

**REPORT TO: LICENSING COMMITTEE - 21 SEPTEMBER 2011**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: MR ROSS C LEE**

## **Recent Prosecutions – Licensing Matters**

### **1. PURPOSE OF REPORT**

To advise members of prosecutions instigated by the City Solicitor and at the request of the Licensing Manager. It is normal policy to provide details of any prosecutions to the committee for information purposes. This report follows previous reports submitted to the Licensing Committee on 31 October 2006 and 19 September 2008. (Minutes 25/06 and 10/08 refer).

Prosecution files are considered on merit and in accordance with the council's adopted enforcement concordat. Offences must be considered both serious in nature and where it is in the public interest to proceed. This report does not therefore include pending matters under investigation or the issue of simple cautions, suspensions of vehicle and/or driver licences together with the issue of points, written and verbal warnings given to licence holders by your staff.

For matters relating to the Licensing Act 2003, the adopted Statement of Licensing Policy for 2011 – 2014 (at paragraph 9.7) states that members "will receive, from time to time, reports from officers on any formal enforcement proceedings".

### **2. RECOMMENDED that the report be noted.**

### **3. BACKGROUND INFORMATION**

#### **3.1 "Operations Argus & Cradle" - Plying For Hire and No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

On selected dates in July 2008 and January 2009 enforcement staff conducted operational orders in both the city centre (Liquid & Envy area) and Albert Road area to check for evidence of vehicles "plying or standing for hire" contrary to section 45 of the Town Police Clauses Act 1847. Only Portsmouth taxis can pick up from streets in the city and/or be flagged down by the public.

Over 40 vehicles/drivers were observed and as a result 21 drivers were formally challenged by way of "on street test purchase" by other council staff working in conjunction with your licensing staff. As a result:

- 16 drivers refused to take the passengers
- 5 drivers took the passengers to pre-arranged destinations

The 16 drivers who refused to accept "street bookings" were given positive feedback by the Licensing Manager for their compliance with the law.

After investigation, 3 drivers received penalty points and written warnings and 2 drivers were reported for prosecution as shown in 3.2 and 3.3 below.

### 3.2 **David John Tuckey - Private Hire Driver - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

Mr David Tuckey was the former holder of private hire driver licence 768.

As part of the above operation, he was observed to be the driver of a Vauxhall Vectra registration KE52 WLU and bearing private hire plate 141. The vehicle was seen in the area of Stanhope Road/Commercial Road during the early hours of Saturday 12 July 2008. At 0256 Tuckey was seen parked up in Commercial Road and subsequently took two females to a pre-determined destination. Booking records revealed that Mr Tuckey had no reason to be in the area at all.

Following investigation and interview the City Solicitor was requested to instigate proceedings against Mr Tuckey 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 **4 December 2008** Mr Tuckey appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For plying for hire - £368 fine
- For permitting no insurance - 7 points endorsed on driving licence but no separate fine
- Council costs of £100 awarded
- Victim Surcharge of £15

### 3.3 **Rasol Mohamadi - Private Hire Driver - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

Mr Rasol Mohamadi was the former holder of private hire driver licence 1247 and hackney carriage driver licence 69.

He was observed to be the driver of a Volkswagen Passat registration HT07 KHB and bearing private hire vehicle plate 545. The vehicle was seen in Albert Road during the evening of Friday 11 July 2008. At 2350 he took two females to a pre-determined destination.

There was no booking recorded with the operator.

Following investigation and interview the City Solicitor was requested to instigate proceedings against Mr Mohamadi 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 **5 February 2009** Mr Mohamadi appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For plying for hire - £120 fine
- For permitting no insurance - 6 points endorsed on driving licence and £120 fine
- No order for Council costs made
- Victim Surcharge of £15

As a result of this prosecution and other matters, Mr Mohamadi's respective driver licences were revoked by the Licensing Sub Committee on 15 December 2010 (minute 103/10 refers).

#### **4.0 Wahed Parwani - Private Hire Driver - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

Mr Parwani was previously a licensed private hire driver and observed to be the driver of a Vauxhall Vectra registration YH06 RWF and bearing private hire plate 777. The vehicle was seen in Commercial Road during the morning of 12 January 2008. At 0120 he took two females who had been seen earlier trying to get into other private hire vehicles but without success.

There was no booking recorded with the operator.

