

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 12th April, 2011.

Present: Cllr Bill Woodhead (Chairman); Cllr Dick Cains, Cllr Paul Kirton, Cllr Miss Tina Large, Cllr Mrs Ann McCoy, Cllr Mrs Kath Nelson, Cllr Maurice Perry, Cllr Roy Rix and Cllr Fred Salt.

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

Also in attendance: Mr M G for agenda item 8 - Application for Licence to Drive Private Hire Vehicles - Mr M G.

Apologies: Cllr Eileen Craggs, Cllr Ken Dixon, Cllr Jean Kirby, Cllr Colin Leckonby and Cllr Alan Lewis.

L Declarations of Interest

123/10

There were no interests declared.

L Minutes

124/10

The minutes of the meetings held on 16th December 2010, 11th January 2011 and 21st January 2011 were signed by the Chairman as a correct record.

L Licensing Protocol

125/10

The Legal Adviser to the Committee reported that with regard to the meeting held on 23rd November 2010 and minute L 95/10 advice had been provided by the Director of Law and Democracy who advised that the Councils Constitution did not require the Licensing Protocol to be reported to Cabinet. The Licensing Committee were invited to agree to adopt the Protocol.

RESOLVED that the Licensing Protocol be adopted by the Licensing Committee.

L Exclusion of the Public

126/10

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 Private Hire Driver - T.H.

127/10

Consideration was given to a report on Mr T H a licensed private hire driver who had failed to submit an application to enable his three yearly criminal record check to be carried out and who was suspended.

Mr T H was not in attendance at the meeting and the Licensing Officer informed Members that Mr T H had gone into the Licensing Unit with a letter dated 8th April 2010 surrendering his private hire driver licence.

In view of the reason for the suspension of Mr T H's licence Members took the view that they still had to make a determination in respect of the matter.

After consideration of the report Members agreed that Mr T H's failure to submit to a criminal record check with the Criminal Records Bureau meant that they were unable to determine Mr T H's continued fitness to hold a drivers licence and that in the interests of public safety this was sufficient grounds under Section 61(1)(b) of the above mentioned Act to be deemed a reasonable cause for revoking Mr T H's Hackney Carriage and Private Hire Drivers Licence. Furthermore Members made a finding that the revocation of Mr T H'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:-

1. Mr T H's Private Hire Drivers Licence be revoked.
2. Under section 61 (2B) of the Act public safety was deemed to be relevant and as such the revocation of Mr T H's licence take immediate effect.

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128/10 **Application For A Private Hire Driver Licence - R.A.**

Members were informed that Mr R A's mother had telephoned the Licensing Unit and informed them that Mr R A had been called into work. Mr R A had asked his mother to ask for a deferment of the item so that he could be in attendance at the meeting. Members agreed with this request.

RESOLVED that the item be deferred.

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129/10 **Application For A Private Hire Driver Licence - M.G.**

Consideration was given to a report on the fitness of an applicant who had applied for a private hire driver's licence who had a previous licence revoked by the Committee. Mr M G's licence was revoked after a conviction was imposed on him for illegally plying for hire contrary to section 45 of the Town Police Clauses Act 1847, and using a vehicle uninsured against third party risks contrary to the Section 143 Road Traffic Act 1988.

Mr M G had submitted an application for a licence to drive private hire vehicles with the Authority. A copy of his application including his DVLA driving licence was attached to the report.

Mr M G attended the Licensing Committee meeting held on 28th July 2010 when Members resolved to defer full consideration of the matter to a future committee hearing, in order for Mr M G to provide additional information to the Committee on the outcome on the investigation by the Department of Works and Pensions into his benefit claims. A copy of the minute 28/10 which refers was attached to the report.

After numerous letters to Mr M G and the DWP this information was eventually received. Documentation showed Mr M G was interviewed under caution on 22nd August 2008 by Fraud Investigation Officers who noted that Mr M G was evasive throughout the interview which eventually had to be suspended as Mr M G claimed he had to attend prayers. During interview Mr M G was questioned about the time sheet which had been provided by his Private Hire Operator showing Mr M G worked over 285 hours in the month of April 2007, Mr M G

claimed that the Private Hire Operator must have got mixed up with the car numbers and that he had not worked that many hours, he went on to say he has never worked more than 16 hours and that the Private Hire Operator must have gave his Pin number to another driver (page17, 18/39) A transcript of this interview was attached to the report.

Mr M G was again interviewed under caution on 12th March 2009 by Fraud Investigation Officers when Mr M G confirmed he had worked for the Private Hire Operator on a self employed, sub contracting basis until giving up his licence in November 2007. He also stated that he had been granted a new licence with Berwick-upon-Tweed from 17th December 2008 and had been doing self employed work earning £40.00 per week which he failed to declare for pension credit purposes.

