

Gloucester City Council

COMMITTEE	: LICENSING AND ENFORCEMENT COMMITTEE
DATE	: 16 NOVEMBER 2010
SUBJECT	: USE OF POWER IN CONSTITUTION TO SET UP A SUB-COMMITTEE OR SUB-COMMITTEES TO DISCHARGE FUNCTIONS
WARD	: ALL
REPORT BY	: GROUP MANAGER, ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	: A: EXTRACT FROM GLOUCESTER CITY COUNCIL CONSTITUTION 2010 PART 3 RESPONSIBILITY FOR FUNCTIONS PAGES 24 AND 25
REFERENCE NO.	: ES21015

1.0 PURPOSE OF REPORT

- 1.1 To outline to members options for hearing Private Hire Driver Disciplinary following a number of successful prosecutions in the Magistrates Court.

2.0 RECOMMENDATIONS

- 2.1 To agree one of the following options:
- (a) To programme all cases with other work over the next 3 or 4 Licensing and Enforcement Committees, or
 - (b) To call 1 or 2 Special Licensing and Enforcement Committee(s) of the full Committee, or
 - (c) To use delegated powers as set out in the Constitution Part 3 Responsibility for Functions paragraph 5 (a) (v), page 25 and set up 1 or more sub-committees consisting of 5 members (or any other number deemed to be appropriate) of the Licensing and Enforcement Committee. That the sub-committee(s) be given delegated powers to hear and determine disciplinary hearings for the recent Private Hire prosecution cases in accordance with the provisions of the Council's adopted General Conditions for Hackney Carriage and Private Hire Licensing.

3.0 BACKGROUND

- 3.1 Following a number of licensing enforcement exercises undertaken earlier this year, 9 cases were taken before the Magistrates Court on Friday 29 October. All cases either pleaded guilty or were found guilty.
- 3.2 The verdicts were as follows:
- Mr H pleaded guilty and was fined £300, £15 victim surcharge and £200 Council costs.
 - Mr E pleaded guilty and was fined £250, £15 victim surcharge and £200 Council costs.
 - Mr D pleaded guilty and was fined £50, £15 victim surcharge and £100 Council costs.

- Mr I pleaded guilty and was fined £160, £15 victim surcharge and £50 Council costs.
- Mr A gave no plea and did not attend, he was fined £350, £15 victim surcharge and £200 Council costs.
- Mr C pleaded guilty by post and was fined £260, £15 victim surcharge and £200 Council costs.
- Mr I gave no plea and did not attend and was fined £350, £15 victim surcharge and £200 Council costs.
- Mr R pleaded guilty by post and was fined £235, £15 victim surcharge and £200 Council costs.
- The Cheltenham driver Mr H faced the greatest fine, he gave no plea and did not attend Court he was fined £525, £15 victim surcharge and £200 Council Costs.

3.3 Six of the convicted Drivers hold current Gloucester City Council Private Hire Driver Licences. In accordance with our licence conditions any existing driver with a criminal conviction must appear before the Licensing and Enforcement Committee for a disciplinary hearing. Experience shows that each disciplinary usually takes around 1 hour.

3.4 Now that these cases have been determined by the Magistrates Court it is important that we hold disciplinary hearings without delay and that they should all be heard within a similar time frame.

3.5 If these cases are left to be programmed in with the regular Licensing and Enforcement Committees the following problems are likely to be incurred:

- With other matters programmed for Licensing & Enforcement agendas it is likely that a maximum of 2 cases will be heard per Committee. Therefore the earliest that all cases are likely to be heard is the end of February.
- With this volume of disciplinaries to be programmed on the Licensing & Enforcement agendas, meetings are likely to be long.
- These disciplinaries are all of a similar nature and it may be disruptive to have them on the same agenda as matters that are of interest to the media and or where questions and deputations are taken.

4.0 PROGRESS

4.1 Currently Licensing and Enforcement meetings are programmed every month. At these meetings a variety of subjects are heard ranging from disciplinaries to policy matters. For example we are planning to present reports on the following in the next 3 months:

- Licensing of Sex Establishments
- Joint Health and Safety Working – Work Well Gloucestershire
- Policy for issuing A Boards

4.2 Following a licensing enforcement exercise 9 cases were taken to the Magistrates Court. These cases all were in relation to 2 evenings enforcement work in the City and consequently all occurred at the same time. The current structure of Licensing and Enforcement Committee, being held every month, whilst usually providing adequate meetings to programme policy issues with capacity for some disciplinary cases as and when they occur has previously worked, it does not allow for situations like this where a number of cases arise at the same time.

