

## Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 3rd March, 2009.

**Present:** Cllr Bill Woodhead (Chairman), Cllr Dick Cains, Cllr Paul Kirton, Cllr Miss Tina Large, Cllr Colin Leckonby, Cllr Alan Lewis, Cllr Mrs Kath Nelson, Cllr Maurice Perry, Cllr Roy Rix, Cllr Fred Salt and Cllr Steve Walmsley.

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

**Also in attendance:** For agenda item 5 - Application for Private Hire Driver - Mr S T M and Mr Fiddler, For agenda item 6 - Mr J H, For agenda item 8 - Mr M J, the wife of Mr M J and Mr P Steele (representing Mr M J), For agenda item 9 - Mr A R and Mr A Ross.

**Apologies:** Cllr Mrs Eileen Craggs, Cllr Kenneth Dixon and Cllr Mrs Ann McCoy.

### **L       Declarations of Interest**

**78/08**

There were no interests declared.

### **L       Minutes of the meetings held on 4th November 2008 and 9th December 2008.**

**79/08**

The minutes of the meetings held on 4th November 2008 and 9th December 2008 were signed by the Chairman as a correct record.

### **L       Exclusion of the Public**

**80/08**

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.

### **L       Application For Private Hire Driver Licence - STM**

**81/08**

Consideration was given to a report regarding an application for a private hire driver's licence from an applicant who had 'other relevant information' disclosed on his Criminal Record Bureau for an arrest for rape.

Mr STM had submitted an application to become a licensed private hire driver with this authority. An important part of the vetting process was to undertake a Criminal Record Bureau check. In Mr STM's case, the record disclosed that he had 'other relevant information' with regard to being arrested for Rape in 2007. A copy of the CRB check was made available for Members.

Mr STM was interviewed with regard to this information by Officers on 7th January 2009. During interview Mr STM explained the event, which had occurred following a party, and alleged it had been consensual sex. He stated he had been cooperative with the police in their enquiries, the allegation against him was withdrawn, and no further action was taken.

Contact was made with the party organisers to obtain details for the injured party so further investigation could be carried out by licensing officers. Address details were provided and two letters had been sent to the injured party requesting contact from her in order to clarify some points. No contact was

received from the injured party.

Mr STM also informed officers he was granted his citizenship after this alleged incident which he believed he would not have been granted if the allegation were true. Discussions with the police did not provide any further information other than that disclosed on the Criminal Record Check.

A copy of the Councils guidance on the Relevance of Convictions was available for Members information.

Members were respectfully reminded that under the provisions of section 51(1)(a) of the Local Government (Miscellaneous Provision) Act 1976 District Councils are instructed not to grant a licence to drive private hire vehicles unless they are satisfied that the applicant is a fit and proper person to hold such a licence

Mr STM was in attendance and given an opportunity to state his case.

The Committee had full regard for the report and also listened carefully to what Mr SMT and his representative had to say with regard to the matters disclosed.

The Committee were mindful that they had a very difficult decision to make. The Committee noted Mr STM's submission that the allegation made against him was withdrawn and that any sexual activity which had taken place at the party had been consensual. However the Committee were also mindful that they should take regard to the 'other relevant information' section and that as such a serious allegation had been made against Mr STM the Committee were of the view that this did have an impact on their consideration as to whether he was a fit and proper person to hold a licence.

Taxi drivers may on occasion have to accept fares from vulnerable females some of which may be drunk. The Committee had concerns that if Mr STM was granted a licence the potential safety of passengers could be put at risk. Due to the serious nature of the allegation made against him it was decided to refuse the application at this time on the grounds that Mr STM was not considered be a 'fit and proper person' because of the 'other relevant information', contained in his CRB disclosure.

RESOLVED that the application be refused on the grounds that Mr STM was not considered a fit and proper person to hold a private hire drivers licence.

**L  
82/08**

#### **Combined Driver - JH**

Consideration was given to a report regarding a licensed combined Hackney Carriage/Private Hire Driver who had been complained about by a member of the public. The complaint was with regard to Mr JH's manner of driving and attitude. Mr JH had previously been spoken to twice about his attitude and temper, with regard to family disputes, which involved police attendance.

Mr JH was a combined Hackney Carriage/Private Hire Driver with this authority, and had been licensed with the Authority since 1994. His current licence was due to expire on 31st May 2009.

In September 2008, the licensing department received a complaint from a member of the public with regard to the manner of driving and attitude of Mr JH. A copy of the witness statement was available to Members.

Mr JH was interviewed on 31st October 2008 regarding the complaint. During interview Mr JH gave a similar account of the events. A transcript of the interview was also available to Members.

According to Council records Mr JH's driver history showed that he received a written warning in November 2007, for not informing the Licensing Department of a Formal Caution received by Cleveland Police. The Caution was for punching and kicking a car and causing dents to the rear passenger door. Mr JH also received a written warning in April 2008, from Licensing Officers, following notification from the Police that Mr JH had been arrested for harassment. The police took no further action.

