

Licensing Committee

Tuesday, 13th March, 2012

PRESENT: Councillor S Armitage in the Chair

Councillors J Dunn, R D Feldman,
B Gettings, T Hanley, G Hussain, G Hyde,
A Khan, P Latty, B Selby, C Townsley,
D Wilson and G Wilkinson

74 Exempt Information - Possible Exclusion of the Press and Public

RESOLVED – That the public be excluded from the meeting during consideration of that part of the agenda designated as exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present there would be disclosure to them of exempt information so designated as follows:-

- (a) Appendix 1 of the report referred to in minute 80 in terms of Access to Information Procedure Rule 10.4 (5) on the grounds that disclosure of the information contained within the appendix could undermine current and/or proposed legal proceedings

75 Declarations of Interest

There were no declarations of interest

76 Apologies for Absence

Apologies for absence were received from Councillors Bruce and Downes

77 Minutes

RESOLVED – That the minutes of the meeting held 14th February 2012 be agreed as a correct record

78 Decision Making in Taxi & Private Hire Licensing

The Committee considered the joint report submitted by the City Solicitor and the Chief Officer, Democratic & Central Services; on the current decision making model in Leeds for the grant, refusal, suspension or revocation of the various licences issued by the Council as the taxi and private hire licensing authority. The report outlined the legal framework governing the decision making process and considered the implications of any proposal to change the current arrangements.

The Chair provided the background to the production of the report before Members. The Chief Officer, Democratic & Central Services reported that there had been a number of informal discussions recently where the decision making model used by Taxi and Private Hire Licensing had been queried. He confirmed that any decision relating to suspensions and revocations undertaken by officers were taken in line with Council Policy, agreed by Members, in the interests of public safety. However, it was appropriate for

Members to review the arrangements and the report provided information to facilitate that review.

Other matters were highlighted which included the fact that in some instances where there was an immediate public safety issue, such as illegally plying for hire, a suspension took immediate effect and remained in place until a subsequent appeal to the Magistrates Court was dealt with. It was acknowledged that this was an area of contention with the trade as the appeal process could be lengthy, depending on the individual case and fees could reach £700. It was noted that if an appeal was upheld, the appellant would recoup the fees, and some appellants on low wages were eligible to receive financial assistance

The Legal Adviser to the Committee provided further detail on the legislative framework and outlined the following issues for consideration:

- the decision making models employed in other authorities, the number of licences and appeals/suspensions/revocations within those authorities and the resource implications. The resources needed to support the model used in Birmingham - similar sized authority – were of particular note
- having regard to concerns expressed over decisions to suspend with immediate effect, it was noted that every Council had some delegation to officers to issue immediate suspensions. Importantly, when a suspension was made having regard to the safety of the travelling public, it was not possible to issue a suspension and then review that matter at a later date
- if Members chose to determine appeals, officers would not recommend decision making based purely on paper evidence. A Sub Committee model would allow Members to test and question the evidence submitted by appellants
- a Sub Committee would be empowered to deal with all relevant evidence and the relevant standard would be balance of probabilities rather than on “all reasonable doubt” as in a criminal case. Factors including whether there was the existence of a criminal conviction, whether an appellant was found not guilty or acquitted, personal circumstances, livelihood, hearsay and the facts of a criminal case were all relevant matters which could be considered by Members to inform their view over whether the licence holder was “fit and proper”
- it was acknowledged that even if an additional right of appeal was written into the decision making process, an appellant retained the right of appeal to the Magistrates Court. As such, it was important to provide clarity to the decision making process and for Members to deal with appeals quickly, possibly within 20 days, in order for the appellant to receive their decision and to afford them time to lodge a further appeal to the Magistrates Court if they wished to, with all the relevant paperwork from the sub committee appeal
- The number of appeals lodged in Leeds and the likelihood that a Member decision may confirm an officer decision, having regard to the Policy and reviewing the same evidence,
- The additional training and resources required to support members decision making if Members chose to change the decision making model

The Committee firstly noted the background to the request for reconsideration of the model currently used by Leeds, and considered how many people would be affected by the change, what level of involvement Members may wish to have, whether the appeals figures indicated a need for change and the impact on Councillor commitments balanced against the impact on all licence holders through a fee increase to support the change

Members discussed the following:

