

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING COMMITTEE

MONDAY, 14TH NOVEMBER 2016 AT 6.00 P.M.

PRESENT: Councillors R. L. Dent (Chairman), C. J. Spencer (Vice-Chairman), M. T. Buxton, B. T. Cooper, J. M. L. A. Griffiths, C. M. McDonald, S. R. Peters, S. P. Shannon (during Minute No's 11/16 to part of 16/16), M. A. Sherrey (substituting for Councillor P. L. Thomas), L. J. Turner and S. A. Webb

Officers: Mrs. V. Brown, Mr. D. Etheridge and Mrs. P. Ross

Prior to the meeting commencing the Chairman informed the Committee that it was with sadness that he was stepping down and resigning as Chairman of Licensing Committee. He had enjoyed his time as Chairman and would like to take this opportunity to thank officers from Worcestershire Regulatory Services for their excellent, clear and professional reports, the Council's Legal Advisor for her enthusiasm in supporting Committee Members and the Democratic Services Officer for her help and support with meetings.

The Vice-Chairman then held a minutes silence in memory of the late Mr. P. Lammas.

11/16 **ELECTION OF CHAIRMAN**

A nomination for Chairman was received in respect of Councillor R. L. Dent.

RESOLVED that Councillor R. L. Dent be elected as Chairman for the remainder of the municipal year.

Councillor R. L. Dent expressed the Committee's thanks to Councillor B. T. Cooper for his hard work as Chairman of the Licensing Committee.

12/16 **APOLOGIES**

An apology for absence was received from Councillor P.L. Thomas. The Committee was advised that Councillor M. A. Sherrey was attending as the substitute member for Councillor P. L. Thomas.

13/16 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

14/16

MINUTES

The minutes of the meeting of the Licensing Committee held on 13th June 2016 were submitted.

Councillor C. M. McDonald drew Members' attention to the RESOLVED item as detailed at Minute No. 9/16, (b) "that the findings be brought back to a future meeting of the Licensing Committee". Councillor McDonald questioned this, as she thought it was agreed at the Licensing Committee meeting on 13th June 2016, that the findings would be brought back to the next Licensing Committee meeting on 12th September 2016, and that in light of the meeting being cancelled, the findings should have been brought to tonight's meeting.

The Democratic Services Officer reported that this item had been included on the Licensing Committee Work Programme to be allocated to a suitable date in 2017/2018.

In response to a suggestion by the Chairman, Councillor C. M. McDonald agreed with the findings being brought back to the next meeting of the Licensing Committee on Monday 13th March 2017 and that the Licensing Committee Work Programme 2016/2017 be updated to reflect this.

RESOLVED that the minutes of the Licensing Committee meeting held on 13th June 2016 be approved as a correct record.

15/16

DRAFT SCRAP METAL LICENSING POLICY - CONSULTATION RESULTS

The Committee received a report which detailed the consultation responses received on the draft Scrap Metal Licensing Policy and Guidelines for the licensing of scrap metal sites and collectors in the District and the finalised version of the Scrap Metal Licensing Policy and Guidelines following consultation.

The Senior Practitioner, Licensing, Worcestershire Regulatory Services (WRS), introduced the report and in doing so reminded the Committee that the Scrap Metal Dealers Act 2013 (the Act), came into force on 1st October 2013, with full enforcement powers coming into effect on 1st December 2013.

A draft Scrap Metal Licensing Policy and Guidelines was produced in order to provide clear guidance as to how the Council would administer and enforce the requirements of the Act.

The draft Scrap Metal Licensing Policy and Guidelines were prepared in accordance with the Act and the regulations that governed it. At the Licensing Committee meeting held on 13th June 2016, Members approved the draft Scrap Metal Licensing Policy and Guidelines for the purpose of consultation.

Consultation subsequently took place with the relevant partners and representatives of the metal recycling industry. Only one response was received, as detailed at Appendix 1 to the report. The response was received from Mr. Robin Edwards a Director of Obis Consultancy, who was part of the team that drafted the guidance on the Scrap Metal Dealers Act 2013, when the Act was first being implemented. Members were asked to note that Mr. Edwards saw no issues with the draft Scrap Metal Licensing Policy and Guidelines and wished to commend the Council for reinforcing the importance of the Act to the recycling industry.

The Senior Practitioner, Licensing, WRS responded to questions from Members and highlighted that a multi-agency enforcement check had been carried out which had also involved the Environment Agency. No legal action had been taken as a result of those checks.

