

CARLISLE CITY COUNCIL

Report to:- **THE LICENSING AND REGULATORY PANEL**

Date of Meeting:- 10 OCTOBER 2001

Agenda Item No:-

A.4

| Public/ Internal | Policy/Operational/Information | Delegated Yes/No | |
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| <hr/> | | | |
| Accompanying Comments and Statements | | Required | Included |
| Environmental Impact Statement: | | No | No |
| Corporate Management Team Comments: | | No | No |
| City Treasurers Comments: | | No | No |
| City Solicitor & Secretary Comments: | | Yes | Yes |
| Head of Personnel Services Comments: | | No | No |

Title:- **NOTES FOR GUIDANCE FOR MEMBERS**

Report of:- **CITY SOLICITOR AND SECRETARY**

Report reference:- **TC.209/01**

Summary:-

The report explains the purpose of the attached Notes for Guidance and recommends that they are received by Members.

Recommendation:-

That Members receive the Notes for Guidance.

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04 October 2001

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Notes for Guidance for Members of the Licensing and Regulatory Panel

1. Prior to the introduction of the new Constitution on 11 September 2001 licensing matters were previously dealt with by the Council's Licensing Panel which was a Sub-Committee of the former Environment Committee. The functions of both these bodies was superseded by the arrangements introduced under the new Constitution which provide that for Licensing and Regulatory matters to be dealt with by the new Licensing and Regulatory Panel.
2. Notes for Guidance for Members of the former Licensing Panel were produced by the City Solicitor and Secretary and were circulated. However these Notes are now out of date due to the following developments:

The introduction of the new Constitution, the setting up of the new Licensing and Regulatory Panel and developments in the law including the introduction of the Human Rights Act 1998 (which came into force in October 2000), certain statutory amendments to the law relating to the Licensing of Public Entertainments and very recent case law affecting the Door Supervisors Registration Scheme.

3. In order to take account of the new developments the Notes have been updated by the City Solicitor and Secretary and are now attached for Members use. The purpose of these Notes is to explain the role of the Panel, the scope of its powers, the role of Members of the Panel and the standards of conduct required, the role of Officers, the principles of decision making and an outline of key statutory provisions which Members are likely to encounter during meetings of the Panel. It is hoped that these Notes will provide useful assistance to Members in exercising their function at meetings of the Panel.

Recommendation

It is recommended that these Notes are received as guidance for Members of the Panel.

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Notes for Guidance for Members of the Licensing and Regulatory Panel

LICENSING AND REGULATORY PANEL GUIDANCE NOTES FOR MEMBERS

1. Introduction

The purpose of these notes is to provide guidance for Members of the Licensing and Regulatory Panel. The notes explain the capacity and remit of the Panel, the role of Members and the standard of conduct required of them, a brief overview of relevant legislation and policies, the procedures to be adopted at meetings of the Panel, general legal principles in decision making including factors to be taken into account.

2. The Remit of the Panel

- 2.1 The Local Government Act 2000 which radically overhauled the decision making machinery in Local Government, requires that certain functions are carried out by the Council and not by the Executive. Such functions include, broadly, the determination of applications for Licences and Registrations and the enforcement of legislation and conditions pertaining to such Licences and Registrations.
- 2.2 Carlisle City Council has delegated these functions to the Licensing and Regulatory Panel. In accordance with the requirements of the legislation the Panel is politically balanced. It is comprised of 8 Members.
- 2.3 The responsibilities of the Panel are fully set out in the table in Part III of the Council's Constitution under the heading "Responsibility for Local Choice Functions". Reference should be made to that table for a full list of functions. As shown from the table, the Panel is responsible for a very wide range of functions. The volume of the workload is such that if the Panel took it upon itself to be "personally" responsible for discharging all these functions it would by necessity have to meet on a daily basis every week of the year! Many of the activities are therefore

delegated to Officers, for example the routine issuing of Licences/Registrations where the fitness of the person or the premises is beyond question.

