

Licensing Committee

A meeting of Licensing Committee was held on Thursday, 4th November, 2010.

Present: Cllr Bill Woodhead (Chairman); Cllr Paul Kirton, Cllr Colin Leckonby, Cllr Alan Lewis, Cllr Mrs Kath Nelson, Cllr Maurice Perry and Cllr Fred Salt.

Officers: C Barnes, L Maloney, S Mills, M Vaines (DNS); P K Bell, J Nertney (LD).

Also in attendance: Mr C D for agenda item 5 - Private Hire Driver - Mr C D; Mr B M and Mr D Wilson (AtoZ Licensing Representing Mr B M) for agenda item 6 - Application for a Private Hire Drivers Licence - Mr B M; Mr A S H for agenda item 7 - Private Hire & Hackney Carriage Driver - Mr A S H; Mr H L for agenda item 8 - Application for a Private Hire & Hackney Carriage Drivers Licence Mr H L.

Apologies: Cllr Dick Cains, Cllr Mrs Eileen Craggs, Cllr Ken Dixon, Cllr Jean Kirby, Cllr Tina Large and Cllr Ann McCoy.

L 84/10 **Declarations of Interest**

There were no interests declared.

L 85/10 **Equality Act 2010 - Taxis & Private Hire Vehicles**

Consideration was given to a report on new powers under the Equality Act 2010 which permits a licensing authority to maintain a list of "designated wheelchair accessible vehicles", which in turn places mandatory duties on the drivers of such vehicles to assist passengers who use wheelchairs. The new provisions also required a procedure to be adopted for dealing with applications for exemptions from these duties from drivers on medical grounds or because of their physical condition.

The Equality Act 2010 brought together in one Act a number of different pieces of legislation about discrimination, including disability discrimination. The new Act included many of the taxi and private hire vehicle (PHV) provisions which were included in the Disability Discrimination Act 1995, but it also contains some important changes.

Sections 160 to 173 of the Equality Act 2010 related specifically to hackney carriage vehicles (HCVs) and PHVs and some of these provisions were brought into force on 1st October 2010.

The Department of Transport had issued guidance documents on the new provisions, one for local authorities and one for the trade. Copies of these documents were attached to the report.

Section 167 allowed licensing authorities to maintain a list of "designated vehicles", that is, a list of wheelchair accessible HCVs and PHVs licensed in their area. The consequence of being on this list was that the driver must undertake the duties to assist passengers who use wheelchairs.

Whilst this section would not to be commenced until a later date (not before April 2011) councils were being urged to start maintaining a list as soon as possible for the purpose of liaising with the trade and because drivers of these vehicles can apply for exemption from having to comply with this requirement with effect from 1st October 2010.

Members were advised that when this section comes into force, and the lists of designated vehicles had a statutory effect, it would be possible for the owner of a vehicle to appeal against a decision to include his/her vehicle on the list. The appeal would go to the magistrates court.

Further more detailed guidance would be issued about the accessibility requirements councils should apply in relation to this provision.

Members views were therefore requested on whether the council should maintain a list of "designated vehicles".

Section 165 of the Act placed duties on drivers of designated wheelchair accessible HCVs and PHVs.

The duties were:-

- To carry the passenger while in the wheelchair;
- Not to make any additional charge for doing so;
- If the passenger chooses to sit in a passenger seat to carry the wheelchair;
- To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- To give the passenger such mobility assistance as is reasonably required.
(Further guidance on what mobility assistance means was given in the guidance for drivers attached to the report)

This section would be commenced at a later date, but not before April 2011.

Should the Council decide not to maintain a list of "designated vehicles" then the above duties would not apply to the drivers.

Before the duties are brought into force drivers of designated vehicles who suffer from a disability or medical condition which would make it impossible or unreasonably difficult to provide physical assistance can apply for an exemption from the duties to offer assistance.

This section was commenced on 1st October 2010 and the Council would therefore need to have a system in place for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.

