

# Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 23rd August, 2011.

**Present:** Cllr Paul Kirton (Chair); Cllr Michael Clark, Cllr Phillip Dennis, Cllr Eileen Johnson, Cllr Jean Kirby, , Cllr Miss Tina Large, Cllr Ray McCall, Cllr Maurice Perry and Cllr Bill Woodhead.

**Officers:** J Nertney, N Hart (LD); M Vaines, S Mills (DNS).

**Also in attendance:** Mr N M and his representative Mr Wilson (AtoZ Licensing) - For agenda item 7 - Application for Private Hire Drivers Licence Mr N M.

**Apologies:** Cllr Evaline Cunningham, Cllr Ken Dixon, Cllr Alan Lewis, Cllr Mrs Kath Nelson and Cllr David Wilburn.

## **L       Declarations of Interest**

**22/11**

There were no interests declared.

## **L       The Licensing Act 2003 - Minor Variation Applications**

**23/11**

Consideration was given to a report that informed Members of the delegated decisions that had been taken by Officers in relation to minor variation applications under the Licensing Act 2003 for the period April to June 2011.

At the meeting held on 27 April 2010 Members considered a report on the number of minor variation applications determined by officers under the Licensing Act 2003 using delegated powers.

At that meeting Members agreed that there be no change to the delegated powers but requested that future update reports provide more details of applications that had been refused. Minute L 2/10 refers.

Members were advised that since the last report a further six applications for minor variations had been received. A list of the premises that had been subject to minor variation applications was attached to the report.

Members were advised that during this period no applications had been refused.

RESOLVED that the report be noted and that future reports include details of the minor variation sought by the applicant.

## **L       Private Hire Operators, Private Hire & Hackney Carriage Drivers - Right To Work In The UK**

**24/11**

Consideration was given to a report that sought Members views on proposals for confirming applicants' right to work in the UK.

The prevention of illegal migrant working in the UK was governed by sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006. This required that all employers be responsible for ensuring that all of their employees hold the right to work in the UK.

The Department of Transport Taxi And Private Hire Vehicle Licensing: Best Practice Guidance - March 2010 suggested it was good practice for local authorities to carry out appropriate checks to ensure all licensees had the right to work in the UK and stated:-

"Immigration checks

66. The Department considers it appropriate for licensing authorities to check on an applicant's right to work before granting a taxi or PHV driver's licence. It is important to note that a Criminal Records Bureau check is not a Right to Work check and any enquiries about the immigration status of an individual should be addressed to the Border and Immigration Agency (now UKBA).

Further information can be found at [www.bia.homeoffice.gov.uk/employingmigrants](http://www.bia.homeoffice.gov.uk/employingmigrants).

More generally, the Border and Immigration Agency's Employers' Helpline (0845 010 6677) can be used by licensing staff to obtain general guidance on immigration documentation, although this Helpline is not able to advise on individual cases. The authority can obtain case specific immigration status information, including whether a licensing applicant is permitted to work or details of work restrictions, from the Evidence and Enquiry Unit, Floor 12, Lunar House, Wellesley Road, Croydon CR92BY. Further details on the procedures involved can be obtained by contacting the Unit (020 8196 3011)."

Section 57 of the Local Government (Miscellaneous) Provisions Act 1976 – Power to require applicants to submit information; states:-

"1. A district council may require any applicant for a licence under the Act of 1847 or under this Part of this Act to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence."

It was considered that requesting evidence to show that an applicant had the right to work in the UK was consistent with the right to require applicants to submit information provided by this section

The draft guidance leaflet was attached to the report and outlined the proposals for requesting this information, what documents would satisfy the evidence required to prove the right to work and the consequences for applicants who fail to comply with these requirements.

RESOLVED that the suggested procedures be introduced to ensure that all private hire operators, private hire and hackney carriage drivers hold the right to work in the UK.