2.4 Matters which will be brought before the Panel for a decision will include the following:

- Where it is considered that the fitness of the person or the premises to hold a Licence/Registration is open to question due to the record or conduct of the Applicant or for the state of the premises.
- Where, in the opinion of Officers, the application ought to be refused.
- Where an existing Licence Holder has been convicted of an offence or it is alleged that the conditions of the Licence have been breached.

2.5 Examples of matters which come before the Panel include the following:

2.5.1 Applications for new Licences and Registrations in respect of which the circumstances outlined above apply including:

- Public Entertainment Licences
- Hackney Carriage Drivers Licences
- Private Hire Vehicles Drivers Licences
- Door Supervisors Registration

2.5.2 The holder of the Licence/Registration is alleged to have breached the conditions of Licence or has been convicted of a relevant offence.

- 2.5.3 Applications for renewals of the Licences/Registrations referred to above where the concerns outlined at 2.4 apply.

3. Role of the Panel

- 3.1 Under the terms of the Constitution the Panel has the function of determining applications and what action should be taken where conditions of Licence have been breached or offences have been committed. It does not have role for the debating and formulation of policies.
- 3.2 In law the Panel is treated as "quasi judicial" body. In other words the Panel's role is similar to that of the Court of Law and like a Court of Law its procedures should be formulated and set down and it should give reasoned decisions which are recorded in writing. This will be explained in greater detail below.
- 3.3 The decisions of the Panel are subject to review by Courts of Law. There is a right of appeal against refusal of applications and suspension and revocation of most types of Licence. The right of appeal is usually to the Magistrates Court. (Door Supervisors registration is not subject to statutory right of appeal but the Council has decided that a right of appeal lies to the Council's Appeals Panel). In addition the proceedings and decisions of the Panel are open to challenge in the High Court under the general principles of administrative law and/or the Human Rights Act 1998.

4. Conduct of Members

Members of the Panel should adhere to the following principles of conduct:

- 4.1 They should not become involved in discussions with Applicants, Licence Holders, objectors or other third parties regarding applications. They should avoid organising support or opposition to an application.
- 4.2 They should not indicate that they have made their minds up on an issue in advance of a decision being taken by the whole Panel and before being exposed to all the evidence and arguments.
- 4.3 Any Members who have publicly committed themselves to a view on an Application should make an open declaration and withdraw from the meeting whilst that item is under consideration.
- 4.4 Members should not put pressure on Officers to make a particular recommendation. The Head of Legal Services will inform the Chairman of the Panel and/or the Chief Executive if undue lobbying by Councillors has taken place.
- 4.5 The overriding duty of Members of a Panel is to the whole community in accordance with the principles set out in this guidance; they must act as individuals rather than as Members of a particular political group when determining issues which come before the Panel for consideration.
- 4.6 Members of a Panel should not become involved in giving advice to persons who appear before a Panel; in the event that Members are approached they should confine their comments to merely stating the procedure for determination of matters by the Panel (a standard letter is available for this purpose).
- 4.7 It goes without saying that the rules relating to declaration of interest apply also to proceedings of the Panel. This situation may occur if a member has a competing interest with an applicant (eg the member holds a Public Entertainment Licence for premises in the vicinity of an

applicant's premises) or where an applicant is personally known to a Member.

Members who have declared a pecuniary or non-pecuniary interest in relation to a particular item should not participate in the meeting whilst that item is under discussion; having declared the interest they should leave the meeting and not return until that matter has been concluded.