Also from October, it would be possible for drivers to appeal against a decision by the Council not to grant an exemption; this appeal would also go to the magistrates' court.

The Department for Transport had indicated that they would be making regulations early in 2011 specifying the format for the Exemption Notices that councils would issue and exempt drivers would be required to display in their vehicles and they would also print and distribute the Exemption Notices.

Officers recommended that any driver wishing to apply for an exemption should be required to produce a report either from his own doctor or his consultant, when applicable, confirming that his medical condition or physical condition

makes it impossible or unreasonably difficult for him/her to comply with the duties and that each application be determined on its individual merits.

Members views are requested therefore on this recommendation and on whether applications for exemptions should come before this committee for determination or whether the ability to determine applications for exemptions be delegated to officers.

Members discussed the report and agreed that Officers should consult with the taxi trade and disabled groups and report back to the Licensing Committee.

RESOLVED that:-

1. Officers consult with the taxi trade and disabled groups and report back to the Licensing Committee.
2. The proposals be referred to Cabinet for approval.

L
86/10 **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
87/10 **Private Hire Driver - C.D.**

Consideration was given to a report on a renewal application from a private hire driver who had since the grant of his licence provided a positive drugs test sample to officers of this Council and was suspended.

Mr C D became a licensed Private Hire Driver with the Authority on 4th September 2007, his licence expired on the 30 September 2010.

Mr C D attended Licensing Committee on 21st October 2010 after a certificate of analysis was received from Cozart which confirmed a positive result for both benzoylecgonine and cocaine. The Committee had regard for the report and attached appendices, and also Mr C D account of the matter. The Committee resolved to grant the renewal of Mr C D private hire licence subject to him submitting a hair sample for drugs analysis, at his own cost. On grant of his licence Mr C D would also be subject to random drugs testing with the first two tests at his own cost. Refusal to submit to testing would result in the matter being heard before the Licensing Committee.

Research into hair sample analysis stated hair grows at an average rate of 1cm per month and every single hair follicle has its own blood supply. Once a drug is taken, it is absorbed into the blood stream and circulated around the body. As the hair grows, it takes drugs from the blood supply running through the hair follicle and incorporates them into the hair in small, but measurable amounts where the drugs can remain almost permanently. Hair analysis can detect as far back as the length of the hair sample allows.

Samples can be taken and analysed months, or even years after the event,

providing there was sufficient hair length. However, due to the length of Mr C D hair, hair sample analysis was no longer an option. Due to the varying growth cycles of body and head hair it was difficult to be specific with the time periods covered by body hair samples. For this reason month-by-month analysis on body hair samples was also not an option.

Members were advised that Mr C D remained suspended.

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 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,

If it appeared 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 C D was in attendance at the meeting.

Members deliberated over their decision as to whether they were satisfied at this time whether Mr C D was still a fit and proper person to hold a licence, they noted Mr C D's remorse and his insistence that he was not a regular drug user and he would not take drugs again. Members agreed on this occasion to grant Mr C D's renewal application and requested that Mr C D was subject to further random drug testing with the first two tests being at Mr C D's own cost. The Licensing Officer would contact Mr C D in due course for Mr C D to submit his first fluid sample. Mr C D would be expected to attend at the time requested, should Mr C D not comply with this or any other reasonable request the matter would be referred back to the licensing committee.

Members also agreed on this occasion to issue Mr C D with a written warning as to his future conduct.

RESOLVED that:-

1. Mr C D's renewal application be granted.
2. Mr C D be subject to further random drug testing with the first two tests being at Mr C D's own cost.
2. Mr C D be issued with a written warning as to his future conduct.

L
88/10

Application For A Private Hire Drivers Licence - B.M.

Consideration was given to a report on an application for the grant of a Private Hire drivers licence from an applicant who had a relevant Police Caution. The offence details were "Battery" on 28th January 2009, Criminal Justices Act 1988 S.39'.