**L**  
**25/11**      **Private Hire Driver Licence - A.D.**

Members were informed that Mr A D was not in attendance at the meeting. Members decided to consider the report concerning Mr A D Private Hire Driver's licence in his absence as they felt that Mr A D had been provided with sufficient

notice of the meeting.

The purpose of the report was for Members to determine the fitness of a Licensed Private Hire Driver, who had previously appeared before the Licensing Committee in July 2010 and was still under investigation by the Department for Work and Pensions (DWP) and also Stockton Housing Benefits Investigation Team and was suspended for lying to officers during investigations into this matter.

Mr A D was a licensed Private Hire Driver with the Authority and had been since 1997 and his licence expired on 31st August 2010, but Mr A D had applied to renew his licence.

Mr A D appeared before the Committee on the 28th July 2010. A copy of the meeting minute which referred was attached to the report.

At this time Members decided to defer further consideration of this matter as requested by Mr A D's solicitor, pending further information being obtained from the DWP. A copy of the letter was attached to the report.

On the 23rd February 2011 an appointment was made for Mr A D to attend the Licensing Office on Tuesday 1st March 2011 to speak to Mr Cummings. On the 25th February 2011 Mr A D emailed Mr Cummings to postpone the interview as he was unable to get an appointment to see his solicitor before the scheduled meeting.

A further appointment was re-arranged for Mr A D to attend 16 Church Road. Mr A D did attend this appointment but the meeting did not really achieve anything as Mr A D was unable to provide details of past living arrangements to Mr Cummings. When asked about where he was living his response was basically "I have been living I all over the place just with different women".

During the meeting Mr A D confirmed that he did not have access to a car and wanted his badge back so that he could have access to a car. He explained that Royal Cars had previously given him a car to use for his own personal use.

During the interview Mr A D agreed to sign a data access request form, this was done with a copy of the same being given to Mr A D.

At the end of the interview Mr A D was observed by Simon Mills leaving Stockton in a black Renault Clio, registration mark NX10 YHP despite him saying in interview that he did not have access to a vehicle.

On the 17th March 2011 Mr Simon Mills and Mr Paul Cummings visited Royal Cars for a meeting to discuss Mr A D. During the meeting the then director Mr D K and Mr A K part owner were also present.

During this meeting Mr A K confirmed that all of their drivers were self employed and Mr A K produced a signed form from Mr A D's file which confirmed he understood that he was self employed and what his obligations were as a self employed driver. A copy of this document was attached to the report.

Mr A K was also asked to produce booking records from their computer system

relating to when Mr A D last worked. From their computers he was able to produce set of booking records consisting of 14 pages from the 12th March 2010 until 4th May 2010 relating to car 97. A copy of the records was attached to the report.

A driver details sheet was produced; this confirmed that Mr A D started work on the 8th July 2008. A copy of this record was attached to the report.

A vehicle detail sheet was also produced which showed the vehicle registration mark AE06 UDD was call sign 97 and was a red Skoda Octavia which was the vehicle Mr A D was using on the 21st April 2010 when he first spoken to by Mr Mills and Mr Cummings. A copy of this was attached to the report.

Mr Paul Cummings from the Councils Benefits Investigation Department had been investigating the matter and had provided a full update in relation to the matters outlined above; a copy of this report was attached to the report.

Also attached to the report was a copy of adopted guidelines relating to the Relevance of convictions for Member's 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 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.

Members decided to defer further consideration of the matter until the investigations by the Council's Housing Benefits Investigation Department and the DWP had been concluded. Mr A D's licence would remain suspended until then so Mr A D would be advised to co-operate fully with their investigation.

Members also noted that Mr A D's current licence, which had not been issued

because of the suspension would expire on 31 August 2011. Mr A D would be advised therefore that should Mr A D decide not to apply for the renewal of this licence to maintain its continuation until the outcome of the above investigations were known, then this matter would be considered closed as a licensing issue and no further action would be taken by this department unless Mr A D made any further application for a licence at any time in the future when the matter would be reviewed.