- 4.8 The conduct and demeanour of Members of the Panel during meetings is important in not only setting the correct tone for consideration and determination of the matters which fall to be determined but also in projecting an appropriate image of the Council when it is exercising its licensing role in this public forum. The demeanour of Members should be modelled on that of the Licensing Justices (when considering applications for Licences/Registrations) and that of the Magistrates (when considering conduct or convictions). It should be remembered, after all, that it is the livelihoods and lives of individuals who are being directly affected by the proceedings of the Panel.
- 4.9 In the event that a Member arrives late for consideration of any matter s/he should not be permitted to join the Panel until consideration of that matter is concluded; the Member should stay out of the room or sit in the public part until the next matter is ready to commence whereupon that Member may take his/her place on the Panel.
- 4.10 If it is necessary for whatever reason for any Member to leave the room whilst an item is under consideration by the Panel that Member must not discuss the matter with anyone whilst out of the room.
- 4.11 Not only must Members of the Panel be free from bias, but perhaps more importantly should not give the impression or give cause for anybody to believe that they are tainted with bias. This is summed up by the old saying "Not only must justice be done; it must be seen to be done".

- 4.12 Members must not act as Judge and Jury in their own cause. (This may arise where a Member has a vested interest – eg financial – in the success or failure of an application).
- 4.13 Members must allow each party an opportunity to state their side of the case.
- 4.14 Members must take into account all relevant considerations and exclude irrelevant considerations.
- 4.15 Members should not discuss with anyone matters which will be or have been considered by the Panel in Part B. Such items are strictly private and confidential.

5. Guiding Principles for Meetings of Panel

The following principles apply to meetings of the Panel:

- 5.1 Each party must be given a full opportunity to state its case and to appoint, a legal or other representative of its choice.
- 5.2 Each party must know the case it has to meet and be given an opportunity to rebut it; this entails that each party must be free to question witnesses of any other party and to make representations to the Panel.
- 5.3 The decisions of the Panel must be proportionate to the objective to be obtained (this is explained in more detail below).
- 5.4 The decisions of the Panel must be recorded in writing and such record must include details of the reasons for the decision.

6. Officer Support and Role

- 6.1 At each meeting of the Panel a Committee Clerk will be available to take notes of the meeting. In addition a legally qualified Officer will also be present at the meeting and it will be that Officers function to advise the Panel correctly on matters of law and procedure.

The Officers can also offer advice and guidance to the Members generally. However it is not the role of these Officers (other than in very exceptional circumstances) to advise Members of the decision which they should make or to formulate the reasons or make findings of fact in support of the decision; it is the function of Members to do this.

- 6.2 "Behind the scenes" there is a lot of preparatory work to be carried out by Officers in preparing meetings of the Panel.

- 6.2.1 The Licensing Officer prepares reports for the panel. Not only does this involve writing the reports and collating the background papers but also entails liaising with applicants and objectors regarding the date of the meeting and ensuring that where necessary, applications are given the appropriate publicity and that appropriate persons are notified (e.g. Police, Fire Service, Environmental Health Officers, Planning Officers). The Licensing Officer also attends the meetings of the Panel to present the reports and to provide clarification of any issues which are raised relating to the application and to answer questions.

- 6.2.2 The Committee Clerk is responsible for preparing the agenda, ensuring that all reports are ready in time for the agenda to be circulated, circulating the agenda and reports to Members of the Panel, relevant Officers, objectors and consultees. The Officer also attends the meeting to take notes as explained above and thereafter prepares the official minutes of the meeting.

6.2.3 The Legal Officer scrutinises the reports in draft before they are handed to the Committee Clerk in order to ensure that the matter is being handled correctly and that there have been identified in the report all relevant legal issues. The Legal Officer attends meetings to provide advice and guidance. Following the meetings the Legal Officer is responsible for scrutinising of the draft minutes to ensure they are an accurate record of the proceedings.

7. Principles of Decision Making

7.1 Under the Human Rights Act 1998 the decisions of the Panel must be proportionate to the objective to be obtained. In other words, as one Senior Judge once famously stated, "a sledgehammer should not be used to crack a nut where a nutcracker will do". An example of this principle would be that it would not be proportionate to revoke a Licence (therefore take away a persons livelihood) where his conduct may be corrected and the right message given by suspending the Licence for a period or even issuing a letter of warning for a more minor transgression.