Mr B M had made an application to become a Licensed Private Hire Vehicle driver. A copy of his application form and driving licence was attached to the report.

As part of the application process a Criminal Record Bureau check was carried out and this revealed a Police Caution dated the 25 February 2009. This was recorded as an offence of "Battery" committed on 28th January 2009.

Following this Mr B M was invited to the office for an interview in relation to the information we had received. A copy of that record of interview was attached to the report. A copy of the Bureau disclosure was available for Members information..

Details of the incident were included in the report.

Mr B M was subsequently spoken to by the Police following a complaint from the injured party. He had attended the Police Station to answer the allegations and had been told that CCTV footage existed in relation to the incident and showed the other party did not throw the first punch.

The Police Caution was not declared on his application form as Mr B M did not believe it to be relevant. He went on to say that he spoke to some people in the "trade" who advised him it was very important to inform the Council of all matters in relation to the police. He then wrote a letter dated 16th July 2010 and presented it the Administration Team at Church Road. A copy of the letter was attached to the report.

Members were reminded that under the provisions of Section 51(1) (a) of the Local Government Miscellaneous Provisions Act 1976 which instructs District Councils 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.

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

Mr B M and his representative (Mr Wilson AtoZ Licensing) were in attendance at the meeting and were given the opportunity to state their case.

Members had full regard to the report and attached appendices, copies of which

had been given to Mr B M prior to the meeting. Members also listened carefully to what Mr B M and his representative, Mr Wilson had to say with regard to the matters disclosed.

Members noted that when Mr B M completed his application form he had stated that he was unemployed. At the meeting Mr B M informed Members that he had a number of business interests including a cleaning company and a business selling SIM cards. Mr B M advised Members that his SIM card business was so successful that in December 2010 he would receive an award from Peter Jones the businessman who appears on Dragons Den. Mr B M advised Members that the reason for him receiving this award was because he had generated the most business and/or sales in his SIM card business.

When Mr B M was asked why he wanted a taxi licence when his businesses were doing so well Mr B M stated that he knew the taxi trade very well as he had grown up with knowledge of the business as his father worked in the trade.

Mr B M advised Members that at the same time as applying for his badge with Stockton he also applied for a drivers badge with Berwick. Mr B M was asked whether he had disclosed his caution for battery to Berwick when completing their application form. Mr B M stated that he had not but that they had also required a CRB check and Mr B M had appeared before their Licensing Committee. Mr B M stated that he was granted a licence by Berwick and had been licensed with them since 16th August 2010. When asked why Mr B M had also applied to Berwick he stated it was because on a number of occasions Mr B M had failed the DSA test which was a pre requisite for being licensed by Stockton Council. Mr B M stated that since obtaining his Berwick hackney carriage drivers licence he had been working for a licensed operator undertaking private hire bookings. Mr B M stated that he worked approximately 16 hours per week for a licensed operator and that he mainly worked on a Friday and Saturday.

Members had regard to Mr B M's explanation for why he did not complete the application form correctly and why he made a false declaration on his statutory declaration. Members noted that to make a false statement on a statutory declaration can result in a criminal prosecution and/or conviction and that in essence it amounted to perjury. Mr B M's explanation for this was that he had been told by someone whose name he could not remember that he did not have to put his caution down on the application form. Even if Members accepted this explanation, which they did not, Mr B M had then completed the application form himself, ticked the box saying he had no cautions and then taken this to a solicitor and signed the statutory declaration. On the balance of probabilities Members were of the view that at the least he had been untruthful and that at worst this had been an attempt to deceive the Council when submitting his application form

In addition to Members finding that Mr B M had been dishonest in his application Members also had regard to his caution for battery which was received on 25th February 2009 in relation to an incident on 28th January 2009. Under the Councils guidelines this was an offence of violence for which would normally have to show three years free from the date of the conviction or caution. Members noted that this was not the lowest range of offence which would have been a charge of common assault. Although the caution was also

under section 39 of the Criminal Justice Act 1988 Mr B M had been cautioned for assault by battery. Members found no reason to depart from their guidelines.