RESOLVED that the matter be deferred until the investigations by the Council's Housing Benefits Investigation Department and the DWP had been concluded.

**L**  
**26/11**

**Hackney Carriage & Private Hire Driver - W.H.**

Members were informed that Mr W H was not in attendance at the meeting. Members decided to consider the report on Mr W H drivers licence in his absence as they felt that he had been given sufficient notice of the meeting.

Consideration was given to a report on a renewal application and continued fitness of a Combined Hackney Carriage/Private Hire Driver who entered the country in 2005 on a student visa but never commenced studies. Since then he had been found on the balance of probabilities by Immigration Judge Clayton to have submitted false documents namely qualification certificates in order to gain leave to remain in the UK as a student. Also a recent Criminal Record Bureau Check (CRB) had revealed that he had been arrested for offences of harassment, threats to kill, possession of offensive weapon and also for breaking a harassment order.

Mr W H was a Licensed Combined Hackney Carriage/Private Hire Driver with the Authority and had been since June 2008. His current licence expired on the 30 June 2011 and Mr W H has applied to renew his licence a copy of his renewal application was attached to the report.

Between 2008 and 2011 various complaints were received about Mr W H's conduct, all appeared to relate to or were connected with a family matter in which Mr W H's brother, Mr M A had separated from his wife F A.

Members noted that on the 8 September 2008 the Licensing Department received formal notification from Cleveland Police that Mr W H had been arrested for Assault Occasioning Actual Bodily Harm and Threats to Kill. The circumstances were that on the 17 August 2008 at his home address, during a domestic argument between his brother and sister in law, it was alleged that Mr W H prevented his sister in law from leaving the address by pulling her back and locking the door. It was also alleged that along with his brother and another, Mr W H assaulted and threatened to kill his sister in law. Mr W H was suspended with immediate effect.

On the 9 March 2009 the Licensing Department received formal notification from Cleveland Police that Mr W H had been at Teesside Crown Court on the 23 February 2009 and was found not guilty, no evidence was offered for both offences as the injured party withdrew her complaint.

Mr W H was interviewed on the 17 March 2009 regarding these matters and during the interview Mr W H denied assaulting and making threats to kill his

sister in law. A decision was made by the Licensing Department to reinstate Mr W H licence based on information provided.

Recently several complaints had been received from another licensed taxi driver regarding Mr W H's manner of driving, attitude and behaviour. These appear to have been connected to the long standing family dispute. In addition a complaint was received which alleged that Mr W H's student visa had expired.

As Cleveland Police were investigating the allegations connected to the family dispute a decision was made to concentrate on the serious matter regarding Mr W H's right to remain in the UK.

Information was received from the Border Agency that Mr W H had no lawful basis to remain in the UK.

On the 14 April 2011 Mr W H attended 16 Church Road, also present were Border Agency Staff. At that time Border Agency Officers arrested Mr W H because he had no lawful basis to remain in the UK.

Later that day Mr W H was released from custody as further enquiries revealed that his Solicitor had already submitted a further application to remain in the UK under the Human Rights Act, which had not yet been determined.

Following Mr W H's release from custody he was advised to voluntarily surrender his licence as he had no right to work in the UK.

On the 18 April 2011 further information was received from the Border Agency which confirmed that Mr W H entered the UK on a student visa. On the 5 June 2007, Mr W H applied for further leave to remain stating that he had enrolled on a foundation degree course in computing at Stockton Riverside College which was to commence on the 1 October 2007. However, enquiries with Stockton Riverside College confirmed that Mr W H had never enrolled on the course.

Mr W H applied for further leave to remain in the UK in October 2008 and claimed that he held a NQF level 7 post graduate diploma in IT gained from study at Cambridge College of learning in London and provided his certificate. This document was confirmed not to be genuine. In the hearing of Mr W H Immigration Judge Clayton stated "I am persuaded by the Home Office on the balance of probabilities false documents were submitted in order to gain leave to remain in the UK as a student". A copy of the Border Agency information was attached to the report.