During interview Investigators stated the Private Hire Operator had informed that Mr M G would have to insert his Pin number when he was available to drive and that no body else would have the Pin unless he gave it to them, Mr M G replied saying the Private Hire Operator must have been fiddling in that. Investigators questioned Mr M G regarding the mileage used on his vehicle which was 163,102 in December 2005 and 204,944 in December 2006, which represented 41,842 miles in 12 months. Mr M G replied saying he had to go to Sheffield 10 times a year and that he knows people in the community in London and relatives in Peterborough and Blackpool (page19-22/30). A transcript of this interview was attached to the report.

Investigators concluded that although time sheets had been provided by the Private Hire Operator Mr M G had not kept any records of profits or loss accounts, so the amount to be paid back was calculated on the time spent working with another Private Hire Operator Cars on a Berwick Licence which he failed to declare.

As a consequence of the investigation officers calculated the overpayment to £630.00 and Mr M G was requested to pay back £390.00 Pension Credit he had been paid which would not have been paid if he had disclosed his earnings from the Private Hire Operator who he was working for on a Berwick Licence. On the 29th May 2009 Mr M G appealed against this amount. On 26th November 2009 this was reduced to £160.00 and Mr M G was requested to pay £48 this being 30% of the over paid benefit. Mr M G paid this in £9.90 instalments which finished on 21.06.10.

Amongst the paperwork provided were witness statements signed by the licensed Operator and owner of the Private Hire firm, stating that when Mr M G was a driver for Royal Cars he was self employed. In light of this information Mr M G was written to on the 16th November and requested him to locate paperwork to substantiate this with the Inland Revenue Department, in particular any tax returns for the period which he was a self employed driver for the Private Hire Operator. Mr M G attended the Licensing Office on 17th February 2011. Mr M G insisted he did not have any paperwork from the Inland Revenue and requested that this matter be taken before the next Licensing Committee without this documentation.

Members were respectfully reminded that in his application Mr M G had declared one conviction:-

On 28th October 2006 Mr M G was convicted of using a vehicle uninsured against third party risks contrary to the Section 143 Road Traffic Act 1988.

Mr M G was subject to a Criminal Record Bureau (CRB) check on 21st January 2010 which confirmed there had been no further convictions at the time. Mr M G had not been requested to submit to a further CRB check.

Mr M G was previously licensed by this authority in 1990. Legal proceedings were instituted against Mr M G on the 30th April 2007 following an enforcement operation undertaken by Officers in October 2006 when he agreed to carry under cover officers in his private hire vehicle without being pre-booked.

Mr M G was found guilty in his absence at Teesside Magistrates Court on 12th June 2007 for illegally plying for hire contrary to section 45 of the Town Police Clauses Act 1847 and using a vehicle uninsured against third party risks contrary to the Section 143 Road Traffic Act 1988.

Mr M G was fined £150 for plying for hire and £300 plus 6 penalty points on his DVLA drivers licence for the no insurance offence. He was also ordered to pay £50 towards costs.

On the 27th November 2007 the committee resolved to revoke Mr M G's licence with immediate effect. In addition to the convictions the Committee also noted that there was a discrepancy between the statements of means form Mr M G had completed which detailed he earned £80 per week. The Committee were provided with a copy of a shift report for the month of April 2007 from the Private Hire Operator which showed Mr M G had worked 285 hours and earned £2102.50p in cash. When asked by the Committee if he had declared his income to the Benefits department Mr Gulab stated "yes, I declare it every year". However, documentary evidence was produced to the Committee from the Council's Benefits Department who confirmed that Mr M G had not reported any income since 2004. The Committee found Mr M G to be dishonest in this matter. A copy of the minute 46/07 which referred and a copy of the decision letter were attached to the report.

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 are 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.

Members were advised that Mr M G had passed the medical, driving standards and knowledge test requirements and if considered to be a fit and proper person at this time his application would proceed and his licence would be granted.

Mr M G was in attendance at the meeting and was given the opportunity to the reasons why he thought he should be granted a private hire driver licence.

After considering all of the written and oral evidence Members focused on the

facts of the report being, Mr M G was convicted of illegally plying for hire contrary to section 45 of the Town Police Clauses Act 1847, and using a vehicle uninsured against third party risks contrary to the Section 143 Road Traffic Act 1988 both in June 2007. At Mr M G's appearance before the Licensing Committee in 2007 it was clear that Mr M G had provided misleading financial figures to Members over the amount of his earnings and the number of hours which he had working for Royal Cars.

