

MINUTES OF A MEETING OF THE LICENSING COMMITTEE HELD IN COMMITTEE ROOM 2/3, CIVIC OFFICES, ANGEL STREET, BRIDGEND ON THURSDAY, 13 AUGUST 2009 AT 2.00PM

Present:-

Councillor D K Edwards - Chairperson

<u>Councillors</u>	<u>Councillors</u>	<u>Councillors</u>
D Buttle	K Watkins P J	M C Wilkins
E M Dodd	White	R Williams
D A Unwin		

Officers:

Y Witchell	-	Licensing and Registration Officer
P Gavigan	-	Principal Solicitor
J Monks	-	Cabinet and Committee Officer

41 APOLOGIES FOR ABSENCE

Apologies for absence were received from the following Members:

Councillor M Butcher	-	Other Council Business
Councillor C J James	-	Prior Engagement
Councillor R D Jenkins	-	Holiday
Councillor M L Simmonds		Unwell

42 DECLARATIONS OF INTEREST

The following personal interest was declared:

Councillor R Williams	Agenda Item 4, Removal of the Requirement for a Designated Premises Supervisor and Personal Licence Holder at Community Premises – as he is a member of a Club Management Committee
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43 MINUTES OF THE PREVIOUS MEETING

RESOLVED: That the minutes of the meeting of the Licensing Committee held on 11 June 2009, be approved as a true and accurate record.

44 AMENDMENTS TO THE LICENSING ACT 2003: SIMPLIFIED PROCESS FOR MINOR VARIATIONS TO PREMISES LICENCES AND CLUB PREMISES CERTIFICATES: REMOVAL OF THE REQUIREMENT FOR A DESIGNATED PREMISES SUPERVISOR AND PERSONAL LICENCE HOLDER AT COMMUNITY PREMISES

The Licensing and Registration Officer introduced a report on two proposed changes to the delegations of functions to Officers in respect of amendments to the Licensing Act 2003 relating to the application process:

- (i) The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009

The Licensing and Registration Officer informed Members that it is proposed to delegate the power to determine applications received in accordance with the Legislative Reform (Minor Variations to Premises Licences and Club Premises

Certificates) Order 2009 to the Assistant Chief Executive – Legal and Regulatory Services.

She advised Members that any variation to a Premises Licence currently requires the applicant to submit an application which requires Public Notice at the premises and also advertised in a local newspaper, together with full notification to all five responsible Authorities. This process can take up to two months to complete and involves a lot of form filling and paperwork.

The proposed change to the application process would allow a single application to be sent to the Licensing Authority, who would then determine whether to consult with the other responsible Authorities on this matter. This new procedure would allow minor variations that would not impact adversely on the licensing objectives, to be simplified as the applicant would not be required to advertise the variation in a newspaper or circulate it to all five responsible Authorities. However, the applicant would still be required to display a notice of the variation at the premises for a period of 10 working days.

The Licensing and Registration Officer drew Members' attention to the Authority's principles of delegation adopted for all licensing applications; to ensure the right to a hearing by the Licensing Committee. Under the new procedure there would be no requirement to hold a hearing, as the minor variation application would either be granted or refused. However, if an application was refused under this process, the applicant would be able to re-submit to a full variation process under Section 34 of the Licensing Act 2003, and therefore have a right to a hearing.

(ii) The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls) Order 2009

The Licensing and Registration Officer informed the Committee that it is proposed to delegate the power to determine applications received in accordance with the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls) Order 2009 to the Assistant Chief Executive – Legal and Regulatory Services.

She advised Members that the proposed change to the Licensing Act 2003 would allow for the removal of the requirement for a designated premises supervisor and personal licence at community premises which offer the sale by retail of alcohol. The effect of the legislation would place a lesser burden on this type of lower risk premises where they are authorised to sell alcohol by removing the requirement of a designated premises supervisor and instead, the management committee would supervise the sale of alcohol.

She explained that as the Chief Officer of Police is required to be consulted on such an application, and may object to the revised conditions being implemented, the right to a hearing under the Licensing Act 2003 is retained and existing principles of delegation will apply so that Officers may deal with uncontested applications. As an additional safeguard, the legislation allows for interested parties and responsible authorities to apply for a review of a premises licence of this type by the Licensing Authority and for the requirement for a designated premises supervisor to be re-imposed on the Licence.

Members were concerned as to who would be prosecuted in the event of legal action being taken against a community premises. The Principal Solicitor advised that it would either be the Chairman or Secretary of that particular management committee and undertook to report back to the next meeting in order to clarify the situation.

RESOLVED: (1) That the functions of the Licensing Committee and the delegation to Officers in relation to premises licences be amended to reflect the changes specified as follows:

Matter	Sub-Committee to hear and Determine	Officers to determine
Applications under the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	n/a	Officer determination
The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	Where the Chief Officer of Police submits an objection	All other cases

(2) That the Assistant Chief Executive – Legal and Regulatory Services submit a report to Council recommending amendments to the Council’s Constitution and Schemes of Delegation to reflect the sub-delegation of functions.

