

LICENSING COMMITTEE - TUESDAY, 25 OCTOBER 2016

MINUTES OF A MEETING OF THE LICENSING COMMITTEE HELD IN COMMITTEE ROOMS 2/3, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON TUESDAY, 25 OCTOBER 2016 AT 10.00 AM

Present

Councillor R Williams – Chairperson

GW Davies MBE	PA Davies	E Dodd	CJ James
PN John	DRW Lewis	JE Lewis	HE Morgan
DG Owen	RM James		

Apologies for Absence

P James, E Venables and D Patel

Officers:

Daniel Cook	Licensing Policy Officer
Katia Daw	Lawyer
Yvonne Witchell	Team Manager Licensing
Mark Galvin	Senior Democratic Services Officer Committees

23. DECLARATIONS OF INTEREST

None.

24. APPROVAL OF MINUTES

RESOLVED That the minutes of the meeting of the Licensing Committee of 24 May 2016 be approved as a true and accurate record.

25. INTRODUCTION OF 'INTENDED USE/REMOTE TRADING POLICY' FOR HACKNEY CARRIAGES

The Team Manager Licensing introduced Daniel Cook, Licensing Policy Officer to the Committee. The Licensing Policy Officer then presented a report on the Introduction of Intended Use/Remote Trading Policy for Hackney Carriages.

The purpose of the report was to consider the risk to public safety presented by the remote trading of Hackney Carriages in other Authority areas and to seek approval to consult on a draft policy to mitigate such risk.

Some authorities across the UK were experiencing a high number of applications for Hackney Carriage Vehicle licences, Joint Hackney Carriage and Private Hire Driver licences from applicants living in different local authorities to the one they were applying to. The concern being that once they have the licence they will then trade in other Authorities. This causes difficulties for both the Authority in which they are trading as well as the Authority in which they are licensed.

In 2008 a High Court Judgement – Newcastle City Council v Berwick-upon-Tweed established a principle that it was lawful for Hackney Carriages to trade in a local authority area other than that which issued the licences. The case precedent arose as a

result of a challenge from Newcastle City Council against Berwick-upon-Tweed where there was considerable disparity between the standards of vehicles, conditions of licence and fees. There were a disproportionate number of licence applications in Berwick-upon-Tweed, where applicants sought to take advantage of less stringent conditions and preferential fees although vehicles and drivers were actually intending to trade exclusively in Newcastle. By taking fees away from Newcastle City Council it detracted from their ability to promote public safety in a city centre environment, with a consequential risk to the travelling public

The decision was that such activity was lawful. However the problems it caused, such as difficulties enforcing standards and regulating the vehicles, remained. Therefore, post the decision, it was for individual licensing authorities to take their own steps to manage the problem. Several licensing authorities identified "out of area" vehicles trading in their Boroughs and took steps to eliminate such trade through the creation of a policy governing remote trading. The main consideration in the policies was where the vehicle would predominantly intend to trade. If it was outside the area, the local authority could either refuse to grant the licence or seek to revoke the licence for breach of the policy post grant. The Licensing Policy Officer confirmed that this had not yet been tested in court.

This was mainly larger cities but more recently all types of areas have been affected

This policy is the attempt by Bridgend to deal with the problem locally and specifically deals with those predominantly trading in other areas. Without the policy, Bridgend Enforcement Officers only have powers to deal with vehicles licensed by their own area. They would have to rely on Enforcement Officers from other areas "coming in" to regulate the other vehicles and this is not practicable.

The Licensing Policy Officer confirmed that the consultation would include questionnaires to the taxi trade, walking around the taxi ranks and letters to the operators and vehicle proprietors.

The Committee questioned if other authorities had already adopted this policy and if so, was it working satisfactorily or were any experiencing major issues. The Licensing Policy Officer explained a few areas had already implemented similar policies. The respective success of these policies depended on the level of cooperation between the neighbouring Authorities and different areas were having different levels of success.