7.2 In order to assist Members in deciding what sanction, if any, should be imposed the Officer's report will identify the range of options that are available. In the case of applications the options will obviously be to refuse or grant the application or in the case of some applications for Public Entertainment Licences, to provisionally grant a Licence subject to certain conditions being fulfilled. In the case of reports as to conduct or convictions of existing Licence Holders the options will be as follows:

- Revocation of Licence – this is the most extreme sanction where Members consider that the conduct/convictions of the holder are such that s/he can no longer be regarded as a fit and proper person to hold the Licence (or in the case of premises this may additionally include the safety/suitability of the premises with having regard to

any alterations in their state which had taken place since the Licence was granted).

- Suspension of the Licence – this will usually be where Members consider that although the conduct/convictions have been of a serious nature an outright revocation is not warranted. Suspension may be for such period which is considered appropriate:
- Letter of Warning – usually this will be where Members consider that the conduct/convictions are not sufficiently serious to render revocation/suspension appropriate but may, if repeated, place the Holder's licence in jeopardy.
- No further action – this will usually only be appropriate where Members consider that the allegations against the Licence Holder have not been proved or where there are sufficient mitigating circumstances.

8. Order of Procedure

8.1 Although neither the Human Rights Act 1998 nor the Licensing legislation prescribe in detail the procedure that should be followed at hearings, Local Authorities acting in a "quasi judicial" capacity have over many years followed the procedure explained below which broadly approximates to that used in Hearings in Courts. (Courts are subject to very detailed and voluminous procedural rules which would not be appropriate for Local Authorities).

8.2 The procedure which is adopted is as follows:

- (1) The Chairman will introduce him/herself and the Members of the Panel and also the Council's Officers. The Chairman will then ask the Applicant and the objectors as well as the Police and Fire Officers to

introduce themselves. The Chairman will then ask the Legal Officer to outline the procedure.

(2) The Legal Officer will then remind the Applicant and Objectors that they are entitled to legal or other representation and will check whether they have received the written Officer reports. The Officer will then explain the procedure.

(3) Usually it will then be necessary for the Council's Officer (ie Licensing or Environmental Health Officer or representative from Environmental Services) to introduce a written report which will have been circulated with the Agenda beforehand. When that Officer has finished speaking the Members of the Panel, the Applicant, Objectors and any other Officers can ask the Officer questions about any factual matters set out in the report.

(4) Officers from the Police, the Fire Service and the Council (eg Environmental Services) will then be invited to present their representations. Members of the Panel, the Applicant and the Council's Officers may ask questions about any factual matters set out in the representation.

(5) The Applicant will then be called upon to present his/her case and to call any Witnesses if so desired. Members of the Panel, the Objectors and Council Officers may ask questions of the Applicant/Applicant's Witnesses about any factual matters in their evidence.

(6) The Objectors will then be invited to present their representations and to call any witnesses as is desired. Members of the Panel, the Applicant, the Police and Fire Officers and Officers of the Council may question them and their witnesses about any factual matters.

(7) The Council's Officers, the Applicant and the Objectors will then be invited to make closing statements – under the Rules of Natural Justice the Applicant will have the last word.

(8) The Chairman will then instruct all persons appearing before the Panel together with members of the press and public to leave the room whilst the Panel then deliberates on the matter.

The Legal Officer and Committee Clerk may remain to offer advice and guidance.

(9) When the Panel have reached a decision all parties who have appeared will be invited to re-enter the room and to hear the decision which will be announced. For Part A items the Press and Public will also be permitted to return to the room for public pronouncement of the decision.

(10) If at any point during the deliberations of the Panel it is necessary to recall any party or witness to clarify a point or issue then all parties must be invited back into the room in order to hear this.

(11) Having announced a decision, in the event that the decision is to refuse an application or to revoke or suspend a Licence the Chairman will also briefly explain to the Applicant/Licence Holder that there is a Right of Appeal to the Magistrates Court (or in the case of registered Door Supervisors an Appeal to the Council's Appeals Panel).