In addition and during the course of the processing of the application Mr M G had failed to provide upon request, any paperwork to substantiate any correspondence between himself and the Inland Revenue Department, in particular any tax returns for the period which Mr M G was a self employed taxi driver. On the balance of probabilities and in the absence of Mr M G failing to provide any documentary or other proof Members found that Mr M G had failed to make sufficient and lawful returns to the Inland Revenue while Mr M G had been employed as a taxi driver. The findings on Mr M G's benefit overpayment lead Members to conclude that Mr M G's honesty was in question and as such this was clearly relevant to the consideration of whether Mr M G was a fit and proper person to hold a drivers licence.

Members decided to refuse Mr M G's application for the grant of a Private Hire drivers licence as they were not satisfied Mr M G was a fit and proper person to hold such a licence.

Members had regard to the guidelines on the relevance of convictions and noted that Mr M G's conviction for driving without insurance was still relevant to his fitness as four years had not elapsed from the date of conviction. Members also took into account Mr M G's other conviction for plying for hire without a licence. Members were not persuaded by the information presented by Mr M G to depart from the Policy Guidelines, when determining Mr M G's fitness and agreed Mr M G was not a fit and proper person to hold a drivers licence. Members noted that Mr M G's main motivation for applying for a licence was because he liked to work and wanted to get out of the house. Although this was noted it was not a sufficient reason to persuade the Committee to depart from their policy guidelines.

RESOLVED that Mr M G's application for the grant of a Private Hire drivers licence be refused as Mr M G was not a fit and proper person to hold such a licence.

**L
130/10** **Hackney Carriage & Private Hire Driver - I.A.**

Consideration was given to a report on a licensed hackney carriage and private hire driver who had driven a Licensed Hackney Carriage in an inappropriate manner which had resulted in his driving licence being suspended by officers.

Mr I A had been a licensed private hire driver and hackney carriage driver since December 2008, and his Licence was due to expire on 31st December 2011. Mr I A attended the Licensing Committee meeting held on 1st March 2011 when Members resolved to defer full consideration of this matter to the next committee hearing, in order for officers to check the authenticity of a reference Mr I A had produced at the meeting. The reference was allegedly signed by Mr L Singh from Teesside University.

Enquires were made with Mr L Singh at Teesside University Darlington Campus, during which he confirmed he did not write the reference as Mr I A claimed. A copy of the reference and email from Mr L Singh were attached to the report.

Members were reminded that information was received from the Community Protection CCTV Centre with regard to an incident that had been recorded on CCTV in Yarm Road in Stockton on the afternoon of Christmas Day 2010 at around 2.30pm.

The CCTV showed Mr I A's vehicle travelling well over the 30 mph limit for the road. He was on the wrong side of the road and he was passing a vehicle travelling in the same direction as he did this he had to avoid a traffic island in the middle of the road.

He narrowly avoided an oncoming vehicle as he swerved back to the correct side of the carriageway. He then had to brake for the traffic lights at the junction of Yarm Lane and Yarm Road. He was travelling that fast he was braking for at least 300 metres on that stretch of road leading to the traffic lights.

Following this information being reviewed by Officers, Mr I A was invited into the office to view the CCTV and to give an explanation as to his actions on that day. He was interviewed on 11th January 2011 and during the interview he explained that there had been a death in the family and he was on the way to a relative's house.

He apologised for his actions and stated it would not happen again. A copy of the record of interview was attached to the report. Following this interview, officers using delegated powers suspended his hackney carriage and private hire drivers licence with immediate effect in the interests of public safety and a copy of the letter of suspension was attached to the report.

Mr I A's speed by his own admission was about 45 to 50 mph, which was well in excess of the 30 mph for that road. It was estimated from information from Cleveland Police Road Traffic Unit, who had viewed the CCTV recording, that the speed was in fact between 53 and 63 mph. A copy of the CCTV recording was viewed by Members at the meeting.

Mr I A had been warned previously regarding his manner of driving after he notified the department of a Traffic Signal Offence. The date of that offence was 2nd January 2010 and the conviction date 24th June 2010. The basic circumstances surrounding this offence were that he went through a red light and crashed into another vehicle. A copy of that warning letter was attached to the report.

It was also relevant that on 12th November 2010 an Officer had cause to speak to Mr I A regarding his manner of driving. Information had been passed to officers that he was driving around drawing attention to himself due to his apparent lack of regard to speed limits. He was given an oral warning regarding this. A copy of that record of oral warning was attached to the report.

It was also relevant that upon his initial application in November of 2008 he had

declared a Careless Driving Offence for which he was given 5 Penalty Points on his DVLA licence in 2007. This was noted during the administration process. A copy of Mr I A's DVLA driving licence was attached to the report.