- 4.3 To overcome this, Members can take one of the following options:
- (a) To programme all cases with other work over the next 2-3 Licensing and Enforcement Committees, or
 - (b) To call 1 or 2 Special Licensing and Enforcement Committee(s), or
 - (c) To use delegated powers as set out in the Constitution Part 3 Responsibility for Functions paragraph 5 (a) (v), page 25 and set up 1 or more sub-committees consisting of 5 members (or any other number deemed to be appropriate) of the Licensing and Enforcement Committee. That the sub-committee(s) be given delegated powers to determine disciplinary hearings for the recent Private Hire prosecution cases in accordance with the provisions of the Council's adopted General Conditions for Hackney Carriage and Private Hire Licensing.
- 4.4 Programme into regular Licensing and Enforcement Committees
- Advantages: Consistent with how this Council has previously carried out disciplinary hearings.
- Disadvantages: Hearings delayed as unable to programme them all in December due to other business and sheer volume. Unlikely to have all cases heard before the end of February 2011. Large meetings for disciplinary hearings could be prone to proportionality and fairness challenges.
- 4.5 Special Licensing and Enforcement Committee(s)
- Advantages: These Committees would be made up of the full Licensing and Enforcement Committee and would be programmed within the next 4 - 6 weeks. Because the whole Committee will sit this would be consistent with how this Council has previously carried out disciplinary hearings. Cases heard expediently.
- Disadvantages: Setting up these meetings would be costly. At this short notice and running in to the lead up to Christmas attendance may be difficult for some members. Large meetings for disciplinary hearings could be prone to proportionality and fairness challenges.
- 4.6 Set up Sub-Committees of 5 members (or any other number deemed appropriate)
- Advantages: These sub-committees would be programmed over the next 4 - 8 weeks. Attendance likely to be better with reduced numbers. Greater flexibility on dates, times and suitable room with reduced numbers. Cases heard expediently. Smaller meetings are likely to cost less and are less prone to proportionality and fairness challenges.
- Disadvantages: Different set up to usual for disciplinaries held in Gloucester may lead to inconsistencies although some of this could be mitigated by using the same Members for all 6 cases.
- 4.7 With these extra meeting(s) there will be a need for Officers to attend and present the report(s) as well as to answer questions Members may have. This work will be shared amongst the Licensing and Enforcement team. In addition consideration should be given to the timing of the meeting(s) to perhaps help share out the work and to possibly reduce the costs incurred by evening meetings.

5.0 CONCLUSIONS

- 5.1 Members should consider the information contained in this report and determine one of the options as laid out in paragraph 2.1, taking into consideration fairness and proportionality issues highlighted.

6.0 FINANCIAL IMPLICATIONS

- 6.1 Additional Committee meetings could attract the following costs in 2010/11 – refreshments, dependent/child care expenses (where relevant), officer evening meeting allowance (where officers in attendance) and room costs. The amount incurred would depend on the number of meetings held, the individuals requested to attend, timing of the meeting (office hours/evenings) and provisions made.
- 6.2 The additional costs incurred by either of the 3 options should not be significant.

7.0 LEGAL IMPLICATIONS

- 7.1 Under the Licensing Act 2003 and the Gambling Act 2005 there is a statutory basis for sub-committees and process. This is not the same for hearings of Private Hire and Hackney Carriage appeals and disciplinary hearings under the Local Government (Miscellaneous Provisions) Act 1976. In these instances, it is up to the Council to what extent it wishes to delegate its functions and to have processes that comply with natural justice and human rights.
- 7.2 The Council also has powers to call special meetings of Licensing and Enforcement Committee or the hearings could be scheduled in the normal cycle with other business.
- 7.3 The implications of all 3 options are considered in the main body of the report.

8.0 RISK MANAGEMENT IMPLICATIONS

- 8.1 The risk management implications of this report are all low.

9.0 PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES)

- 9.1 This will be captured in a wider review of the Licensing and Enforcement Committee.

10.0 OTHER CORPORATE IMPLICATIONS

1. Community Safety

The Community Safety implications are covered in the main body of the report.

2. Environmental

None

3. Staffing

The staffing implications are covered in the main report.

4. Trade Union

If these meetings are to be held in the evenings then the Union would be concerned if this additional work was not shared between the team. Managers should ensure that individuals working hours are managed in line with E U Working time legislation.

Background Papers : Gloucester City Council Hackney Carriage and Private Hire Licensing General Conditions

Published Papers : Gloucester City Council Constitution 2010

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