

## Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 18th August, 2009.

**Present:** Cllr Bill Woodhead (Chairman), Cllr Jim Beall, Cllr Dick Cains, Cllr Mrs Eileen Craggs, Cllr Miss Tina Large, Cllr Alan Lewis, Cllr Maurice Perry, Cllr Roy Rix and Cllr Fred Salt.

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

**Also in attendance:** Mr C M S and Mr Fidler (Representing Mr C M S) for agenda item 6 - Application For a Combined Driver - CMS; Mr M A for agenda item 7 - Hackney Carriage Driver - Mr M A; Mr B and Mr Schiller (Solicitor Representing Private Hire Operator - RC) for agenda item 8 - Private Hire Operator - TC and RC; Mr R T and Mr Wilson (Representing Mr R T).

**Apologies:** Cllr Ken Dixon, Cllr Jean Kirby, Cllr Paul Kirton, Cllr Colin Leckonby and Cllr Mrs Kath Nelson.

### **L       Declarations of Interest**

**31/09**

Councillor Beall declared a personal non prejudicial interest in respect of agenda item 4 - Gambling Act 2005 - Statement of Licensing Principal as his wife was the Stockton on Tees Safeguarding Children Board Manager.

Councillor Lewis declared a personal prejudicial interest in respect of agenda item 6 - Application for Combined Driver - Mr C M S as he was known to him as he was a family friend of Mr C M S's father. Councillor Lewis withdrew from the meeting and left the room during consideration of the item.

### **L       To confirm as a correct record the minutes of the meetings held on 23rd 32/09   April and 26th May 2009**

The minutes of the meetings held on 23rd April and 26th May 2009 were signed by the Chairman as a correct record.

### **L       GAMBLING ACT 2005 – STATEMENT OF LICENSING PRINCIPLES**

**33/09**

Consideration was given to a report on the draft review of the Council's Statement of Licensing Principles which would apply in exercising its functions under the Gambling Act 2005 and which would be the subject of full formal consultation with interested parties prior to being approved by Council.

Section 349 of the Gambling Act 2005 required licensing authorities to publish a "statement of the principles that they propose to apply in exercising their functions" under the Act, applicable to a 3 year period.

The current Statement of Licensing Principles was approved by Council in December 2006 and under the provisions of the Act needed to be reviewed prior to publication in January 2010.

In preparing the statement of principles licensing authorities were required to:-

- Adhere to regulations issued by the Secretary of State
- Consider guidance issued to licensing authorities by the Gambling Commission

- Recognise the need to be reasonably consistent with the licensing objectives where applicable. The licensing objectives were set out at Section 1 of the Act and were:-

- Preventing gambling from being a source of crime and disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Statement of Licensing Principles had been reviewed by officers and a revised draft statement was attached to the report. The revisions in the main related to decision making and to the definition of premises and how the Council would deal with the issue of split premises and multiple licences and reflect the revised guidance issued by the Gambling Commission. The section on transitional arrangements had been removed.

The Act also required the licensing authority to consult with the following people on its statement of principle:-

(a) the Police

(b) those who represent the interests; of gambling businesses in their area; and

(c) those persons which represent interested persons likely to be affected by the exercise of the Authority's functions under the Act.

Following receipt of Members comments on the draft document the Statement of Principles would be circulated for comment to:-

- All elected Members
- Town and Parish Councils
- Cleveland Police
- Cleveland Fire Service
- Stockton-on-Tees Safeguarding Children Board
- Environmental Health
- Development Control
- Safer Stockton Partnership
- HM Revenue and Customs
- Primary Care Trust

- Citizens Advice Bureau
- Residents Associations
- Trade Bodies and Associations
- Representatives of Local Businesses
- Organisations working with problem gamblers

In addition the statement would be published on the Council's website and comments would be invited from anyone who would be affected by the policy.

Members were given the opportunity to ask questions on specific areas of the document and provided Officers with comments.

RESOLVED that Members comments be noted.

