

## **Licensing Committee – Meeting held on Tuesday, 29th September, 2009.**

**Present:-** Councillors Davis, Chohan, Bains, Dale-Gough, Jenkins, Long, Maclsaac, Rasib and Shine.

**Apologies for Absence:-** Councillor Qureshi.

### **PART I**

#### **6. Declarations of Interest**

Councillor Davis declared a personal interest as a member of his family worked for Burnham Cabs.

#### **7. Minutes**

The minutes of the meeting held on 1<sup>st</sup> June, 2009 were approved as a correct record.

#### **8. Appointment of Designated Chair to the Licensing Sub Committee**

This report was withdrawn.

#### **9. Gambling Act 2005, Statement of Principles (2009)**

The Senior Licensing Officer advised the Committee that the authority was required to put in place a policy, known as the Statement of Principles, which would be applied when the Council exercised its functions under the Gambling Act 2005. The original policy was placed before the Committee on 8<sup>th</sup> November, 2006 and subsequently approved by the Council in December of that year. It was required to be reviewed at least every three years. Officers had revised the Statement in accordance with the Gambling Commission's "Guidance to Local Authorities, Third Edition" and the amended document was presented for the Committee's approval prior to formal submission to the Council.

Consultation on the revised document had taken place between April and August 2009, by way of press releases, an interview on local radio, through the Council's website and by writing to a range of organisations and individuals. Very little feedback had been received as the draft Statement was comprehensive and in line with legislation and the Gambling Commission's guidance, and consultees were generally in agreement with it. Moreover, the feature of the Gambling Act which tended to give most cause for public concern related to casinos and provisions for the regulation of casinos were not included in the draft Statement as the Council had recently reiterated its policy that no casinos should be allowed in the Borough.

Reference was made to the proposed amendments to the currently approved Statement of Principles which were minor in nature and complied with national guidance.

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**Recommended unanimously** – That the Council be recommended that the Gambling Act Statement of Principles 2009, as now submitted, be adopted as the authority's gambling policy.

### 10. Review of Delegated Powers

The Committee considered a report recommending that the level of delegation to Officers in respect of the licensing of hackney carriages and private hire vehicles be increased. Currently, where any new applicant for a driver's licence was deemed not to be a "fit and proper" person in accordance with the legislation or with the current policy on convictions and cautions, the application was submitted to the Licensing Sub-Committee for consideration. Similarly, where a current licence holder had received any caution, conviction or sentence for particular offences, or where there was a matter of misconduct and, in the opinion of Licensing Officers, the driver was not deemed to be "fit and proper", the matter also required referral to the Sub-Committee.

Officers were then required to prepare a Sub-Committee report setting out all relevant information and make arrangements for a Sub-Committee meeting to be held which required the attendance not only of the three sitting Members, but staff from the Licensing Department, a Legal Officer and a Democratic Services Officer. Partly due to the large number of such cases requiring consideration, there could be a considerable time between the Licensing Officer preparing the report and the matter being heard. This was considered to be prejudicial to the applicant or licence holder as the matter was not dealt as expeditiously as possible. In addition, it was considered important for such matters to be dealt with in a more efficient manner as it was inappropriate for a long period of time to elapse between a particular issue coming to light and a decision being taken on it. Moreover, there had been an increase in the number of appeals against the Sub-Committee's decisions to the Magistrates' Court which, depending on court availability, could add an additional three to nine months before an appeal was heard.

Reference was also made to the fact that the level of staffing within the Licensing Team had recently been reduced and the proposed delegation would enable such cases to be dealt with more efficiently and this was considered to be of benefit to all parties. In addition, a reduction in the number of Sub-Committee meetings called would lead to significant savings in the recharge made to the licensing budget for Member allowance claims, officer time in Democratic and Legal Services preparing for and attending the meetings, and the cost of providing accommodation and refreshments, etc.

A benchmarking exercise had been conducted of twelve other local authorities in the area which demonstrated that most had introduced an officer delegation scheme similar to that now being proposed. Officers pointed out that, as at the present time, applicants unhappy with the decision made by officers could appeal to the Magistrates' Court as was the case currently in respect of Sub-Committee decisions.

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The report outlined the proposed delegated powers as well as highlighting those areas where matters would continue to be brought to the Sub-Committee. These included misconduct matters involving complaints and/or evidence from members of the public, the police or other persons which may require the evidence to be given orally. In addition, a licence holder may deny the misconduct and/or provide mitigation on the matter and it may be appropriate for such an issue to continue to be heard by Members.