- Practice elsewhere in West Yorkshire and that the current delegation scheme was set within the parameters of national Legislation
- That public safety was a paramount concern. Members highlighted the data showing the number of PH suspensions where drivers were found to be illegally plying for hire. Members sought clarity on the fact that in these instances neither the vehicle nor the driver was insured to carry passengers, thus creating the risk to public safety.
- Noted the concerns expressed to some Members by some sections of the PH and HC trades about the current decision making model
- Noted that suspension or revocation would still occur if a driver was found to be plying for hire or driving whilst disqualified as the Policy would still apply to any decision maker. Members reiterated that, drivers of any vehicle should be aware that driving whilst disqualified was illegal and plying for hire invalidated the vehicle's insurance - thus increasing the risk to public safety
- That the term "generally invalidate" in paragraph 3:1 referred to those rare vehicle insurance policies which were not invalidated if the vehicle was used for a purpose other than that stated on the insurance policy document
- Whether the evidence collated from other Authorities was written or verbal evidence. and noted the reply that verbal responses had been typed and sent back to the Authority for confirmation. This correspondence could be made available to Members on request
- One Member commented that he had not been aware that financial assistance was available to drivers on low incomes who lodged appeals
- One Member expressed the view that it was wrong for one officer to make a decision to suspend or revoke a licence with immediate effect and that the Committee should include co-opted members
- The detail of criminal cases and the impact of the outcome of criminal cases on an officer decision to suspend or revoke a licence. Officers responded that if a driver was cleared of an offence at Court, whether the decision to give back the licence was an officer decision or a Member decision, that decision would be based on Council Policy and could take into account all reasonable evidence. It was reported that there had been very few cases where, following a driver/operator being cleared of a criminal offence, a suspension/revocation had been upheld. The decision to give back a licence would be taken after investigation of the court proceedings and findings, which it was acknowledged could take some time as evidence would be required from external organisations. Officers noted the request for further information on such instances to be presented at a later date
- The level of Member involvement in the different models applied across West Yorkshire and the core cities, the resources required for each of those models and the level of additional training Members could require

- The requirement for Members to attend Court in any subsequent appeal proceedings
- The fact that the number of suspensions for plying hire (63 in 2010) was unlikely to change as the decision to suspend was based on Council Policy which was not in question
- The tight timescale of any appeals to a Sub Committee and the impact this would have on Councillors commitments and Members concern that an appellant could lose the opportunity to appeal to the Magistrates Court if an appeal was not dealt with swiftly by Members
- Noted the comments expressed by one Member that a number of drivers had been treated in an appalling fashion by officers. He was concerned that drivers, having been acquitted of an offence at a court hearing, were not automatically given their badge/licence back and that he could not support delegating that decision making process to officers. Officers responded that there had been only one such case in the previous 18 months. Officers acknowledged the length of time a driver could be suspended if a criminal case was proceeding, however the Court process was beyond LCC control
- The number of suspensions in 2010 (89) and 2011 (129), the number of refusals in 2010 (18) and 2011 (15) and revocations in 2010 (69) and 2011 (64). Officers confirmed that 44 appeals had been lodged during the 2010/11 period. Of the 7 cases where a Magistrates Court did not uphold an officers decision, all 7 badges/licences were given back to the driver/operator
- The legal and resource implications for Leeds if any other model was adopted
- The data provided on the actual number of appeals to the Magistrates against decisions taken by the Authority under the current policy and conditions, and the impact any change might have on these numbers
- The availability of the Council's corporate complaints procedure for drivers to pursue complaints
- The comments made in respect of driver permit appeals in which Members had found officers decisions to be objective and in line with Policy
- The cost implications of any changes – whether to the general public through the Council bearing the increased administration costs for an additional appeals system or on the trade through the fees levied on the trade

The Committee having discussed the matter at length, carefully considered a motion whether to support a change to the current decision making model; but this was not supported.

RESOLVED – To note the contents of the report and to support the continued use of the existing decision making model

79 Chairs Comment

Having noted the discussions on the perception of the decision making within sections of the PH and HC trades and the comments by some Members on individual cases; the Chair urged all Members and trade representatives who knew of a case which they felt required further investigation, to provide the details of the case in writing, to the appropriate officers so that a full investigation could be undertaken.

80 Appeals Under the Licensing Act 2003

The Committee considered the report submitted by the City Solicitor on appeals lodged against the decisions of the Licensing Sub Committees under the provisions of the Licensing Act 2003. Members discussed the contents of Appendix 1 to the report and issues relating to the Cumulative Impact Policies within the Authority's Statement of Licensing Policy

The Committee noted the comment that the forthcoming change in legislation could be having an impact on the number of appeals lodged recently.

RESOLVED – To note the contents of the report and the intention to present updates on the appeal outcomes at the appropriate time.

(Councillor A Khan left the meeting at this point)

81 Licensing Work Programme

RESOLVED – To note the contents of the Licensing Work Programme for the remainder of the Municipal Year

82 Date and Time of the Next Meeting

RESOLVED – To note the date and time of the next meeting as Tuesday 10th April 2012 at 10:00 am