- 8.3 As stated above the foregoing procedure is not only necessary to comply with Common Law and administrative principles but also to comply with Article 6 of the European Convention on Human Rights which has been incorporated into English Law under the Human Rights Act 1998. Article 6 requires, among other things, that a person has a right to be professionally represented by a Legal or other Adviser, to have a public Hearing for the decision to be announced in public.

Article 6 also entails that an opportunity must be given to put one's case and to question witnesses called by the other parties.

9. Legislation and Policies

- 9.1 The Council's Licensing functions are governed by a voluminous body of miscellaneous statutes and case law decisions.

It is impossible within the format of these notes to relate or adequately summarise this body of law. Instead the most frequently used provisions will be put briefly summarised in these notes as follows:

- 9.2 In relation to Applicants for **Hackney Carriage/Private Hire Vehicles Drivers Licences** the relevant legislation is Section 46 of the Town Police Clauses Act 1847 which provides that no person may act as a Hackney Carriage Driver unless they have obtained a Licence from the Council and Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 which provides that no person may act as a Driver of a Hackney Carriage unless they have first obtained a Licence from the Council. Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 further provides that a District Council may not grant a Licence to drive a hackney carriage unless they are satisfied that the applicant is "a fit and proper person to hold a Drivers Licence". In respect of applicants who apply to drive Private Hire Vehicles the same qualification applies as to Hackney Carriage Drivers as set out above i.e. the Council cannot grant a Licence unless it is satisfied that the person is a fit and proper to hold a Drivers Licence – Section 51 of the Local Government (Miscellaneous Provisions) Act 1976.
- 9.3 In helping Council's determine whether a person is "**fit and proper**" the legislation empowers Councils to :
- obtain details of unspent convictions. The High Court has ruled that when the Council consider such conviction the Council must decide

first what issue might be relevant and then decide whether the convictions are sufficiently relevant to that issue.

- to require the applicant to undergo a knowledge test and the policy of this Council is that all applicants should be required to undergo such a test and to pass it before a Licence can be granted.
- to require the applicant to obtain a Medical Certificate as to their fitness to drive, and to require a medical examination. Again Council policy is that all applicants should produce such a certificate and undergo an examination. (Section 57 of the Local Government (Miscellaneous Provisions) Act 1976).
- DSA "Taxi" test. There is a requirement for all new applicants to take and pass the Driving Standards Agency Test for drivers of Hackney Carriages and Private Hire Vehicles.

9.4 It should also be noted in relation to the grant of Hackney Carriage and Private Hire Vehicle Drivers Licences that the Council had adopted, as policy, the guidelines used by the Metropolitan Police. These are attached to these notes.

9.5 In respect of existing licensees (Hackney Carriages and Private Hire Driving Licences) the Council is empowered to **suspend or revoke** or to refuse to renew a Licence on the following grounds :

- (i) Since the grant of the Licence the holder has :
 - (a) been convicted of an offence involving dishonesty, indecency or violence; or
 - (b) been convicted of an offence and has failed to comply with the provisions of the 1847 and 1976 Acts.

- (ii) Any other reasonable cause.

This paragraph is set out in Section 61 of the Local Government (Miscellaneous Provisions) Act 1976. The power goes on to provide that where a licence is suspended, revoked or not renewed, notice must be given to the driver on the grounds of the decision and must also demand the return of the badge.

- 9.6 In respect of applications for **Public Entertainment Licences** the relevant legislation is in Schedule 1 of the Local Government (Miscellaneous Provisions) Act 1982. This gives the Council discretion whether to grant or refuse a Licence for entertainment in respect of any place where an entertainment (as defined in the Schedule) is to be staged.

- 9.6.1 A Licence is not required where the entertainment takes place as follows :

- In cinemas if the entertainment is introductory or interval music or arises from the film itself.
- Premises holding a Liquor Licence where the entertainment is provided by wireless, television or recorded music, or if there are not more than 2 performers (subject to certain exceptions) providing the entertainment.
- Theatres where the entertainment is incidental music or music played during plays which incorporate music or dancing.
- In places of public religious worship or incidental to a religious meeting or service.
- Pleasure Fairs.
- In the open air, but only where the land is private land.