**L  
34/09**      **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.

**L  
35/09**      **Application For Combined Driver - CMS**

Consideration was given to a report on the fitness of an applicant for a hackney carriage and private hire drivers licence who had a relevant conviction for a violence offence and who had a previous drivers licence revoked by this Committee.

Mr C M S had submitted an application for a licence to drive both hackney carriages and private hire vehicles with the Authority. Because of his previous history he had requested that at the present time his fitness be determined on the relevance of his conviction. A copy of his application was attached to the report and included in this was a copy of his DVLA drivers' licence, which showed he had no motoring convictions.

Members were advised that Mr C M S had held a combined hackney carriage and private hire drivers licence previously with the Authority from December 2001 until 13th June 2006 when they were revoked by the Licensing Committee following Mr C M S's conviction for inflicting grievous bodily harm on 9th June for which he received a sentence of 9 months imprisonment suspended for 12 months. A copy of Minute 248/2006, which referred was attached to the report.

Mr C M S had been subject to a Criminal Record Bureau (CRB) check which confirmed details of his conviction and which revealed no further convictions. A copy of the CRB disclosure was available at the meeting.

A copy of the Council's guidelines on the Relevance of Convictions was attached to the report.

Members were respectfully reminded that under the provisions of Section 51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 District Councils were 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, and Section 59(1)(a) makes the same provisions in respect of licences to drive hackney carriages.

Members were advised that if Mr C M S was considered to be a fit and proper person at this time based on his CRB disclosure then for his application to proceed he would need to submit and pass the medical, driving standards and knowledge test requirements before his licence could be granted.

Mr C M S had requested that Members note that he was currently unemployed and that he had had confirmed that full employment would be given to him by Mitchell Cars if his application was successful.

Mr C M S and his representative (Mr Fidler) were in attendance at the meeting and were given the opportunity to state their case.

Members felt that after consideration of the report and to the comments made by Mr C M S and his representative (Mr Fidler) Members decided to approve Mr C M S's application subject to the submission of a satisfactory medical report and him passing the DSA Taxi Drivers Test and the Council's Knowledge Test before the licence be issued and subject to a written warning as to his future conduct.

RESOLVED that Mr C M S's application be approved subject to the submission of a satisfactory medical report and him passing the DSA Taxi Drivers Test and the Council's Knowledge Test and subject to a written warning as to his future conduct.

**L  
36/09**

#### **Hackney Carriage Driver - MA**

Consideration was given to a report on what action to take in relation to a licensed Hackney Carriage Driver who had received a conviction for "using a vehicle uninsured against third party risks" (IN10).

Mr M A was a licensed hackney carriage driver and had been licensed with this Authority since July 1992. His current licence was due to expire on 28 February 2010.

On the 26th January 2009 the Licensing Unit received notification from Mr M A that he had received a conviction for "using a vehicle uninsured against third party risks" (IN10). The notification and a copy of his DVLA licence was attached to the report.

Mr M A was interviewed in the Licensing Office on 9th March 2009 when he advised officers that he had been taking a vehicle for an MOT at M&M Tyres, Snowdon Road, when he was pulled over by police at Mandale Triangle. A copy of the transcript was attached to the report.

The police advised Mr M A at that time that his vehicle was not insured. Mr M A advised the Police Officer that his car insurance renewal was processed in April 2008, he had always had insurance that covered him on all vehicles.

It transpired however that when Mr M A's son had processed their insurance renewal and obtained a cheaper quote, the new policy did not have the same level of cover as that of the previous policy and unfortunately Mr M A was no longer covered to driver any vehicle.

On the date Mr M A was pulled over by the police he and his brother-in-law were meant to go for the MOT together, but his brother-in-law was unavailable when he collected the car to take it to M&M. Mr M A also wasn't aware that the trade plates were in the boot of the car and the Police Officer did not check the vehicle.

Mr M A was issued £250 fine and 6 DVLA licensing penalty points at Court.

Mr M A was apologetic for his actions though he genuinely believed he was insured as he wasn't aware the car insurance policy was different from his that of his usual policy and advised he would never knowingly driver any vehicle without insurance.

