefore should K.C.P receive any further convictions or fail to comply with the conditions of his licence then his continued fitness to hold a hackney carriage/private hire drivers licence would be reconsidered by them when this warning would be revisited.

RESOLVED that:-

1. The renewal applications for K.C.P for a Hackney Carriage and Private Hire Drivers Licence be approved.
2. K.C.P receive a final written warning as to his future conduct.

### **1123 Private Hire Drivers Licence - Mr D.D.**

Consideration was given to a report on an application for a licence to drive private hire vehicles from an applicant who had previously been disqualified from driving under the totting up procedure.

Application had been received from D.D for a licence to drive private hire vehicles. A copy of this application was attached to the report.

D.D had been a licensed driver in the past (since February 1996) but in March 2006, following a conviction on 25 January 2006, for driving without insurance for which he received a six months disqualification under the totting up procedure, he voluntarily surrendered his licence and did not renew it.

In July 2006 D.D wrote a mitigating letter to the Licensing Office seeking the return of his licence. A copy of this letter was attached to the report. Advice was given to him at that time when he was referred to the Council's guidelines on the relevance of convictions and advised that any application that he submitted would be referred to the committee for determination. A copy of that letter was attached to the report.

D.D's driving licence was attached to the report.

A criminal record check has been carried out on D.D and this revealed no further convictions.

Checks on his previous private hire driver history revealed that he received five warning letters, three for failing to notify motoring convictions, one for not wearing his driver badge and one for sounding his horn. In addition his licence was suspended in November 2004 for failing to submit to a Criminal Record Bureau check.

Members were reminded that under the provisions of Section 51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 the Authority was



instructed not to grant a licence to drive private hire vehicles unless they were satisfied that the applicant was a fit and proper person to hold such a licence.

A copy of the adopted guidelines with respect to the relevance of convictions was attached to the report for Members information.

Member were also advised that if they considered D.D to be a fit and proper person at this time he would then have to pass the DSA Taxi Driving Test, the Council's Private Hire Knowledge test and submit a medical report before his licence is granted.

D.D. and his partner (A.K.) were in attendance at the meeting and were given the opportunity to outline their case.

Members felt that driving without insurance was a serious matter and under the Councils guidelines it was classed as a major traffic offence. Also when D.D was previously licensed he received a number of warnings for his behaviour.

Members had sympathy for D.D's personal circumstances but felt that they were not relevant considerations when determining his fitness to hold a private hire drivers licence.

RESOLVED that D.D's application for a Private Hire Drivers Licence be refused as D.D was deemed not to be a fit and proper person due to his previous written warnings and conviction for driving without insurance.

#### **1124 Combined Driver - Mr S.A.**

Consideration was given to a report on a Combined Hackney Carriage and Private Hire Driver who was verbally abusive and refused to give any of his details to an Authorised Officer's for motoring and parking offences. Also for illegally parking his Hackney Carriage Vehicle on two separate occasions.

S.A. was a licensed Combined Hackney Carriage and Private Hire Driver driver. He was first licensed on 6th October 1997; his current license was due to expire on 31st May 2007.

On 2nd October 2006 the Licensing Unit received a Complaint from a Parking Attendant employed by Stockton on Tees Borough Council. On 2nd October 2006 she observed S.A illegally parked in a bus stop on double yellow lines on Bishopton Lane. On approaching S.A. and asking him for his details he refused to give them to her, the Parking Attendant explained that it was an offence to refuse his details and that he could be liable to prosecution he still refused. At this point the Parking Attendant contacted the Surveillance Centre and asked for the CCTV cameras to be placed on her, as she felt uneasy. An Enforcement vehicle then arrived and pulled in behind S.A who immediately drove away narrowly missing the Parking Attendant. Because S.A. drove away the Parking Attendant was unable to issue him with a Fixed Penalty Notice. S.A. was interviewed regarding this incident and stated that Parking Attendants had no right to see his badge. Copies of Photographs obtained from CCTV were attached to the report. A copy of the witness statement was also attached to the report.

On the morning of 12th October 2006 a further complaint was received regarding S.A. and the illegal parking of his vehicle. This complaint was from Car Parking Security at The University of North Tees Hospital. S.A's car was parked on double yellow lines causing an obstruction to the bus and emergency service vehicles. A licensing officer had to ring S.A. to ask him to remove his vehicle, which, he eventually did. Copies of the photographs obtained from Car Parking Security were attached to the report.

On checking S.A.'s previous driver history it showed he was interviewed on 30th August 2006 for not disclosing convictions from 10th April 2006. He was given 6 points on his DVLA License and fined £250.00 with £150.00 costs at Leeds Magistrates Court for speeding and resisting or obstructing a Police Constable in the execution of his duty. A copy of his written warning was attached to the report.

Members were reminded that under the provisions of Section 61 (1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke or refuse to renew the licence of a hackney carriage and/or private hire driver on the following grounds: -

That he has since the grant of a licence:-

(i) been convicted of an offence involving dishonesty, indecency or violence;  
or

(ii) been convicted of an offence under or fails to comply with the provisions of the Act of 1847 or of this part of this Act;

(iii) any other reasonable cause.

and Section 61(2)

(A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section

(B) If it appears in the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2) (a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

S.A, his solicitor (Mr P Wislade) and two Parking Attendants were in attendance at the meeting and were given the opportunity to state their case.

Members felt that the attitude of S.A. was appalling and that the Committee would not tolerate any more of this behaviour. Abuse of Council staff or any Member of the public is not fit and proper behaviour. North Tees Hospital had contacted the Council regarding the parking incident which was unusual and showed how seriously they viewed the incident. S.A. had already appeared in

Court for obstructing a Police Officer and then S.A. had effectively obstructed a Council Officers in their lawful execution of their duties.

Members agreed that S.A should receive a final written warning as to his future conduct.

RESOLVED that S.A. receive a final written warning.

(Councillor Mrs Wade declared a personal, prejudicial interest in respect of the above item and left the room while the item was being considered.)