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 any of the following grounds: -

(a) that he has since the grant of the Licence: -

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

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

(b) 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.

A copy of the adopted guidelines relating to the relevance of convictions was made available for Member's information.

Mr JH was in attendance at the meeting and was given an opportunity to state his case.

The Committee had regard for the report and listened carefully to what Mr JH had to say with regard to the matters disclosed. This included the fact that he was apologetic with regard to what happened and his behaviour.

The Committee deliberated over their decision as to whether they were satisfied at this time whether Mr JH were still a fit and proper person to hold a licence. Holding a combined hackney carriage and private hire licence was a position of trust and holders of such licences were expected to be civil and orderly at all times.

Members felt that on this occasion, as the complainant had not appeared to substantiate his allegations, to issue Mr JH with an advisory letter and to remind him as to his future conduct, regarding his temper, as such behaviour would not be tolerated. Licence drivers were expected to demonstrate a high standard of driving and to behave in a civil and orderly manner at all times. Mr JH was also reminded that he should never leave his vehicle to remonstrate with another driver as this only ever served to inflame the situation.

RESOLVED that Mr JH be issued with a warning regarding his future conduct.

**L  
83/08**      **Private Hire Driver - MLT**

Members were informed that attempts had been made to inform Miss MLT of today's hearing by letters to her last recorded address, however due to the circumstances detailed in the report she was not in attendance. Members agreed to consider the report in Miss MLT absence.

Consideration was given to a report regarding a licensed Private Hire Driver who was convicted for committing arson recklessly and was sentenced to imprisonment for four years.

Miss MLT was a licensed private hire driver and had been since July 2006. Her current licence was due to expire 31 July 2009.

Miss MLT's initial application was brought before this Committee on 25th July 2006. The licence was granted with a strict warning as to her future conduct.

Licensing Officers were made aware that Miss MLT had allegedly been involved in an incident on 27 August 2008 enquiries were made at the time and it was found that she had been remanded in custody to prison due to the serious nature of the alleged offence. The details of the offence were that she set fire to her own flat and in doing so endangered the lives of members of the public. No further action was taken at that time as she was remanded to prison.

Then on 22 January 2009 under the 'Notifiable Occupations Scheme Home Office Circular 6/2006'. Cleveland Police informed the Authority that she had been convicted at Teesside Crown Court on 17 November 2008, and sentenced to four years imprisonment.

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 any of the following grounds: -

(a) that he has since the grant of the Licence: -

- (i) been convicted of an offence involving dishonesty, indecency or Violence; or
  - (ii) been convicted of an offence under or fails to comply the provisions of the Act of 1847 or of this part of this Act; or
- (b) 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.

After consideration of the report Members believed that Miss MLT's conviction for committing arson recklessly was a serious offence and that this was sufficient grounds under Section 61(1)(b) of the above mentioned Act to be deemed a reasonable cause for revoking her Private Hire Drivers Licence.

RESOLVED that:-

1. Miss MLT's Private Hire Drivers Licence be revoked as Miss MLT's was not a fit and proper person to hold such a Licence.
2. As the revocation was on the grounds of public safety the revocation take immediate effect under the provisions of Section 61(2)(B) The Local Government (Miscellaneous Provisions) Act 1976.

**L  
84/08**

#### **Private Hire Driver - MJ**

Consideration was given to a report regarding a licensed Private Hire Driver who received 8 penalty points and £220 fine for driving with no insurance, and did not inform the licensing department as per his licence conditions, and who had applied to renew his private hire drivers licence.

Mr MJ was a licensed private hire driver and has been since December 2007 and his current licence expired 31st December 2008. He had submitted a renewal application. Mr MJ informed licensing officers in December 2008, at the time of his renewal application, that he had 8 penalty points on his driving licence due to a no insurance conviction received in February 2008.

Mr MJ advised during interview with officers that he had been driving to Nottingham in October 2007, to drop off his stepson. He was pulled in by South Yorkshire Police who advised him he had no insurance on the vehicle. Mr MJ believed he was insured. Allegedly the Police were unable to determine if Mr MJ was or was not insured and then Mr MJ was allegedly asked for £50 by the Police and told no more would be said about the incident. Mr MJ returned from

Nottingham with no other incidents with the Police, he understood this was the end of the issue and he had in fact been insured.

Mr MJ then applied for and was granted his private hire drivers licence by this authority. He did not disclose the incident at the time of application as he didn't believe there was anything to disclose. Mr MJ then received a letter summoning him to appear at Pontefract Court in February 2008. Mr MJ advised when he got the letter he went to speak to his employers but neither were available. He then spoke with another driver who told him not to tell the Council as he would have his badge taken from him. Mr MJ confirmed he knew he was supposed to advise this department within 7 days as per his conditions and confirmed he purposely tried to hide the conviction from the department.