In 2006, Mr M A was issued a written warning and given 6 licensing penalty points as he failed to declare his previous convictions, which came to light on his CRB. Mr M A was convicted on the 15th May 2002 for the offence of "Making A False Statement Or Representation In Order To Obtain Benefit Or Payment" on the 14th February 2001, Contrary to Section 112(1)(A) Social Security Administration Act 1992. Mr M A disputed the information recorded against him on the CRB but did not pursue the issue. A copy of the councils warning letter 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 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 attached to the report for Member's information.

Mr M A was in attendance at the meeting and was given the opportunity to state his case.

Members deliberated over their decision as to whether they were satisfied at this time whether Mr M A was still a fit and proper person to hold a licence.

Members felt that on this occasion to issue Mr M A with a final written warning as to his future conduct. Members hoped that Mr M A had learnt a valuable lesson from the situation.

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

**L  
37/09**

#### **Private Hire Operator - RC**

Consideration was given to a report on a Licensed Private Hire Operator who:-

- (i) had been convicted for employing an unlicensed private hire driver and failing to keep proper records following prosecutions instigated by a neighbouring authority;
- (ii) had had Private Hire Operators Licences held in the Borough's of Middlesbrough and Hartlepool revoked and subsequently reinstated following appeal hearings, but subject to additional conditions being imposed by the Courts.
- (iii) had given this authority's licensing officers cause for concern over the way the company has been run which had resulted in several advisory letters being sent to them which appeared to have been ignored.

RC was a licensed Private Hire Operator and had held a licence with this authority since October 2004 and the current licence was due to expire on 30th November 2009. The Managing Director/General Manager was Mr G B who was appointed as such on 1st August 2008. The Company also held Private Hire Operator Licences with neighbouring authorities at Hartlepool and Middlesbrough.

The Company was licensed to operate 77 private hire vehicles with the Council and there were currently approximately 52 vehicles owned by the company and 22 owner-drivers working on that licence. A copy of Operators Licence attached to the report.

Prior to Mr G B being employed as a Manager, Licensing Officers had concerns

in relation to the way in which the Company was being run. The Council was receiving general complaints from members of the public with regard to how customer complaints to the Company were being dealt with. In general terms they were not satisfied with the answers they were being given, if any. A number of complaints were not even recorded or actioned in anyway by the Private Hire Operator.

In addition, licensed vehicles were not always being sent for their bi-annual test of fitness at the Council testing station when requested resulting in more vehicle suspension notices having to be issued than was considered acceptable.

Prior to Mr G B's appointment in 2008 consideration was given to reporting these matters to Members. However, in light of the appointment of Mr G B and following discussions with him it was decided he should be given an opportunity to make changes and to introduce practices and procedures that would alleviate the problems. This did improve the situation and the number of complaints went down, and the vehicles started to attend for test as the new practices and procedures were implemented. The proposed report to this Committee was therefore withdrawn on the understanding that the business continue to be managed correctly.

On 19 January 2009 Mr G B informed the Council by fax that the company had been convicted of two offences under The Local Government (Miscellaneous Provisions) Act 1976. This was in relation to an unlicensed driver being used to carry passengers, and failure to keep proper records in relation to the licence held in Hartlepool. The company was fined a total of £300 in total with a costs award of £350. A copy of the fax was attached to the report.

With the above convictions pending, on 7 October 2008 Hartlepool Borough Council Licensing Committee was presented with a report regarding the general day to day management of the company. The council had received reports of drivers being assaulted, customers feeling intimidated, the operating of unlicensed vehicles and drivers. Their Licensing Committee came to the conclusion that based upon the evidence presented that the Private Hire Operators Licence be revoked.

This decision was appealed by the company to the Magistrates Court and following a hearing in the Magistrates Court at Hartlepool the appeal was allowed subject to the following conditions; Mr G B remained a Director of the Company and any application for an Operators Licence by the Company shall include his name; If Mr G B ceases to be a Director, he shall notify the Local Authority; Mr A K was not to return as a Director of the Company without prior approval of the Local Authority, and was not to be involved in the day to day running of the business. A copy of the decision was attached to the report.