In conclusion, Officers commented that decisions would be made by officers using the policy on convictions and cautions previously approved by Members which had been tested at appeals in the Magistrates' Court and had been proved to be a sound and reliable policy document. In using this policy, it would be the responsibility of the Assistant Director, Public Protection and the Licensing Manager to ensure that all decisions made under delegated powers were made in a consistent, reasonable and proportionate, transparent, legal, accountable, necessary and justifiable, non-discriminatory manner. Every decision made would necessitate written justification being provided to the applicant or licence holder and this would be the evidence as to why the decision had been made. This written justification would be the basis on which the Council would defend any appeal that may be made against the decision.

Members raised the following issues in the subsequent debate:

- Members sought clarification as to those issues which would continue to be submitted to the Sub-Committee and whether for example drivers who had received a caution would have the opportunity to explain the position before Members. Officers commented that, generally speaking, any individual who had received a conviction or a caution would be dealt with by Officers under delegated powers. However, any representations made by the driver would be fully taken into account. Moreover, it was stressed that drivers aggrieved by an officer decision would still have the option of appealing to the Magistrates' Court as they did currently in respect of Sub-Committee decisions. Where, for example, an allegation was received from a member of the public, then such matter would still be brought before Members. Each case would be looked at on its individual merits and if a particular case was borderline, then officers would normally refer such matter to Members for a final decision.
- Concern was expressed by some Members at an increase in delegation to officers as it reduced the decision-making powers of the elected Members. Officers reiterated that the thinking behind the proposal was to lead to greater efficiency and cost-effectiveness, particularly in cases where there was a clear cut conviction which should not need to be formally considered by Members.
- A Member referred to the cost to drivers of taking an appeal to the Magistrates' Court. Officers pointed out that this was already the case where a driver appealed against the Sub-Committee's decision and, where the Court found in the driver's favour, costs would normally be awarded against the Council.

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- A Member asked whether stakeholders had been consulted on the current proposal. Members were advised that formal consultation was not required as the decisions to be taken at officer level would be based on the previously agreed and consulted upon policy which had been praised recently at the Magistrates' Court for its clarity.
- Some Committee Members expressed the view that, whilst accepting in principle that an increased level of delegation may be desirable, costs should not be the only consideration. There was felt to be a case for issues to be referred to a three Member Sub-Committee as many of the cases were not straightforward and the representations made by the driver may lead to a different outcome at the Sub-Committee than if the matter was considered by a single officer. Moreover, there was a perception by amongst some drivers that officers were less likely to be sympathetic to their case given that the officer may be working more strictly to the agreed policy and may be less inclined to take mitigating circumstances into account.
- Some Members commented that whilst they did not have an issue with officers having an increased level of delegation in dealing with serious convictions, they were less comfortable with cautions and concern was expressed at the phrase "any other reasonable cause" as being too vague. It was pointed out that this wording had been lifted from the relevant legislation.
- The Sub-Committee was informed that officers would not simply take decisions strictly in accordance with the policy. As with Members, they would need to collate all of the relevant information, speak to the applicant allowing him or her to make representations, and would consider each case on its individual merits. Every decision made would need to be properly justified and put in writing to the applicant.

Members felt unable to approve the report as currently submitted but requested that officers take away the comments raised and submit a revised report to the next meeting of the Committee taking into account the following issues:

- A clear indication in tabular form of the precise matters that would continue to be dealt with by the Sub-Committee, those areas which were proposed for delegation to officers and any "grey areas" in between.
- The report to include details of the currently approved policy on convictions and cautions.
- A clear explanation of the procedure to be adopted for dealing with these cases to be set out.

Concern was also expressed in the course of discussion at the number of requests for deferral made by applicants in respect of their cases before the Sub-Committee. Some Members thought there was a perception amongst some drivers that if they asked for a deferral, a more "favourable" Sub-Committee might be appointed for a future hearing. It was suggested that a clear policy should be set out for the guidance of Sub-Committee Members in future and this would be taken into account in the report back.

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**Resolved** – That the recommendations be not adopted but that officers report back to the next meeting of the Committee in the terms indicated.

Chair

(Note: The Meeting opened at 6.30 pm. and closed at 7.30 pm.)