

REPORT TO: LICENSING COMMITTEE - 19 SEPTEMBER 2008

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: NICKII HUMPHREYS

Recent Prosecutions – Licensing Matters

1. PURPOSE

The purpose of this report is to advise members of recent prosecutions instigated by the City Solicitor on behalf of your reporting officer. It is normal policy to provide details of prosecutions to the committee for information purposes. This report follows a previous report submitted to the Licensing Committee on 31 October 2006 (Minute 25/06 refers).

Prosecution files are considered in accordance with the council's adopted enforcement policy concordat and where the city solicitor is satisfied that the offence is serious and it is both in the public interest/appropriate to proceed. This report does not therefore include pending matters under investigation or the issue of simple cautions, suspension of vehicle and driver licences together with written and verbal warnings issued to licence holders/licensees by your staff.

2 RECOMMENDED that the report be noted.

3 BACKGROUND INFORMATION

3.1 MR HUU AN LE – The Red Dragon Chinese Takeaway, 110 Fawcett Road, Southsea – Breach of Licensing Act 2003

Mr Huu An Le was the proprietor of The Red Dragon Chinese takeaway situated at 110 Fawcett Road in Southsea. These premises did not have the benefit of a premises licence to lawfully permit licensable activities to take place as prescribed by law. In particular, premises that provide for the public sale of hot food and/or drink after 2300 require a licence authorising the provision of "late night refreshment".

Mr Le did not respond to various letters and visits as a result of the premises being observed to be open for trade after 2300 without a premises licence.

On 13 January 2007 the premises were seen to be open after 2300 and evidence of the staff providing hot food and drink was obtained. Mr Le was subsequently investigated and reported for carrying on a licensable activity (late night refreshment) without an authorisation contrary to Section 136 of the Licensing Act 2003. The maximum fine for this summary offence is £20,000 and/or six months imprisonment.

The City Solicitor was requested to instigate proceedings against Mr Le as his conduct was considered to be a serious repetitive breach of the law as he had ignored repeated general advice and warnings previously given by licensing staff.

The matter was set for hearing at Portsmouth Magistrates' on 22 May 2007 although Mr Le failed to attend. A subsequent warrant (without bail) was issued and he was arrested and brought before the court on 11 June 2007. He pleaded guilty and advised the Magistrates' that he knew he needed a licence but due to domestic circumstances he had neglected to deal with the matter. Mr Le was fined £1,000 and ordered to pay council costs of £500.

3.2 MR GARY HUGHES-BRIAN – Hackney Carriage Driver -Town Police Clauses Act 1847 & Local Government (Miscellaneous Provisions) Act 1976

Mr Gary Hughes-Brian was the former holder of Hackney Carriage Driver's Licence No. 914 and the proprietor of a Portsmouth licensed Hackney Carriage Vehicle.

During 2006 Licensing staff received a number of complaints about the conduct of Mr Hughes-Brian whilst acting as a licensed driver. The complaints were all similar in complaining that Mr Hughes- Brian had failed to behave in a civil and orderly manner to other persons contrary to byelaws made by the council pursuant to the Town Police Clauses Act 1847. The complaints were from a serving police officer, another taxi driver and a member of the public. In particular, it was alleged that Mr Hughes-Brian used racist, foul and abusive language towards another Hackney Carriage driver and attempted to obstruct/block the driver from picking up a fare at the main Portsmouth and Southsea Town station. Other members of the public and Station staff witnessed this incident. Likewise he verbally abused a police officer and another member of the public following further incidents at the Hard Interchange complex.

Mr Hughes-Brian refused to comment during interview under caution and subsequently entered not guilty pleas to four charges of breaching the byelaws and provisions of the 1847 Act. The matter was set for trial at Portsmouth Magistrates' Court on 29 June 2007. Council witnesses were called to give evidence but, after taking legal advice in court, Mr Hughes-Brian entered a guilty plea to two offences and, after discussion and negotiation, the council agreed to offer no evidence in respect of the two further charges. The guilty pleas reflected on the more serious offences of breaching the byelaws (by failing to behave in a civil and orderly manner) to another taxi driver on 2 October 2006 and to also assaulting a member of the public whilst at The Hard Interchange on the afternoon of 31 December 2006.

The District Judge imposed fines totally £450 together with a costs recovery order of £238.50.

3.3 MR ALI NAZARIPOUR – Havana, 38-40 Kent Road, Southsea, PO5 3ET – Breach of Licensing Act 2003

Mr Ali Nazaripour is the joint premises licence holder and former Designated Premises Supervisor (DPS) for Havana situated at 38-40 Kent Road in Southsea. The premises licence granted under Licensing Act 2003 authorises late night refreshment, regulated entertainment and retail alcohol sales. The premises licence authorisation is subject to conditions previously imposed by the Licensing

Sub-Committee following a review hearing on 4 July 2006 – (Minute 69/2006 refers).