Middlesbrough Borough Council also had issues relating to the Private Hire Operators Licence held by the company and the way in which their business was being conducted. So much so that the Licensing Committee at Middlesbrough also revoked their Private Hire Operators Licence.

Again, following a three-day hearing in the magistrates their Appeal was allowed by District Judge Harrison with specific conditions to be applied to the Operators Licence. These were shown on the e-mail that was copied to an officer from

Middlesbrough Council and a copy of which was attached to the report. As of the date of writing this report, this was still to be formally communicated from the courts to Middlesbrough Council.

The Company had also been written to regarding the issue of "out of town" vehicles being used within the Stockton Borough area. Initially hackney carriages and recently private hire vehicles had been found to be illegally standing/waiting for hire in the Stockton Borough district when not licensed to do so. A copy of the letter sent was attached to the report.

As the information given in the letter appeared to have no effect it was felt that Mr G B should be invited to the office for an informal meeting to address quite clearly what the concerns were. This was done on the 12 February 2009. A letter was also sent on the 6th March 2009, which confirmed the matters discussed. A copy of that letter was attached to the report.

The situation was monitored for any immediate changes following the meeting. However, this did not appear to have any impact and the company continued to operate in the same way. A further letter was therefore sent on the 30 March 2009 regarding the issue and again outlining the Council's opinion in relation to vehicles from outside of the Stockton Borough district being used. A copy of that letter was attached to the report.

Again the situation did not improve following that letter. Evidence was then gathered in relation to the use of vehicles from other authorities being used and a further letter was sent on 8th June 2009 in relation to this and requesting information regarding the individuals that had been observed and advising that matters would be referred to the Licensing Committee. A copy of that letter and the response from Mr G B was attached to the report.

Members were reminded that under the provisions of Section 62 (1) of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke or (on application therefore under section 55 of this Act) refuse to renew an operator's licence on any of the following grounds:-

- (a) any offence under, or non-compliance with the provisions of this part of this act;
- (b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;
- (c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
- (d) any other reasonable cause

(2) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the operator notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal.

(3) Any operator aggrieved by a decision of a district council under this section



may appeal to a magistrates court.

Mr G B and Mr Schiller (Solicitor Representing Mr G B) were in attendance at the meeting and were given the opportunity to state their case.

Members had regard to the report and attached appendices, copies of which had been given to Mr G B prior to the meeting. Members also listened carefully to what Mr G B's representative had to say with regard to the matters disclosed. Also taken into consideration was the outcome of the two appeal hearings in relation to the revoked licenses at both Hartlepool and Middlesbrough which were reinstated on appeal at Hartlepool and Teesside Magistrates Courts respectively.

Members deliberated as to whether they were satisfied at this time whether the company was still "fit and proper" to hold an operators licence. Members were concerned at the convictions which the company had received in relation to Licensing matters. Members were also concerned that Hartlepool and Middlesbrough had both felt it necessary to revoke R C Operators Licence within their respective districts. However it was noted that much of the evidence on which the revocation decisions had been taken was historic and it was accepted that since Mr G B had been employed there had been substantial improvements to the Company's working practices and systems.

Members felt that on this occasion to allow the company to retain their Operators Licence but with a warning as to their future conduct. The Operator was warned that any relapse in the standards that the Company had now set may result in this matter been referred back to the Licensing Committee. Members also noted the undertaking given by the Operators legal representative that the Operator and the Company was willing to agree to the conditions as detailed by District Judge Harrison be attached to the Operators Licence issued by Stockton Council. The spirit of the conditions would be implemented by the Operator immediately and the conditions would be formally attached to the licence at the next renewal date.

Those conditions were:-

1. Mr G B shall at all times be a director of the Company. If for any reason he is no longer a director, T C Limited must report this to the Local Authority within seven days.
2. There shall be no material alteration in the composition of the Company without written notice been given to the Local Authority within seven days of its alteration. For these purposes the composition of the Company is deemed to be Mr G B as Director, A I and S K as shareholders and A L as Company Secretary.
3. Mr A K does not have a shareholding in excess of that of any other shareholder.
4. All dealings with the Local Authority and all regulatory aspects of the Company are to be dealt with by Mr G B who will provide a specimen signature to the Local Authority and only his signature will be accepted by the Local Authority.