Following investigation and interview the City Solicitor was requested to instigate proceedings against Mr Parwani 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 **13 February 2009** Mr Parwani appeared at Portsmouth Magistrates' and pleaded not guilty to the offences. After a full day's hearing (with an interpreter present) he was convicted and sentenced as follows:

- For plying for hire – Conditional Discharge for 12 months
- For permitting no insurance - 6 points endorsed on driving licence and Conditional Discharge for 12 months imposed
- Council costs of £420 awarded

Mr Parwani now currently holds a hackney carriage driver licence.

#### **5.0 Kieran Sean Wilson - Café Citrus, 56 Albert Road, Southsea - Breaches to Premises Licence - Licensing Act 2003**

Mr Wilson was previously the premises licence holder and designated premises supervisor (DPS) for Café Citrus situated at 56 Albert Road, Southsea.

The premises licence permitted the sale by retail of alcohol but NO provision for regulated entertainment was authorised at the premises due to concerns about potential noise breakout and poor acoustic properties – particularly to the front facade.

However, musical entertainment was provided at the premises and doors/windows were left open despite conditions on the licence preventing this. Local residents had complained about noise from the venue.

Mr Wilson had received previous written and verbal advice from both Licensing and Public Protection staff but evidence of unlicensed regulated entertainment being provided at Café Citrus was still apparent.

Allegations of “music pumping out” and doors/windows being left open on 12 July and 4 August 2007 were received. Following investigation and interview the City Solicitor was requested to instigate proceedings against Mr Wilson for breaches to his premises licence and providing licensable activities otherwise than in accordance with the premises licence contrary to section 136 of the Licensing Act 2003.

On **6 January 2009** Mr Wilson appeared at Portsmouth Magistrates’ and pleaded guilty to the offences. He was sentenced as follows:

- For breaches to the premises licence authorisation - £1000 fine
- Council costs of £400 awarded
- No order was made to suspend or revoke Mr Wilson’s personal licence

Following further allegations that music was being provided and causing a nuisance – particularly in relation to a “Friday night DJ”, the premises were investigated and both the Licensing Manager and Public Protection staff attended Café Citrus on the evening of 03 July 2009. A DJ with speakers was on the premises and playing recorded music.

Evidence of a DJ at Café Citrus on other nights was established and Mr Wilson admitted, during interview, being responsible for the DJ equipment at Café Citrus.

On **28 May 2010** Mr Wilson again appeared at Portsmouth Magistrates’ and pleaded guilty to 5 offences of providing licensable activities (regulated entertainment) otherwise than in accordance with the premises licence. He was sentenced as follows:

- For breaches to the premises licence authorisation - £1500 fine
- Council costs of £500 awarded
- Victim surcharge of £15
- Outstanding fine of £1195 to be paid by order of the court

The premises licence for Café Citrus was subsequently revoked by the Licensing Sub Committee on 26 May 2010 following a review application being submitted by Hampshire Constabulary (minute 38/2010 refers).

Mr Wilson surrendered his personal licence.

## **6.0 Mr Leslie John Hayward – Private Hire Driver - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

Mr Hayward is the holder of private hire driver licence 351.

An allegation was made that Mr Hayward picked up a passenger in the High Street, Cosham who had previously booked with Coastline Taxis and was waiting for his car in the High Street and opposite Cosham Railway Station.

Hayward was the driver of a Skoda Octavia registration YS55 TTU and bearing private hire plate 580. This car was on the Aqua Cars circuit.

CCTV evidence put this vehicle directly in the vicinity of the Coastline office at 0715 on the morning of 09 August 2009.

There was no booking or reason for Mr Hayward to be in the immediate vicinity of another taxi office although he maintained that he had stopped to pick up a family member. However, he could not provide details of this person to licensing staff when interviewed.

Following further investigation and interviews the City Solicitor was requested to instigate proceedings against Mr Hayward 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 **21 May 2010** Mr Hayward appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For plying for hire - £180 fine
- For permitting no insurance - 6 points endorsed on driving licence and £350 fine. NOTE - Mr Hayward now had 12 points on his driving licence but, after hearing evidence from him, the Magistrates decided not to impose a 6 month totting up ban
- Council costs of £100 awarded
- Victim surcharge of £15

#### **7.0 Mr Balram Singh - Private Hire Driver - Driving Whilst Unlicensed and Permitting No Insurance - Local Government (Miscellaneous Provisions) Act 1976 and Road Traffic Act 1988**

Mr Singh was previously a licensed private hire driver. On 17 April 2010 he was the driver of a Skoda Octavia registration YS55 KBJ and bearing private hire plate 736. The vehicle was seen to enter HMS Excellent and his badge was retained by security staff. His driver licence had expired on 31 January 2010. When challenged Singh suggested that he had a current licence but had come out to work with his "expired" licence by accident. The matter was reported to the council.