On the 6 June 2011 Mr W H's 3 yearly CRB was returned to the office with a copy being returned to the applicant. The CRB revealed no convictions recorded against Mr W H however, other relevant information was also disclosed by Cleveland Police, this detailed how Mr W H had been arrested on several occasions for offences of harassment, threats to kill, offensive weapon and also for breaking a harassment order. No further action was taken in relation to the offences due to insufficient evidence. The CRB also confirmed that Mr W H had no right to work in the UK. A copy the CRB was available at the meeting.

Mr W H was written to on the 16 June 2011 and advised that a report was due

to be prepared for the Licensing Committee to consider his continued fitness based on information received from the Border Agency and he was given an opportunity make written submissions. A copy of the letter was attached to the report.

Further enquiries with the Border Agency had confirmed that Mr W H had not reported to the Police station since his release and a copy of this information 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.

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.

A copy of the new adopted guidelines relating to the Relevance of convictions was attached to the report for Member's information.

After consideration of the report Members agreed that Mr W H's actions in submitting false documents to gain leave to remain in the UK as a student and the fact that Mr W H had no right to work in the UK were sufficient grounds under Section 61(1)(b) of the above mentioned Act to be deemed a reasonable cause for revoking Mr W H Private Hire and Hackney Carriage Drivers Licences. Furthermore as Members made a finding that the revocation of his licence was based on the grounds of public safety they agreed that under Section 61(2)(B) that the revocation take immediate effect.

RESOLVED that:-

1. Mr W H Private Hire and Hackney Carriage Drivers Licences be revoked.
2. As the revocation of Mr W H's licence was based on the grounds of public

safety the revocation take immediate effect.

**L  
27/11**

### **Application For A Private Hire Drivers Licence - N.M.**

Consideration was given to a report on an application for a private hire driver's licence from an applicant who had been working in the Borough of Stockton-on-Tees on a Berwick/Northumberland Council Hackney Carriage Drivers Licence. During the time he had been working within the Borough, a complaint was received by the Licensing Department from a young female in which she alleged the applicant behaved inappropriately towards her.

Mr N M had applied to become a licensed private hire driver with the Authority a copy of his application including his DVLA driving licence was attached to the report.

Mr N M appeared before the Licensing Committee on the 27 June 2011. A copy of the meeting minute which referred was attached to the report.

At this time Members decided to defer further consideration of this matter as there was further enquiries which Members felt were crucial. A copy of the letter was attached to the report.

Mr Mills (Licensing Officer) attended Tees Valley Cabs on the 30 June 2011 and obtained booking records relating to Mr N M from 23:15 hours on the 18 November 2011 until 00:30 hours on the 19 November 2011. Copies of these records were attached to the report.

Mr N M had presented his full mobile phone bill a copy of which was available to Members at the meeting.

There had been delays in making these further enquires due to the personal circumstances of the complainants father as he had agreed to obtain the phone records from his daughters mobile phone provider. Mr Mills had confirmed with the complainant's father that Miss G found the Committee experience very stressful and this had been exacerbated as he has been in hospital for several weeks following complications from an operation. Given their current personal situation they did not feel they can assist Members any further with the investigation and they were not in attendance at the meeting.

Member 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.

Mr N M was given a copy of the Council's guidelines on Relevance of Convictions at the time of his application and a copy was attached to the report.

Mr N M and his representative (Mr Wilson AtoZ Licensing) were in attendance at the meeting and were given the opportunity to make representation.

Members had concern that a complaint had been made by a female passenger but decided that the evidence that had been brought before the Members was inconclusive.



Having taking everything into account Members decided to grant Mr N M licence with a warning that his future conduct should be of the highest standards, especially when carrying passengers and Mr N M was advised that when carrying lone female passengers, especially at night he should ensure that they sit in the rear of the vehicle.

RESOLVED that Mr N M's Private Hire Driver's application be granted with a warning as to his future conduct.