A copy of the letter would remain on Mr G B's Operators file and may be referred to should there be any further disciplinary issues in the future.

RESOLVED that:-

1. Private Hire Operator RC be allowed to retain their Operators Licence but with a warning as to their future conduct.
2. Private Hire Operator RC be warned that any relapse in the standards that the Company had now set may result in this matter being referred back to the Licensing Committee.
3. The undertaking given by the Operators legal representative be noted that the Operator and the Company was willing to agree to the conditions as detailed by District Judge Harrison be attached to the Operators Licence issued by Stockton Council. The spirit of the conditions would be implemented by the Operator immediately and the conditions would be formally attached to the licence at the next renewal date.

Those conditions are:-

- a. Mr G B shall at all times be a director of the Company. If for any reason he is no longer a director, T C Limited must report this to the Local Authority within seven days.
- b. There shall be no material alteration in the composition of the Company without written notice been given to the Local Authority within seven days of its alteration. For these purposes the composition of the Company is deemed to be Mr G B as Director, A I and S K as shareholders and A L as Company Secretary.
- c. Mr A K does not have a shareholding in excess of that of any other shareholder.
- d. All dealings with the Local Authority and all regulatory aspects of the Company are to be dealt with by Mr G B who will provide a specimen signature to the Local Authority and only his signature will be accepted by the Local Authority.

**L**  
**38/09**      **Private Hire Driver - RT**

Consideration was given to a report on the continued fitness of a licensed driver who received a final written warning from the Licensing Committee on the 20th January 2009 following a complaint from Stockton Borough Council Parking Attendant and when it was resolved that his licence be reviewed after 6 months.

Mr R T was a licensed private hire driver with the authority and had been licensed since October 2007 and his current licence was due to expire in October 2009.

Mr R T was referred to Licensing Committee on the 20th January 2009 for members to determine his continued fitness following a complaint about his attitude from Parking Attendant on the 6th October 2008.

At the Committee hearing on 20th January 2009, the Committee resolved to issue him with a final warning as to his future conduct. The Committee also required Mr R T be brought back before them in six months time for his licence to be reviewed. A copy of minute 73/08, which referred was attached to the report.

During the past six months no further complaints had been received however, Mr R T did notify the Licensing Unit on the 30 January 2009 of a motoring conviction which he received on the same day, offence code CU80 which was the code for using a mobile phone whilst driving a motor vehicle. A copy of the conviction notification was attached to the report which included a copy of the fixed penalty notice and a copy of his DVLA driving licence was attached to the report for Members information.

Member 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:-

(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.

Mr R T and Mr Wilson (Representing Mr R T) were in attendance at the meeting and were given the opportunity to state their case.

After consideration of the report, a copy of which had been provided to Mr R T prior to the meeting, and to the comments made at the meeting the Members decided on this occasion to issue Mr R T with a final written warning.

Members considered the offence of using a mobile phone whilst driving to be

extremely serious putting not only himself, but also his passengers and other road users at risk, and Members expected licensed drivers to demonstrate a high standard of driving at all times.

Members were also extremely concerned that Mr R T committed this offence only 10 days after they had agreed to renew Mr R T's licence with a final warning as to his future conduct.

The members were minded to revoke Mr R T's licence because of this and the only reason that they did not revoke it is because of the administration error that had resulted in the matter not being brought to their attention at the time the offence had been notified.

Whilst Mr R T had been fortunate on this occasion Members advised Mr R T that there would be no further warnings and therefore any further complaints about his conduct or any further convictions he received would result in a referral back to the Licensing Committee and where details of this "final" written warning would be referred to and where Mr R T's private hire drivers licence could be revoked. A copy of the letter will remain on Mr R T's file for future reference.

RESOLVED that Mr R T be issued with a final written warning.