Mr I A had been invited to attend the meeting but was not in attendance.

Members noted that this issue had first been before them at their meeting on 1st March 2011 when it had been deferred in order for enquiries to be made as to the authenticity of a reference produced to the Committee by Mr I A. Members noted that Mr I A's legal representative had written to the Council on 1st April 2011 stating that neither he nor Mr I A would be attending the meeting and they were happy for the Committee to consider the matter in their absence. Mr I A's legal representative was advised that it would be in Mr I A's interests to attend the meeting as members of the Committee had further questions which they may wish to put to Mr I A. Mr I A was not in attendance and Members agreed to hear the matter in his absence.

Members noted that in 2010 Mr I A had received a written warning for a traffic signal offence when he had gone through a red light and crashed into another vehicle. Mr I A had also received a verbal warning over his manner of driving following receipt of information that he had been speeding. When initially licensed it was noted that Mr I A had received 5 penalty points in November 2008 for a careless driving offence. All of this prima facie evidence indicated that Mr I A's driving ability and standards was not that which is expected of a licensed driver.

Members then considered the main basis of the initial report to Committee which involved an incident on the afternoon of Christmas Day 2010 when Mr I A was caught on CCTV driving on the wrong side of the road as he overtook a vehicle travelling the same direction as himself and also went around a traffic island in the middle of the road. At this time a vehicle was travelling towards Mr I A on the opposite side of the road and Mr I A narrowly avoided a collision. Members had regard to the CCTV evidence and noted that there were pending proceedings been brought by Cleveland Police for dangerous driving. In the opinion of the Committee the CCTV evidence showed on the balance of probabilities that Mr I A had driven in a dangerous manner. This would have been an unacceptable standard of driving for any road user but for it to have been carried out by a licensed taxi driver while driving his licensed vehicle aggravated the incident.

Members also considered the reference which Mr I A had produced to the Committee at the meeting on 1st March 2011. The reference purported to have been written by Mr L Singh, Mr I A's course tutor at Teesside University. At the meeting on 1st March 2011 Members had raised concerns over the authenticity of the reference and had asked officers and Mr I A's legal representative to make enquiries. Licensing officers had contacted Mr Singh at Teesside University and he confirmed that he had not completed a reference for Mr I A. This information was relayed to Mr I A's legal advisor who wrote back to the Council with further information, namely a letter from a gentleman called Mr Masud Babul. Mr Babul stated that he had written the reference and had shown it to Mr Singh for him to sign. The letter included Mr Babul's contact telephone number and asked that he be contacted if there were any enquiries. On receipt of this letter efforts were made to contact Mr Babul and he was telephoned on

four occasions each without success. On two occasions messages were left on Mr Babul's voicemail asking him to contact officers but Mr Babul had made no contact. Mr I A's legal representative was informed in writing that Mr Singh denied signing any reference for Mr I A. As was noted above Mr I A's legal representative then wrote to the Council stating that neither he nor Mr I A would be attending the Committee meeting.

Members had regard to the reference which they found on the balance of probabilities was a forged document. Members found that Mr I A had blatantly sought to deceive the Committee by producing to them a forged document. Although the motive for doing this was likely to have been a desperate attempt to try and persuade the Committee not to revoke his licence this deliberate attempt at deception went to one of the main issues which was considered when assessing a driver's fitness, namely truthfulness. Mr I A was not only a dangerous driver but also someone who would go to extreme lengths to achieve a desired outcome.

In mitigation Members took into consideration the fact that, at his own expense, Mr I A had recently completed a driver improvement course. Members also had regard to Mr I A's assertion that he needed to retain his taxi driver's badge so that he could continue with his University studies. Members did not feel that these were sufficient reasons to allow them to set aside what they believed constituted a risk to public safety. Mr I A's actions and behaviour were not fit and proper for a licensed driver.

After considering all of the evidence Members found that Mr I A was both a dangerous driver and dishonest and this constituted reasonable cause to revoke Mr I A's licence under Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

Members agreed that owing to the standard of Mr I A's driving and their findings over his honesty that public safety was a relevant issue and therefore under Section 61 2B of the Act the revocation takes immediate effect.

Members asked Officers to consider taking action by way of a referral to Teesside University over the forging of the reference and that consideration be given to taking criminal proceedings against Mr I A for the production to the Committee of the reference. Members noted that any decision as to whether further action was necessary or appropriate would be taken by Officers.

RESOLVED that:-

1. Mr I A's Private Hire Drivers Licence be revoked.
2. Under section 61 (2B) of the Act public safety was deemed to be relevant and as such the revocation of Mr I A's licence take immediate effect.