Members referred to the requirement in some areas for applicants to sit a Knowledge Test before they were able to trade. This was not a requirement in Bridgend which made it easier to secure a licence here than in authorities which had such a test.

Members welcomed the policy and questioned the number of drivers in Bridgend who lived outside the area. The Team Manager Licensing explained that circumstances changed and drivers moved in and out of the area. It was explained that there could be changes to policy in the future and Bridgend could introduce a knowledge test.

Members asked if this was a devolved issue. The Lawyer explained that they were not creating a new Law. The Law of England and Wales remained as drafted, this created individual licensing Authorities. It is the role of each Licensing Authority to licence drivers and vehicles and adopt such policies as are necessary to do so. This is a policy which the Committee are deciding whether they should approve to consult upon.

The Lawyer reminded Members that they were not creating a criminal offence. Each licensing authority was responsible for its own policies and enforcement and each had

its own Licensing Committee. Breach of the Policy may be a reason to consider revoking the license but this would not be a criminal offence.

The Lawyer further reminded Members that approval was being sought from the Committee to consult on the draft policy. Members were invited to take part in the consultation and that the consultation was true and meaningful and therefore when the policy next comes before them it could be in a different format and could have changed to take account of any concerns or comments they make as part of the consultation.

The Committee asked if the policy would apply to the driver or the vehicle. They were advised that the policy covered the vehicle and the licensed driver. The Committee suggested that the policy would be hard to administer because every single job a vehicle had taken in a period would have to be checked.

The Committee were aware that the policy had not been tested in Court and requested information on what the likely costs would be. The Lawyer explained that there were two ways that this could end up in the court arena;

The First was through a Judicial Review. The most likely time for this would be when the policy was implemented. Costs in Judicial Reviews can be large and are borne by the unsuccessful party. Hopefully, so long as the correct procedure is followed for the policy to be adopted, and this consultation stage is part of that, the risk of a judicial review would be low.

The second is that when the policy is applied, and a licence is refused or revoked, there is a right of appeal to the Magistrates' or Crown court. This is in the criminal courts but in their civil structure and is dealt with as any Appeal but means that the Court would consider and apply the Policy.

Dealing with the Consultation the lawyer advised that a consultation team would deal with advising on how to run the consultation. They would ensure that all necessary people were communicated with and any publications required took place.

The Licensing Policy Officer confirmed that the policy was based on a template approved by the Licensing Technical Panel of the Directors of Public Protection Wales (DPPW) which was approved for use by Welsh local authorities. Previous consultations had been held in Cardiff and the Vale and the policy was positively received.

Members questioned the process of "policing" the policy and that the onus would be on the authority to provide evidence to the Committee before a licence would be revoked. The Licensing Policy Officer explained that Enforcement officers could investigate allegations and the evidence would also come from the taxi operators and from experience their systems were set up so that jobs could not be deleted. The smaller operators did not use these systems but it was likely that there would not be an issue with the smaller operators. It had appeared previously that the trade were keen to provide information and they often supplied registration numbers and dates/times to enforcement officers.

The Committee asked if it could be made a criminal offence to work outside the authority. Members were advised that the Licensing Authority could create policy to assist in issuing and revoking licences but it had no power to introduce legislation creating a criminal offence. Also there were some occasions where a "one off" legitimate journey was valid and should be allowed to continue. Creating a policy was the only option available to the licensing authority at the moment. If Members felt that a criminal offence should be created they would need to make contact with Central Government who draft England and Wales legislation. The Committee supported the proposal whilst

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recognising that policing it could be a problem. There could be resource issues however having a policy would allow the authority provision to investigate and take action if necessary and that at the moment there was nothing in place.

RESOLVED

1. That the content of the report be noted.
2. That approval be given to consult on the introduction of an Intended Use/Remote Trading Policy in Bridgend County Borough with a further report being presented to Committee with the outcome of the consultation and a decision as to whether to adopt the policy

26. **URGENT ITEMS**

There were no urgent items.

The meeting closed at 10.45 am