The first set of renewal applications was due at the end of November 2016. Should Members approve the Scrap Metal Licensing Policy and Guidelines, as detailed at Appendix 1 to the report, a copy of the approved document would be sent out with all renewal applications for help and guidance.

The Senior Practitioner, Licensing, WRS further informed and reassured the Committee that, as highlighted in Mr. Edward's response, with regard to reports of cash returning on a daily basis; there appeared to be no evidence of the use of cash re-emerging for the payment of scrap metal in the Worcestershire area. Scrap metal dealers must only pay for scrap metal by either:-

- a) a cheque (which was not transferable under Section 81A of the Bills of Exchange Act 1882); or
- b) electronic transfer of funds (authorised by a credit, debit card or otherwise).

As set out in the Act it was a legal requirement for scrap metal dealers to keep and produce two types of records and an audit trail detailing the receipt of scrap metal and the disposal of scrap metal.

Councillor M. T. Buxton stated that there had been a noticeable decline in the number of complaints received regards mobile collectors and the noise made by some of those mobile collectors.

RESOLVED:

- (a) that the response received to the draft Scrap Metal Licensing Policy and Guidelines be noted; and
- (b) that the draft Scrap Metal Licensing Policy and Guidelines, as detailed at Appendix 1 to the report be approved.

HACKNEY CARRIAGE AND PRIVATE HIRE PENALTY POINTS SCHEME

The Committee considered a report which provided details of a Hackney Carriage and Private Hire Penalty Point Scheme to use as a tool to assist officers in ensuring that holders of hackney carriage and private hire licences were compliant with the requirements they had placed upon them as licence holders.

The Senior Practitioner, Licensing, Worcestershire Regulatory Services (WRS), introduced the report and in doing so informed the Committee that the vast majority of licence holders complied with the requirements placed upon them.

The introduction of a Hackney Carriage and Private Hire Penalty Point Scheme would be to enable WRS officers to deal quickly and efficiently with minor non-compliance issues and to help identify those who were regularly not acting in compliance with their licensing requirements so that further action could be considered against the individuals in a targeted and proportionate way.

The basic principle of such a scheme was that individuals that were found to have committed relatively minor offences or acts of non-compliance would have a number of penalty points logged against their licensing records held by the authority.

If an individual accumulated a given number of penalty points, within a defined period of time, this would trigger an automatic referral of the licence holder to a Hearing of the Licensing Sub-Committee for consideration as to whether or not they remained a fit and proper person to hold such a licence.

Members were further informed that other authorities across the United Kingdom operated penalty point schemes and had received a number of legal challenges.

In order to avoid such legal challenges being successful, it was necessary to have a mechanism in place to enable appeals against the imposition of penalty points; and to ensure that any decision in respect of whether, or not, to revoke a licence, once the maximum number of permissible points had been reached, was taken at the appropriate level, based on the merits of each individual case.

WRS Officers would use the scheme as an additional mechanism for dealing with minor offences and acts of non-compliance, where there was no impending risk to the travelling public. A penalty point scheme would be used in order to assist them in addressing low level breaches of regulations and to ensure that licensed drivers remained compliant.

The holders of hackney carriage and private hire licences issued by the Council were subject to a number of legal requirements and licence conditions which governed how they conducted their business.

WRS, who acted on behalf of the Council, were responsible for ensuring that licence holders complied with these legal requirements and were responsible for taking appropriate action when dealing with any licence holders who had committed offences or had failed to comply with their legal requirements.

Currently there were a number of options available to officers from WRS when dealing with offences or acts of non-compliance, as summarised:-

- Verbal warnings
- Written warnings
- Formal cautions
- Prosecution
- Referral to a meeting of a Licensing Sub-Committee

The way in which offences and acts of non-compliance were dealt with by officers from WRS was dependant on the circumstances of each individual case; whilst having appropriate regard to the Regulator's Code and relevant enforcement policies in order to ensure that any action taken was proportionate.

The introduction of a penalty point scheme would not affect the Council's ability to take formal enforcement action for any offence or act of non-compliance as every case would continue to be considered on its own merits. A penalty point scheme would not be an appropriate mechanism for dealing with serious offences or acts of non-compliance.

Appendix 1 to the report detailed the draft Hackney Carriage and Private Hire Penalty Point Scheme for consideration by Members. Should Members approve the draft penalty point scheme, officers from WRS would then conduct further consultation on the draft Hackney Carriage and Private Hire Penalty Point Scheme with licence holders and other relevant organisations. The results of the consultation exercise would then be presented to a future meeting of the Licensing Committee.