Mr MJ did not attend Court and also did not advise anyone he would not be there, which he stated he deeply regretted.

Mr MJ continued to work until his renewal application showed a discrepancy with the DVLA licences he produced. Mr Barnes, Licensing Officer, asked Mr MJ if there was anything on his DVLA licence that we should know about and Mr MJ said there wasn't. Mr Barnes explained that a DVLA mandate would be required due to the two different issue numbers on the produced DVLA licence. Mr MJ queried with reception what the DVLA mandate was and it was explained to him that it was a full breakdown of his DVLA history. Mr MJ then admitted to his penalty points and conviction due to no insurance.

The DVLA mandate was received in the licensing office on 9th January 2009. This mandate detailed how Mr MJ requested a duplicate licence due to one being lost / stolen. Then followed the Court notification and then, since Mr MJ did not return his licence in order to have the points added, the DVLA revoked his licence.

There had been no complaints about Mr MJ and he has had no enforcement actions from the department since the grant of his licence in December 2007.

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 any of the following grounds: -

(a) that he has since the grant of the Licence: -

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

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

(b) 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.

A copy of the adopted guidelines on the Relevance of Convictions was made available for Members information.

Mr MJ was in attendance at the meeting with his representative Mr PS and was given an opportunity to state his case.

The Committee had regard for the report and also listened carefully to what Mr MJ and his representative had to say with regard to the matters disclosed. This included the fact that Mr MJ was very apologetic for his behaviour.

The Committee deliberated over their decision as to whether they were satisfied that Mr MJ was still a fit and proper person to hold a licence. Council guidelines considered Mr MJ's conviction as a major traffic offence for which his private hire drivers licence could be revoked. However, the Committee agreed to depart from the guidelines on this occasion and to give Mr MJ one last chance as they believed that the offence was not wilful on his part.

Members felt that on this occasion to put their trust in Mr MJ and to issue him with a final written warning as to his future conduct. Mr MJ was also advised to contact Licensing Officers for advice when required and not to listen to other members of the trade. The Committee hoped that he had learnt a valuable lesson from this.

RESOLVED that Mr MJ be issued with a final written warning as to his future conduct.

**L**  
**85/08**      **Private Hire Driver - AR**

Consideration was given to a report regarding a licensed private hire driver who had been convicted of possessing goods with false trade mark for sale or hire, by Northallerton and Richmond Magistrates in August 2005. Mr AR failed to disclose this conviction on subsequent badge renewals with this Council.

Mr AR had been a licensed private hire driver since May 2002 and his current licence expired 31 May 2009.

On 29th September 2008, Mr AR's 3 yearly Criminal Records Enhanced Disclosure was received. This revealed one conviction, of which there were 4 items, all for possessing goods with false trade mark for sale or hire. Mr AR was issued a fine for £350 and costs for £320.

North Yorkshire Trading Standards Officers had attended Catterick Market on 21 November 2004 and seized the items on Mr AR's stall for testing. It was determined these goods were counterfeit and Mr AR was subsequently

prosecuted. A copy of the Criminal Records Check was available for Members at the meeting.

Mr AR's was interviewed by Licensing Officers to establish the details of what had happened. Mr AR explained that he had purchased various items of clothing including jumpers and t-shirts at £2.50 per item. Mr AR stated he was not aware of what he had bought, nor did he have an understanding of branded goods or trademarks.

During his period as a licensed driver our records show that Mr AR received 3 licensing penalty points in June 2005 for failing to notify our department of motoring convictions. Mr AR also received 3 licensing penalty points in May 2005 for failure to produce insurance as previously requested.

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 any of the following grounds: -

(a) that he has since the grant of the Licence: -

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

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

(b) any other reasonable cause.

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(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.

A copy of the Council Guidelines on the Relevance of Convictions was provided for Members information.

Mr AR was in attendance with his legal representative Mr A Ross and given an opportunity to state his case.

The Committee had regard for the report, and also listened carefully to what his legal representative had to say with regard to the matters disclosed.

The Committee deliberated over their decision as to whether they were satisfied whether Mr AR was still a fit and proper person to hold a licence. The



Committee felt that there were sufficient grounds under the above legislation to revoke Mr AR's private hire drivers licence as they considered he knowingly tried to deceive this Council by not divulging his convictions as soon as he received them, and then subsequently omitted them from his renewal applications.

However, on this occasion Members decided to issue Mr AR with a severe final written warning as to his future conduct. Members hoped that he had learnt a valuable lesson from this and reminded him that must tell the Licensing office of any cautions or convictions or dealings with the Police and Officers would determine whether they considered it relevant.

RESOLVED that Mr AR be issued with a final severe written warning as to his future conduct.