- 9.6.2 It is important to note that the need for a Licence attaches to the entertainment and not to the premises. The requirement to obtain a

Licence applies to public dancing or music or any other public entertainment of a similar kind.

- 9.6.3 In exercising its discretion whether to grant a Licence the Panel may take into account representations from Officers of the Council (from Licensing, Planning and Environmental Services) the Police and Fire Services, representations made by the applicant and representations made by the objectors.
- 9.6.4 The Council may attach conditions to the Licence and the Council has a standard set of conditions for this purpose which has previously been approved by the Council's former Licensing Panel.
- 9.6.5 An applicant may apply for a Licence to be renewed or transferred.
- 9.6.6 It should be noted that the Police have been recently given new powers to make reports to the Council where they are satisfied that there is a serious problem relating to the supply or use of drugs at the premises controlled by the Licence. The Council may revoke the Licence or impose terms, conditions or restrictions on it if they are satisfied that this will assist in dealing with the problem. If the Panel decides to take this course they must give written reasons for this and they must consider any representations that they receive within a period of 21 days. A similar power applies in circumstances where the Panel is considering an application for the renewal or transfer of a Licence.
- 9.7 Except in the circumstances set out above (8.6.6) the Council **cannot revoke a Public Entertainment Licence** unless the Licence holder has been convicted of an offence of allowing the premises to be used otherwise in accordance with the terms, conditions or restrictions on the Licence. The Magistrates Court also has power to revoke the Licence where persons have been convicted for such an offence and the Court is satisfied that there is a problem relating to the supply and

use of drugs at the premises. (Local Government (Miscellaneous Provisions) Act 1982 Schedule 1 Para 12).

9.8 In respect of **Registered Door Supervisors** there is as yet no formal statutory power directly governing their registration.

9.8.1 However in a recent case in the Spring of 2001 involving Liverpool City Council, the Court of Appeal recognised that it is lawful for Local Authorities to operate such a scheme under the Conditions of Licence imposed on Public Entertainment Licences under the powers described above.

9.8.2 Essentially the conditions require that the holder of a Licence will only employ Door Supervisors registered by the Council. As policy the Council requires applicants who apply to be registered to undertake a training scheme recognised by the Council. In other words an applicant cannot obtain registration unless they have successfully completed the training scheme.

9.8.3 Where the Police object to the grant of registration on the grounds that the applicant has been convicted of the relevant offence, or there are other matters relating to the applicant's character or where the Licensing Officer has similar concerns, the application will be reported to the Panel for determination. In deciding whether or not to grant registration the Panel should take into account representations made by the Police and the Licensing Officer and by the applicant before reaching a decision. There is no statutory right of appeal against the Panel's decision but under the Council's Constitution a right of appeal lies to the Council's Appeals Panel.

9.8.4 Conditions which are attached to the registration provide that the Council may suspend or revoke the registration where the applicant has been convicted of an offence, or has engaged in unsuitable conduct since the grant of the registration.

In deciding whether to revoke or suspend such registration the Panel should take into account representations from the Police, the Licensing Officer and the registration holder before making a decision. Once again there is no statutory right of appeal against the decision, but under the Council's Constitution there is a right of appeal to the Appeals Panel.

10. Other Matters

10.1 As mentioned above these notes address the matters which most commonly come before the Panel for determination. (i.e. Hackney Carriage Drivers, Private Hire Vehicle Drivers, Public Entertainment Licences and Registered Door Supervisors).

10.2 There are a wide range of other licensing functions which are delegated to Officers including Hackney Carriage Vehicle, Private Hire Vehicle Licences, Cinemas, Sex Shops, Theatres, Betting and Gaming Machine Permits, late night refreshment houses. It will only be very rarely, if ever, that such a matter would be brought to the Panel for consideration, and for this reason these matters are not covered in these notes. In the event that it is ever necessary to report such a matter to the Panel the Officers Report will outline the relevant legislation and policies.

Head of Legal Services

September 2001