In response to questions from Members, the Senior Practitioner, Licensing, WRS, informed the Committee that a penalty point scheme would enable officers to build up evidence. Any licensed driver who continued to breach their conditions and were in receipt of a number of penalty points under the scheme would be brought before a Hearing of the Licensing Sub-Committee.

Members discussed the penalty point scheme in some detail and in doing so raised several questions with regard to the scheme, their main concerns being:-

- That some passengers, particularly elderly passengers, would not complain and that the scheme would be reliant on passengers reporting areas of non-compliance.
- Passengers not been aware of how to report any concerns.
- Concerns that reports of non-compliance could be one person's word against another.
- Reasonable assistance being given, some licenced drivers may be unable to assist passengers due to either a long term or short term medical condition.
- Passengers who had reported an act of non-compliance may not want to attend a Hearing of the Licensing Sub-Committee.
- Consideration of a broader range of points dependent on the severity of the non-compliance.
- Some of the offences / breaches listed at Appendix 1 to the report were covered under other legislation and the Highway Code, so why were they included in the list?

The Senior Practitioner, Licensing, WRS, responded and in doing so, explained that WRS did not solely rely on passengers to report areas of non-compliance. WRS licensing officers who patrolled the taxi ranks witnessed acts of non-compliance. Under the penalty point scheme, the officer, where possible, would speak with the driver and highlight the non-compliance / breach and explain that a letter would be issued explaining the details of the incident, the amount of penalty points awarded and the right to appeal. This would then be logged onto the driver's record by the officer.

Passengers should feel confident in coming forward and reporting any concerns to WRS. WRS could only act on information received and investigate non-compliances reported. Passengers would be made aware that their details would not be given out to licensed drivers, but it would also be highlighted to those who reported incidents, that should the matter be referred to a Hearing of the Licensing Sub-Committee that it may be difficult to keep their anonymity.

With regard to the question raised whereby incidents were reported and it could be one person's word against another. The Senior Practitioner, Licensing, WRS, reassured Members that should delegation be given to the Licensing and Support Manager, WRS, she would dispassionately take into consideration all of the evidence presented to establish the facts and if necessary seek further clarification from both the passenger and the driver. Each case would be determined on its own merits and if deemed relevant points could be overturned.

Members were further informed that with regard to a broader range of penalty points being included at Appendix 1 to the report. That, following on from the suggestions made by Members, this was something he would look to include in the consultation document, in order to seek the views of those consulted with, should Members agree with the consultation being carried out.

The Senior Practitioner, Licensing, WRS, further explained that the inclusion of some of the offences / breaches, which could be dealt with by other legislation and enforcement agencies, had been included in order for officers to use it as a further deterrent. For example, WRS received a lot of complaints regards drivers sounding their horns, by including "using vehicle horn otherwise than in accordance with rule 112 of the Highway Code" provided officers with another arm in which to deal with and monitor such complaints and to act as a deterrent.

If the Committee agreed with the consultation being conducted, and if following that consultation, the Hackney Carriage and Private Hire Penalty Point Scheme was introduced, WRS would ensure that a press release was issued to raise public awareness of the agreed scheme.

Members welcomed the report and were reassured to note, that as highlighted earlier by the Senior Practitioner, Licensing, WRS that the vast majority of licence holders complied with the requirements placed upon them. The consultation would raise awareness with the taxi trade that any minor breaches or non-compliances could be monitored.

Members agreed for the consultation document to be approved by the Chairman.

The Senior Practitioner, Licensing, WRS, further responded and informed the Committee that the consultation period followed the Code of Practice on Consultation, which states that consultations should last for a minimum of twelve weeks. By allowing at least twelve weeks this should enhance the quality of responses and avoid any possible legal challenge

The Chairman thanked the Senior Practitioner Licensing, WRS, for presenting his report.

RESOLVED:

- (a) that following approval of the consultation document with the Chairman;
- (b) the draft Hackney Carriage and Private Hire Penalty Point Scheme, as detailed at Appendix 1 to the report, be approved for the purpose of consultation with licence holders and other relevant organisations; and
- (c) that, as detailed in the preamble above, following consultation with licence holders and other relevant organisations the consultation results be presented to a future meeting of the Licensing Committee.

17/16

LICENSING COMMITTEE WORK PROGRAMME

The Committee considered the Work Programme for 2016/2017.

RESOLVED that, the Licensing Committee Work Programme be updated to include the items discussed and agreed during the course of the meeting.

The meeting closed at 7.21 p.m.

Chairman