After taking into consideration their finding that on the balance of probabilities Mr B M had been dishonest in his application form and that he had received a caution for battery on 25th February 2009 these were deemed sufficient reason under Section 51(1)(a) of the Local Government (Miscellaneous) Provisions Act 1976 to find that Mr B M was not a fit and proper person to hold a drivers licence and his application was refused.

RESOLVED that Mr B M's application for a Private Hire Drivers Licence be refused under Section 51(1)(a) of the Local Government (Miscellaneous) Provisions Act 1976 as Mr B M was not a fit and proper person to hold a drivers licence.

**L
89/10** **Private Hire & Hackney Carriage Driver - A.S.H.**

Members were informed that Mr A S H had requested that the item be deferred as he said he had not received the letter inviting him to the Licensing Committee and he wanted to obtain legal advice.

Members agreed that the item be deferred.

RESOLVED that the item be deferred.

**L
90/10** **Application For A Private Hire & Hackney Carriage Drivers Licence - H.L.**

Consideration was given to a report on an applicant who had applied for a combined hackney carriage and private hire drivers licence, the applicant had relevant convictions and had previously had a licence refused.

An application for a combined hackney carriage and private hire drivers licence had been received from Mr H L. A copy of this application, including his DVLA licence, was attached to the report.

Mr H L had previously had a licence application refused, by Officers, in October 2000. A copy of the refusal letter was attached to the report.

An important part of the vetting process was to undertake a Criminal Record Bureau check. Mr H L's CRB Disclosure revealed that he had relevant convictions and Officers subsequently interviewed him on 11th August 2010. A copy of the transcript was attached to the report. A copy of the CRB was available at the meeting.

In 1998, Mr H L received a conviction for:-

- Driving Other Than In Accordance With A Licence
- Resist Or Obstruct A Constable
- Using Vehicle While Uninsured

Mr H L advised he was young, he did not have a full DVLA driving licence. He got in his fathers car and was pulled over, by Police, down the road from his home.

In January 2005, Mr H L was convicted of:-

- Possessing Controlled Drug With Intent To Supply – Class A - Heroin
- Possessing Controlled Drug – Class A – Cocaine
- Possessing Controlled Drug – Class A – Heroin

Mr H L was given a custodial sentence of 42 months and two 6 months to run concurrent. He advised he served half of the sentence and was then released with a tag for 4 months.

Mr H L denied ever taking drugs. He informed Officers that he was young and got involved with the wrong people. He wanted a lavish lifestyle and ended up embroiled with drug dealers, he was a courier for the main dealers. Mr H L was asked if he would be willing to undertake a drugs test and he advised he would. The test was undertaken at the end of the interview and the results were negative.

Mr H L worked in the control room at for taxis firm. His main role was as a telephone operator though he also undertook other duties for the business. A character reference from his father detailing Mr H L's duties in the business was attached to the report.

As part of Mr H L's rehabilitation from prison, he had worked with Nacro. Nacro work with the most disadvantaged people, offenders and those at risk of offending, to help them find positive alternatives to crime and to achieve their full potential in society. Two letters had been provided in support of Mr H L. A copy of these letters were attached to the report.

Mr H L advised that when he was convicted and sent to prison he lost his then partner and daughter. He did not see either of them because of being involved in drugs and had learnt a very valuable lesson. Since getting out of prison, he had rebuilt his family life; he was married with one child and living with his parents.

Mr H L had a further conviction on his DVLA licence. This was an IN10 (using a vehicle uninsured against third party risks), which he received 6 points in January 2010. Mr H L advised in interview this was because he went to buy a car from someone, it was a private sale, he was of the impression his insurance would cover him for a test drive and it didn't.

Mr H L had provided a satisfactory medical and had also successfully completed the DSA driving test and his local knowledge test.

