

## **WEST DUNBARTONSHIRE COUNCIL**

### **Report by the Head of Legal, Administrative and Regulatory Services**

**Licensing Committee : 1 March 2011**

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**Subject: Dumbarton and Alexandria TOA – Taxi Booking Office Licence - Complaints**

#### **1. Purpose**

- 1.1 To advise the Committee of complaints against the Dumbarton and Alexandria TOA and to provide information on the ongoing dispute between the TOA and drivers.

#### **2. Background**

- 2.1 On 24 November 2010 Council resolved:-

“Council notes the ongoing disagreement between TOA taxi committee members and drivers. Council also note that a number of drivers have had their radios removed and instructs Licensing Officers to bring a report to the Licensing Committee.

Council further notes that statements have been made by individuals alleging that TOA are now trading under a different company name to that which appears on their licence.

Council agrees that this situation is cause for concern and cannot continue to go unchecked. Therefore, Council instructs officers to fully investigate these matters, and any related allegations of impropriety that may impact on TOA’s licence, and prepare a report for the next Licensing Committee.”

On 11 January 2011 the committee received this report and agreed to continue it in order to ask questions of the TOA.

- 2.2 The background to the complaints is that there is an ongoing dispute between Dumbarton and Alexandria TOA and drivers who use its services but are not members of the company. To understand the complaints it may be helpful to detail the reasons for the underlying dispute, and the legal situation pertaining thereto.
- 2.3 Dumbarton and Alexandria TOA were formed in 1990 as a company limited by guarantee. The company’s main purpose was to promote, organise and carry on the organisation of the association of taxi cab owners for the benefit of members and drivers. Membership was not open to all taxi and private hire car owners and drivers. Originally there were four subscribing members and

membership initially required the approval of these members and thereafter required the approval of 75% of the company's board of management (the equivalent of a board of directors). The company does not have charitable status, but the fact that it is limited by guarantee rather than shares means that any profit has to be reinvested in the company. This notwithstanding, members can be paid for services provided to the company and directors can be reimbursed for expenses.

- 2.4 The company primarily provide a taxi booking and radio service on behalf of both its members and much larger number of owners and drivers. Owners and drivers who are not members of the company are, in legal terms, customers of the company who buy services from it. They do not have any legal right to either own or run the company.
- 2.5 The TOA has recently taken over the running of Leven and District Taxis which was a privately owned organisation. As a result of this increased trade, as well as the continued payments from existing drivers and income from taxis run by the TOA itself, the company has found itself in a position of making a profit. Having taken accountancy advice, the TOA has been advised that a company limited by guarantee is not a good model for a company which makes a profit. They have therefore set up a new company limited by shares, known as Alexandria and Dumbarton TOA Ltd. It is understood that the existing members of the TOA will hold shares in the new company and, as with all companies limited by shares, will be entitled to receive dividends should the company wish to declare these.
- 2.6 Dumbarton and Alexandria Taxi Owners Association (the old company) holds a Taxi Booking Office Licence under the Civic Government (Scotland) Act 1982. An application has now been made for Alexandria and Dumbarton TOA Ltd (the new company) to hold such a licence. In addition, all owners and drivers of taxis and private hire cars will hold either a Taxi or Private Car Hire Operators Licence or Taxi or Private Hire Car Driver's Licence.
- 2.7 The perception of drivers who are not members of the TOA is that the company, having been set up to benefit taxi owners and taxi drivers in the Dumbarton and Alexandria area, is now being used to benefit the twenty two members of the company. While at present the profit needs to be re-invested in the TOA, since it is a company limited by guarantee, this will no longer be the case when a company limited by shares is set up. There would then be direct financial benefit to the twenty two members. The opposing argument from the TOA is that membership has always been restricted and the drivers have never had any legal ownership of the TOA, merely buying services from it. When the TOA was not making a profit this was not an issue and it has only become a problem since the company started to make a profit.
- 2.8 There have been a number of complaints to the Council as licensing authority by the drivers and by the GMB on their behalf. These have been investigated by the Council's Licensing Officer. The complaints and analysis thereof are as follows:-

- 2.8.1 The TOA was set up as an association for the benefit of all drivers and is now being run for the financial benefit of twenty two members. It is alleged that since October 2009 a payment of £500 every eleven weeks has been paid to directors and that the company secretary is paid £100 per week in cash for installing driver's radios. These are in breach of company law as all profits need to be reinvested back into the company and members are not entitled to payments.

Analysis – in terms of the company's Memorandum and Articles, members are entitled to be reimbursed for services to the company, and directors are entitled to be reimbursed their expenses. The TOA completely refute the sums mentioned in the complaint. Where any expenses are paid for services carried out, these are detailed in the accounts which are audited. In the event that an operator changes vehicle and the radio equipment has to be moved between vehicles a fee of £20 is charged to reflect the time taken to carry out the service. There is no objective evidence which substantiates the driver's complaint. Even if the TOA had been run for the private benefit of a number of individuals, this would not be an issue for the Council as licensing authority. Taxi booking offices are often run on a private or commercial basis, Leven and District Taxis being an example of this.