Investigations revealed that Mr Singh completed 944 jobs with Citywide Taxis between the period 1 February and 17 April 2010. His driver licence had expired, by virtue of non renewal, on 31 January 2010.

The City Solicitor was requested to instigate proceedings against Mr Singh for offences of driving without a current driver licence contrary to section 46 of the Local Government (Miscellaneous Provisions) Act 1976 and permitting no insurance contrary to section 143 of the Road Traffic Act 1988.

On **18 November 2010** Mr Singh appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For driving without a current private hire driver licence - £100 fine
- For permitting no insurance - 6 points endorsed on driving licence and £100 fine. NOTE – Mr Singh now had 12 points on his driving licence and was banned from driving for 6 months under the totting up rules
- Council costs of £100 awarded
- Victim surcharge of £15

Appropriate action was also taken against the operator.

## **8.0 David Hammond - Private Hire Driver - Driving Whilst Unlicensed, Obstruction of Authorised Officer and Permitting No Insurance – Local Government (Miscellaneous Provisions) Act 1976 and Road Traffic Act 1988**

David Hammond was the former holder of private hire driver licence 536.

On the morning of Saturday 04 September 2010 licensing staff were carrying out routine vehicle, driver and drug screening checks whilst stationed at Southwick Park (HMS Dryad).

At 0140 Mr Hammond was seen to enter the base and drop off passengers. He was driving a Vauxhall Astra registration BG55 ZLX and bearing private hire plate 41. This vehicle was on the Elite Cars radio circuit.

Hammond was directed to park his vehicle in the well lit car park area in order that appropriate checks could be undertaken. Licensing staff were wearing high visibility reflective jackets and working alongside the base security staff.

Mr Hammond's vehicle appeared to initially complete a slow "u turn" to park in a space directed by licensing staff but then suddenly accelerated away at speed and left the base.

Investigations revealed that Mr Hammond's private hire driver licence expired on 31 January 2010. He had started work with Elite Cars in July 2010 and lied to them about the status of his badge. 186 jobs were completed by Hammond between July and 04 September 2010.

The City Solicitor was requested to instigate proceedings against Mr Hammond for multiple offences of driving without a current driver licence contrary to section 46 of the Local Government (Miscellaneous Provisions) Act 1976, obstructing an authorised officer by failing to comply with a reasonable request contrary to section 73 of the same act and permitting no insurance contrary to section 143 of the Road Traffic Act 1988.

On **14 April 2011** Mr Hammond appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For driving without a current private hire driver licence - £75 fine
- For obstructing an authorised officer - £75 fine
- For permitting no insurance - 6 points endorsed on driving licence and £150 fine. NOTE – Mr Hammond now had 12 points on his driving

licence and was banned from driving for 6 months under the totting up rules

- Council costs of £85 awarded
- Victim surcharge of £15

Appropriate action was also taken against the operator.

#### **9.0 “Operation Axle” - Hackney Carriage Vehicle and Driver Fitness Checks - Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847**

The Licensing Manager has asked that members be briefed on recent hackney carriage vehicle checks undertaken by licensing staff in conjunction with authorised vehicle examiners from Adams Morey Ltd.

Taxis and private hire vehicles are mechanically tested at least once but sometimes twice a year (dependent upon the age of the vehicle) at the council’s nominated garage – Adams Morey, Burrfields Road, Portsmouth.

Individual vehicle spot checks are regularly carried out together with concentrated night time “operational orders”- in this case held recently on the evenings of **1 July and 5 August 2011**.

The checks can be summarised as follows:

- 49 taxis were inspected at various rank locations around the city
- 27 taxis were sent for full testing at Adams Morey
- 20 taxis failed the prescribed fitness checks and were immediately suspended from working
- 7 taxis were repaired later the same evening and had suspensions lifted
- 13 taxis remained suspended until repaired at a later time

Individual proprietors/drivers were also subject to spot check drug screens. 27 drug screens were completed. All were returned as negative.

As a result of the poor vehicle test results the Licensing Manager has asked staff to complete a review of vehicle testing requirements (together with consideration of policy requirements for vehicle age limits) and to report back to members in due course. Trade representatives and other interested parties will be consulted on any proposals for change.



For Licensing Manager  
Legal, Licensing & Registrars

**THERE ARE NO PUBLIC BACKGROUND PAPERS TO THIS REPORT**