A copy of the guidance 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 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 H L and his representative (Mr Ross - Hawkins Ross Solicitors) were in

attendance at the meeting and were given the opportunity to state their case.

Members agreed to refuse Mr H L's application for the grant of a Hackney Carriage and Private Hire drivers licences on the grounds that he was not considered to be a fit and proper person because of his convictions. In particular Members noted that his convictions for drug offences related to both possession and supply of Class A drugs which were deemed to be extremely serious matters.

Members noted that in relation to Mr H L's conviction for driving while uninsured in January 2010 Mr H L's legal advisor informed the Members that if he had provided legal advice at the time it was arguable that Mr H L may have had valid insurance at the time and a copy of his certificate of insurance was produced. It was noted that no policy document was produced by Mr H L and Members were therefore of the view that they could not go behind the offence and had to consider this conviction in accordance with the Policy Guidelines on the relevance of convictions.

Members had regard to the references which Mr H L had been provided with when he was released from prison. Members accepted that these were good references but noted that they had been provided when Mr H L had been released from prison and the authors of the references were unaware of his recent conviction for driving without insurance. After hearing Mr H L's submissions Members were not persuaded by the information presented to depart from the Policy Guidelines, when determining Mr H L's fitness. Members found that owing to Mr H L's history of relevant convictions he was not a fit and proper person to hold a drivers licence.

RESOLVED that Mr H L's application for a Private Hire & Hackney Carriage Drivers Licence be refused under Section 51(1)(a) of the Local Government (Miscellaneous) Provisions Act 1976 as Mr H L was not a fit and proper person to hold a drivers licence.

**L
91/10**

Application For A Private Hire & Hackney Carriage Driver Licence - I.H.

Members were informed that Mr I H was not in attendance at the meeting. Members decided to hear the item in Mr I H's absence as he had had sufficient notice of the meeting.

Consideration was given to a report on the fitness of an applicant for a combined licence to drive hackney carriage and private hire vehicles who had relevant convictions for a major traffic offence and further motoring offences.

Mr I H had submitted an application for a combined licence to drive hackney carriage and private hire vehicles with the Authority. A copy of his application was attached to the report.

In his application Mr I H had declared three convictions:-

21st November 2008 Using a mobile phone whilst driving a motor vehicle for which he received a £60 fine and 3 DVLA penalty points.

24th August 2009 Using a mobile phone whilst driving a motor vehicle for which he received a £100 fine and 3 DVLA penalty points.

8th August 2009 driving without due care and attention for which he received a £90 fine and 5 DVLA penalty points.

Mr I H had been subject to a Criminal Record Bureau (CRB) check which confirmed on 3rd December 2009 Mr I H was convicted of driving a vehicle without due care and attention on 8th August 2009 for which he received a fine of £90.00 and 5 DVLA penalty points. In addition Mr I H was convicted of resisting or obstructing a constable on 9th August 2009 for which he received a fine of £90.00 costs of £85.00 and a victim surcharge of £15.00. A copy of the CRB disclosure was available at the meeting.

Mr I H was interviewed on 17th August 2010 regarding the CRB disclosure a summary of the transcript of the interview was attached to the report.

Mr I H stated he was driving behind a bus in Bradford, the bus braked in bad weather and Mr I H's vehicle skidded hitting a bus stop. After thinking there was minimal damage to the bus stop or to his vehicle Mr I H made off without reporting the incident. Mr I H was identified as the driver after his VRM plates was found at the scene. When questioned further about the offence of obstructing a constable Mr I H claimed this was because he did not stop at the time of the incident and was located by police the following day.

When asked about the two offences for mobile phone use Mr I H stated that on the first conviction he was using his mobile phone whilst driving to obtain directions. On the second instance he was using a mobile phone whilst driving to enquire about his son who was ill at the time, he now owned and used a hands free kit whilst driving. Mr I H had 11 live penalty points on his DVLA driving licence for the offences detailed above. A copy of which was attached to the report.