At the review hearing the police gave evidence that persons were acting as “door supervisors” without being registered and licensed with the Security Industry Authority (SIA) and also expressed concern at the purchase and consumption of alcohol by persons under the age of 18 together with a corresponding lack of supervision at the premises.

Following visits by licensing enforcement staff, a further visit was made on 12 January 2007 by way of a formal “follow up” to previous visits. As a result, a number of breaches to the premises licence authorisation (by way of breach of conditions) were observed. 8 breaches reflecting on poor management, unlicensed door staff, blocking of a designated fire exit and breaches of conditions imposed by the Licensing Sub-Committee following the 2006 review were observed. After considering mitigation, the City Solicitor was requested to instigate proceedings for 3 of the most serious breaches of the premises licence authorisation relating to unlicensed door staff, failing to protect public safety and blocking a designated fire exit.

On 25 September 2007 Mr Nazaripour appeared before Portsmouth Magistrates’ and pleaded guilty to carrying on licensable activities at the Havana Bar contrary to the premises licence authorisation and section 136 of the Licensing Act 2003. In mitigation Mr Nazaripour advised the Magistrates’ that he had relied on an “outside security company” for door staff and the fire exit had been blocked by persons unknown.

The Magistrates’ imposed an absolute discharge against Mr Nazaripour and ordered that he pay council costs of £200. The Magistrates’ chose not to take any action in relation to his personal licence issued under the Licensing Act 2003.

3.4 MR RICHARD HYDE MANNING – Unlicensed Private Hire Operator, Vehicle and Driver – Part II Local Government (Miscellaneous Provisions) Act 1976 – Stretch Ford Lincoln Limousine

Mr Richard Hyde Manning was formerly recognised by the city council as a private hire operator and proprietor of a licensed Ford Lincoln stretch limousine registration number X686 NNK. He also held a private hire driver’s licence.

The respective operator, vehicle and driver licences lapsed by virtue of non-renewal on 31 January 2006.

Members may be aware that there has been concern expressed nationally in relation to the safety and legality of some stretch limousines used for commercial hire and reward. Whilst many proprietors operate nationally with appropriate council and/or VOSA approval, some operators were known to use unsafe and unlicensed vehicles. Generally speaking, for vehicles conveying eight passengers or less, private hire licences are required from the local council.

Accordingly, proactive joint enforcement initiatives with Hampshire Constabulary and officers from VOSA have been regularly undertaken during the “Prom season” to investigate and detect any offences involving the use of stretch (and/or other style) limousines.

On 29 June 2007 Mr Manning was seen to be the driver of a Ford Lincoln town car registration number X686 NNK. This vehicle had conveyed eight female passengers to a Prom night function at the Marriot Hotel in Portsmouth. Mr Manning had no licences and, following investigation, he was reported for offences of operating a vehicle without an operator licence, using the vehicle without a private hire vehicle licence and driving a vehicle without a private hire driver licence all contrary to Part II and section 46 of the Local Government (Miscellaneous Provisions) Act 1976. He was also reported for no insurance contrary to Section 143 of the Road Traffic Act 1988.

On 3 January 2008 the matter was heard at Portsmouth Magistrates’. Mr Manning pleaded guilty to the offences. He was fined a total of £1,000 and 6 penalty points were endorsed on his driving licence. He was also ordered to pay council costs of £305.

3.5 MR GERALD ROBB KENNEDY – Plying for Hire and Permitting No Insurance – Town Police Clauses Act 1847 and Road Traffic Act 1988

Mr Gerald Robb Kennedy is the current holder of Private Hire Driver’s Licence No. 675.

Mr Kennedy was subject to a complaint that he had picked up two female passengers from the Guildhall Walk area who had not “pre-booked” his vehicle. The incident took place at 2252 hours on the evening of Friday 13 July 2007.

Following investigation and interview, the City Solicitor was requested to instigate proceedings against Mr Kennedy for offences of plying for hire contrary to Section 45 of the Town Police Clauses Act 1847 and permitting no insurance contrary to Section 143 of the Road Traffic Act 1988.



On 17 January 2008 Mr Kennedy appeared before Portsmouth Magistrates’ and pleaded guilty to the offences and apologised for his actions. He was fined a total of £300, 6 points were endorsed on his driving licence and he was subject to a costs order of £200.

THERE ARE NO PUBLIC BACKGROUND PAPERS TO THIS REPORT

Licensing Manager
For Head of Legal, Licensing & Registrars