45 **HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS PROPOSED STATEMENT OF POLICY REGARDING THE LICENSING OF EX-OFFENDERS**

The Licensing and Registration Officer introduced the report, the purpose of which was to review the policy document relating to consideration of taxi driver applications and the relevance of convictions.

Members had requested a review of the Policy, which covers the relevance of convictions relating to taxi drivers’ applications. Appendix A of the report outlined the specific guidelines and timescales.

After consideration was given to the report, it was

RESOLVED: That the Committee approve the following proposals for amendment within the Statement of Policy regarding the relevance of convictions and licensing of ex-offenders document:-

Paragraph 1.2

A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction and/or caution for a reasonable period, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances but the overriding consideration when granting a licence will be the protection of the public. In coming to a decision, the Sub-Committee will have regard to the nature of the offence, how long ago it was committed, the age of the person at the time, any pattern of offending, any penalty imposed and the provisions relating to the rehabilitation of offenders. A Sub-Committee may consider spent convictions which are relevant to the role of a taxi driver.

Paragraph 1.8

Applicants will be advised in advance of the full details of the spent convictions which will form part of the report to a Licensing Sub-Committee.

Paragraph 1.9

The Sub-Committee will give the applicant an opportunity to address the Sub-Committee as to whether he or she feels that any spent convictions are either irrelevant or should not prejudice the application because of the age, circumstances or lack of seriousness of the convictions. The Sub-Committee will consider a spent conviction only if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

Paragraph 1.10

Prior to including spent convictions within a report, the officer concerned will assess spent convictions according to the age relevance and seriousness of the offence.

Paragraph 1.11

The officer will consider firstly the interests of both the applicant and the public in whose interests the statutory power to have regard to spent convictions is being exercised.

Paragraph 1.12

The following factors will be assessed:

- The relevance of the conviction to the role of a taxi driver
- The age of the applicant at the time of the offence
- Whether the conviction was dealt with by a Juvenile Court
- The severity of the sentence imposed, with greater weight being given to custodial sentences
- Repeat patterns of offending and relevance to unspent convictions

Paragraph 1.13

Particular weight will be given to dishonesty, indecency, violence and serious motoring offences.

Paragraph 1.14

The Officer concerned will seek legal advice before including spent convictions within a report.

Paragraph 1.15 (Minor amendment)

This policy document will also apply (where appropriate) to disciplinary hearings for holders of operator and vehicle licences.

Paragraph 2.1

The following classes of conviction are deemed to be especially relevant to the role of a taxi driver, and each Licensing Sub-Committee may give greater weight to a conviction in this category. The information set out below is not exhaustive, or listed in any order of priority. It is intended as a guide to applicants on how the licensing authority may determine the relevance of a conviction, prior to reaching a conclusion about the application or case before them. Whilst specific timescales

have been indicated each Sub-Committee has the discretion to depart from the timescales and deal with each case on its merits by having regard to exceptional or mitigating circumstances.

Paragraph 2.3

Convictions or fixed penalty notices for minor traffic offences such as obstruction, parking offences, construction and use offences (including mobile telephone use) or isolated speeding offences, should not prevent a person from obtaining a licence except where a pattern of offences emerges which could give rise to concerns for public safety. When considering renewal applications, greater weight will be given to those offences committed whilst driving a taxi.

Paragraph 2.4.1

Major traffic offences are defined as those which give rise to disqualification, relate to driving without due care and attention, dangerous driving, and using a vehicle uninsured against third party risks and greater weight will be given to offences in this category.

Paragraph 2.4.2

Disqualifications under the “totting up” procedure usually arise because of repeat speeding offences but could also include convictions for failing to hold insurance or other driving offences.

Paragraph 2.4.3

If sufficient penalty points have accrued within a three year period under the “totting up” system to result in disqualification for a period not exceeding twelve months, an application for the initial grant of a private hire or hackney carriage driver's licence would be unlikely to be considered within a term of twelve months following the end of a disqualification period. An applicant would therefore be expected to have been driving as an ordinary motorist for at least a period of twelve months following restoration of the driving licence but this timescale may be re-evaluated should the applicant have committed further offences since the restoration of licence (either criminal and/or motoring offences). Longer disqualifications will follow the same principle.

Paragraph 2.4.4

Repeat disqualifications in this category of offence would normally merit the refusal of a licence as would disqualifications exceeding five years in duration.

Paragraph 2.4.5

Isolated short period disqualifications e.g. between seven to fifty six days, will not necessarily prevent an applicant from obtaining a licence. However, in the case of an initial application for a licence involving a disqualification period at the high end of the above scale, an application is unlikely to be granted unless a period of at least six months has elapsed from the end of the disqualification period. Applications for renewal of a licence following this type of disqualification, will be dealt with on a case by case basis.

Paragraph 2.4.5

In “totting up” cases where the court does not disqualify a licensed driver from driving, the Sub-Committee is likely to consider that different criteria apply to a person who has responsibility for driving members of the public, and this may result in the refusal to grant, or renew a licence or decision to revoke an existing licence unless there are exceptional circumstances.