Mr I H was a licensed driver with Middlesbrough Council for 5 years, and records showed no previous history or enforcement action, however he failed to renew his driver badge 31st December 2009 after securing different employment. Mr I H also submitted an application with Middlesbrough Council and attended Licensing Committee on 6th September 2010. Members refused the application on the grounds of having a disregard for public safety on three occasions in 2008 and 2009 accumulating 11 points on his licence.

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 are satisfied that the applicant is a fit and proper person to hold such a licence. Section 59 (1) (a) provides the same instruction in respect of applicants for hackney carriage drivers.

Members were advised that if Mr I H had passed his DSA and Medical test requirements and if he was considered to be a fit and proper person at this time based on his convictions his application would proceed and his licence would be granted upon completion of his knowledge test and payment of fees.

Members decided to refuse Mr I H's applications for the grant of a Hackney Carriage and Private Hire drivers licences on the grounds that he was considered not to be a fit and proper person at because of his convictions and DVLA penalty points.

Members were not persuaded by the information presented by Mr I H in interview to depart from the Policy Guidelines, when determining his fitness. Members found that owing to Mr I H's history of driving convictions he was not a fit and proper person to hold a drivers licence.

RESOLVED that Mr I H's applications for the grant of a Hackney Carriage and Private Hire drivers licences be refused on the grounds that he was considered not to be a fit and proper person at because of his convictions and DVLA penalty points.

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92/10 **Hackney Carriage Driver Licence - R.C.**

Members were informed that Mr R C was not in attendance at the meeting. Members decided to hear the item in Mr R C's absence as he had had sufficient notice of the meeting.

Consideration was given to a report on a licensed driver who has received a conviction for drink driving.

Mr R C had been a licensed driver since July of 2003, and his Licence was due to expire on 31st July 2011.

The Authority received a report from Cleveland Police on 17th September 2010 in relation to Mr R C and that information informed us he had been arrested on 14th September 2010 for an offence of "Driving a motor vehicle with excess alcohol". A Copy of the notification from Cleveland Police under the Notifiable Occupations Scheme Home Office Circular 6/2006 was attached to the report.

The details were that on 14th September 2010 at Durham Road By-Pass in Stockton-on-Tees, Mr R C drove a motor vehicle on a road and due to the manor of driving was stopped and provided a positive roadside breath test.

Due to the nature of the above information it was felt necessary to suspend Mr R C's Hackney Carriage Drivers licence with immediate effect. A copy of the letter of suspension was attached to the report.

The notification of Mr R C's actual conviction was sent in a letter dated 19th October 2010 and a copy of that letter was attached to the report. The information outlined that Mr R C's Licence was disqualified for 12 months, he was fined £100.00 with a victim surcharge of £15.00 and costs of £50.00. The disqualification would be reduced if Mr R C attended a Course designed to inform people of the dangers of Alcohol and Driving when combined.

A copy of the Council's document entitled "Relevance of Convictions, Cautions, Reprimands, Warnings and Complaints and Character" was attached to the report.

He had no other disciplinary matters or complaints from Members of the public

recorded on his file.

Members decided that Mr R C's licence to drive Hackney Carriage and Private Hire vehicles be revoked with immediate effect. Members agreed that due to the very serious nature of the offence and the fact that Mr R C was no longer the holder of a DVLA licence that it was sufficient cause to revoke his licence.

Members were of the view that the integrity of a licensed driver was one of the most important factors in protecting members of the public when travelling in licensed vehicles. The safety of the public was one of the main considerations of Members and his actions on that morning were deemed to put the safety of the public at risk. As Members made a finding that the revocation of Mr R C's licence was based on the grounds of public safety they agreed that under Section 61(2)(B) that the revocation takes immediate effect.

RESOLVED that Mr R C's licence to drive Hackney Carriage and Private Hire vehicles be revoked with immediate effect under Section 61(2)(B).