

# PAPER B

Purpose: For Decision

Committee: **LICENSING COMMITTEE**

Date: **1 MARCH 2005**

Title: **TO CONSIDER WHETHER MR R WILKINS IS A FIT AND PROPER PERSON TO CONTINUE TO HOLD A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE**

## **REPORT OF THE HEAD OF CONSUMER PROTECTION**

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### PURPOSE/REASON

1. To consider whether Mr R Wilkins, 69 Fairmount Drive, Newport, Isle of Wight is still a fit and proper person to hold a Hackney Carriage/Private Hire driver's licence for the former Borough of Newport, and what action, if any, to take following his recent conviction of Harassment.

### DETAILS

2. Mr R Wilkins notified the Licensing Section on the 2 November 2004 that he had been found guilty of Harassment at the Isle of Wight Magistrates Court. He had been given a conditional discharge for 12 months and a restraint order was made in respect of 7 individuals. A compensation order was also made together with the award of court costs against Mr Wilkins totalling £550. Mr Wilkins letter is set out at Appendix 1.

### LOCATION & SITE CHARACTERISTICS

3. Mr Wilkins was granted a licence on 1<sup>st</sup> February 2004, which expired on 31<sup>st</sup> January 2005. By virtue of his appeal to the Isle of Wight Magistrates Court he was able to continue to drive until the Committee makes a decision in this matter.

### RELEVANT HISTORY

5. The Licensing Section received the Memorandum of Conviction for the Magistrates Court on the 4 January 2005. This is set out at Appendix 2.
6. A letter suspending Mr Wilkins Hackney Carriage/Private Hire Driver licence no. 751 was sent on the 21 January 2005 until this hearing. This is set out at Appendix 3.
7. Mr R Wilkins has lodged an appeal to the Isle of Wight Magistrates Court, which has the effect that he can continue to drive pending the appeal.

### COUNCIL POLICY

8. The Council's policy is the Guidelines Relating to the Relevance of Convictions as issued by the Department of Transport and adopted as the

Council's policy. It shows that for an offence involving a conditional discharge, a person should be able to show at least one year free of conviction.

#### FORMAL CONSULTATION

9. Not applicable to this matter.

#### THIRD PARTY REPRESENTATIONS

10. Not applicable to this matter.

#### FINANCIAL IMPLICATIONS

11. Broadly, Council expenditure on Licensing matters and in particular those that are administered and enforced through Consumer Protection, balances income received from licence fees.

#### LEGAL IMPLICATIONS

12. The Licensing Committee will be aware this is not a re-hearing of the Magistrates' decision, Mr Wilkins has already been convicted.
13. The Local Government (Miscellaneous Provisions) Act 1976 Part 2 governs the licensing of Hackney Carriage/Private Hire Drivers, and Section 61 (1) is set out below:-

**“Notwithstanding anything in the Act of 1847 or in this part of this Act, a district council may suspend or revoke or (on application therefore under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds;**

**(b) any other reasonable cause**

14. Each case should be considered individually so as to comply with the rules of natural justice.
15. In arriving at their decision the Committee will have taken into account all relevant matters, and not taken into account any irrelevant matters.

#### IMPLICATIONS UNDER THE CRIME AND DISORDER ACT 1998

16. Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

#### IMPLICATIONS UNDER THE HUMAN RIGHTS ACT 1998

17. Members are advised that this application must be considered against a background of the implications of the Human Rights Act 1998.

There are three convention rights which need to be considered in this context:-

- a) Article 6 - Right to a fair trial  
In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the magistrates' court from any decision of the Committee is sufficient to make the Council's licensing system compliant with the convention rights.

- b) Article 8 - Right to respect for private and family life.  
Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

- c) Article 1 of the first protocol – protection of property.  
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties”.

- d) The Committee needs to be clear as the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.

Article 1 is particularly relevant to this case, as a licence is deemed to be a possession.

### OPTIONS

18. To issue a written warning to Mr R Wilkins with regard to his future conduct as a licensed Hackney Carriage/Private Hire driver.
19. To suspend Mr R Wilkins Hackney Carriage/Private Hire Driver's licence for a period to be determined by the Licensing Committee.

20. To revoke Mr R Wilkins Hackney Carriage/Private Hire Driver's licence as he is no longer considered to be a fit and proper person to hold such a licence, due to being convicted of an offence involving Harassment.

#### EVALUATION/RISK MANAGEMENT

21. Officers have taken into account the fact that no complaints have previously been received regarding Mr Wilkins' ability as a licensed driver.
22. Officers believe that this type of behaviour is not that which would be expected of a driver licensed by the Isle of Wight Council.
23. Officers have considered the implications under the Human Rights Act and the Local Government (Miscellaneous Provisions) Act Part II Section 61(1).
24. Insofar as any risk to the Council is concerned, the issue of Crime and Disorder and Human Rights have been evaluated. Any resolution the Committee makes is within its delegated powers.

#### RECOMMENDATION

25. That Mr Wilkins' Hackney Carriage Driver's Licence number 751 be suspended for a period to be determined by the Licensing Committee, and for this period to be for a minimum period of 2 weeks.

#### APPENDICES ATTACHED

26. Appendix 1 – Mr Wilkins letter  
Appendix 2 – Magistrates Memorandum of Conviction  
Appendix 3 – Suspension letter

[Click here to view Appendices](#)

#### BACKGROUND PAPERS

27. The checklist for this report in relation to the Human Rights Act, Wednesbury principles, and proportionality.

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