Paragraph 2.5

Alcohol or drug related offences with motor vehicle resulting in disqualification.

Paragraph 2.5.1

Greater weight will be given to convictions relating to alcohol or driving related offences involving motor vehicles than those relating to the “totting up” disqualifications.

Paragraph 2.5.2

A Sub-Committee will have regard to the length of the disqualification imposed and to whether an approved driving course was completed as part of the sentence. An application involving an isolated occurrence may therefore be considered in exceptional circumstances but a period of at least three years should elapse since the ending of the disqualification.

Paragraph 2.5.3

Applicants should note that they will be required to submit a certificate of medical examination on the grant of a licence which includes an assessment of alcohol/drug use and/or evidence of satisfactory treatment.

Paragraph 2.5.4

Unless there are exceptional circumstances, a conviction for the possession with intent to supply drugs involving a motor vehicle will normally merit the refusal of a licence.

Paragraph 2.6 (Alcohol or drug related offences not in motor vehicle)

An isolated conviction or caution for drunkenness or possession of a drug will not necessarily debar an applicant from gaining a licence. Repeat convictions or cautions for these types of offence in the five years preceding an application will normally merit the refusal of a licence. Applications for renewal will be dealt with on merit. Unless there are exceptional circumstances, a conviction for the possession with intent to supply drugs will normally merit refusal of a licence.

Paragraph 2.8.1

As hackney carriage and private hire vehicle drivers are in close contact with the public, persons under the age of 18 and other vulnerable persons, any conviction for murder, manslaughter, arson or grievous bodily harm with intent will normally merit refusal of an application.

Paragraph 2.8.2

Applicants will be expected to demonstrate a period of at least five years free from conviction for all other serious violent

offences; this period may be longer if consistent with the statutory rehabilitation period for the offence. This policy also applies to convictions relating to possession of firearms or offensive weapons. All other offences will be assessed on a case by case basis.

Paragraph 2.8.3

The Sub-Committee considers all forms of violence, including domestic violence, physical and verbal abuse, harassment and racially aggravated offences as being relevant to the fitness of an applicant. Greater weight will be placed on repeat or patterns of offending.

Paragraph 2.8.4

The Sub-Committee is unlikely to grant an application from a person convicted of an offence involving the use of violence or threatening behaviour towards a police officer or police community support officer or similar.

Paragraph 2.8.5

The Sub-Committee will normally revoke a private hire or hackney carriage driver's licence where the holder has been convicted of an offence involving obstruction to, or making a false statement to, or the use of violence or threatening behaviour towards, a police officer, police community support officer or similar, or an authorised officer of the Council carrying out his or her duty.

Paragraph 2.9

As hackney carriage and private hire vehicle drivers are expected to be persons of trust, any conviction for serious fraud or theft within the past five years will normally merit refusal of a licence. A pattern of offending is also likely to result in the refusal of a licence. The Sub-Committee considers all levels of theft, including fraud, benefit fraud, forgery, obtaining money or property by deception and other deception to be relevant to the role of a taxi driver.

Paragraph 5.1

Application of this policy to renewal and disciplinary cases.

Any conviction coming to light following the grant of a licence will be considered on its merits having regard to public safety either at renewal or, in serious cases, at a disciplinary hearing. Any conviction for indecency, grievous bodily harm, alcohol or drug related offences serious motoring offences, and any other relevant conviction, committed whilst acting as a taxi driver or involving a licensed taxi, is likely to merit serious consideration of the revocation or the refusal to renew the licence unless there are exceptional circumstances. All other matters will be dealt with on a case by case basis.

Paragraph 5.2

Existing taxi drivers who fail to submit an application for renewal prior to the expiry date but who subsequently wish to re-apply may be entitled to "grandfather rights" and therefore exempted from the requirement to produce the Driving Standards Agency Taxi Test Certificate on application. This exemption will only

apply if an application is submitted within six months of the expiry date. Applicants in this category will be required to comply with the remaining pre-licensing checks. Determination of this category of application will follow the process outlined in this policy.

Paragraph 7.0 – replaced by 1.8 and 1.9 above.

Paragraph 8.1

Where the Sub-Committee determines that suspension or revocation of a licence is not appropriate, it will consider issuing written warnings as to future conduct. Warnings may be given at the following levels: first written warning, second written warning, and final written warning. A written warning does not fetter the discretion of any subsequent sub-committee to take appropriate action in respect of a licence. A written warning (or other disciplinary action) will generally remain relevant for five years according to the circumstances and be reported to the Sub-Committee.

Paragraph 8.4

In exceptional circumstances, authorised officers will exercise the powers granted under the Road Safety Act 2006 to suspend a licence with immediate effect where there are serious concerns regarding public safety following arrest or information provided by the Chief Officer of Police (or a body responsible for public or child protection). Where relevant, the case will be referred to a Licensing Sub-Committee for final determination following the conclusion of any legal proceedings.

The meeting closed at 2.48pm.