- 2.8.2 The second complaint is that the twenty two members intend to embezzle money from the TOA by forming a company limited by shares to run the business. The complaint is that this breaches the Companies Acts.

Analysis – there is nothing to stop the members of the present TOA forming a new company limited by shares. There are no apparent breaches of company law in doing so, nor in closing down the existing TOA and offering similar services from the new company limited by shares. Moreover it should be noted that the new company, Alexandria and Dumbarton Taxis Limited does not yet hold a Taxi Booking Office Licence and is not yet operating as such.

- 2.8.3 The third complaint is that the twenty two members of the TOA were trying to sell the company to outside parties, some of whom may have links to organised crime.

Analysis – committee members of the TOA have stated categorically that the company is not for sale and they have no interest in considering bids from outside parties to buy out the business. In the event that the company was sold to person with links to organised crime the Council as licensing authority could consider the issue of whether the licence was being operated for the benefit of someone who is not a fit and proper person. Until such a transfer took place, there are no issues for the Council as licensing authority.

- 2.8.4 There are complaints that the TOA is in breach of the Companies Acts, are embezzling the assets of the old company and they are guilty of false accounting.

Analysis – Strathclyde Police were also contacted about this and decided there was no evidence to proceed with a criminal enquiry and that the

complaints would have to be dealt with as a civil matter. As previously detailed there is no evidence to substantiate this complaint.

- 2.8.5 There are three Taxi Operator Licences held by the company which are no longer being operated by the individuals named in the licences.

Analysis – the Licences are being operated by the licence holder Dumbarton and Alexandria TOA. The conditions for holding a Taxi Licence state that the insurance certificate must be in the name of the licence holders which they are. The vehicles are being driven by individuals not necessarily named in the licence but named on the individual insurance certificates with the permission of the licence holder. This has always been the case.

- 2.8.6 Seven drivers have been excluded from the TOA without any notice. This means that these drivers cannot get bookings via the TOA, inhibiting their ability to trade. GMB Scotland complained that the drivers have been dismissed for acting on behalf of other GMB members and colleagues.

Analysis – drivers who are not members of the TOA are, in legal terms, merely customers of the TOA who receive services from it. The TOA is entitled to cease providing such services. There is no employment relationship.

Committee members of the TOA were interviewed regarding the decision to exclude seven drivers. They stated that:-

- One driver had previously been excluded due to his conduct. On this occasion he had picked up two passengers, one of whom owed him money from a previous hire. The new passenger paid for the hire but the driver told her he would take off the money owed by the other passenger. The TOA had also received complaints from other drivers regarding his conduct in verbally intimidating drivers.
- Another driver was excluded as it was alleged he was making derogatory remarks to committee members and inviting drivers to fight in the rank.
- The other five drivers were excluded due to the personal campaign and false allegations which had been made publicly against the TOA.

In all cases the decision to suspend services was made by the twenty two members of the TOA, not by its board of management.

In legal terms the TOA are perfectly entitled to cease providing taxi booking services on behalf of drivers. It would not be uncommon for a company to stop providing services to a party with whom they have a public dispute. This is a private matter between the TOA and its drivers and there are limited issues for the Council as licensing authority.

- 2.9 One of the main purposes of the licensing legislation, in addition to ensuring the safety of passengers, is to help ensure a sufficient availability of taxis and

private hire cars in an area. Were the present exclusions to continue to the point where it impacted on the availability of taxis in the Dumbarton and Vale of Leven area, there might be issues for the Council. However this is not the case. The individual drivers can still pick up passengers on the street and at taxi ranks. It is also understood that they have entered into taxi booking arrangement with another call handling company. While the telephone number of that company may not be as high profile as that of the TOA, this is not an issue for the Council as licensing authority.

### **3. Proposals**

- 3.1 There is a perception by drivers that the Council regulate the taxi and private car hire trade and can determine this dispute. This is not the case. The sole issue for the Council as licensing authority is to determine whether Dumbarton and Alexandria TOA is still a fit and proper person to hold a Taxi Booking Office Licence. No evidence has been found that the TOA is doing anything which is in breach of any of its legal obligations, whether under the Companies Acts or the Civic Government (Scotland) Act 1982. Accordingly, there is no evidence whatsoever which would entitle the committee to review the company's Taxi Booking Office Licence on the basis that they were no longer a fit and proper person. It should also be pointed out that if the committee did suspend the company's licence, this would not resolve this dispute. Instead it would merely stop the TOA's booking office from operating. This would have a detrimental impact on all drivers who rely on the booking office for trade and on the public, who use the office's telephone number. In any case there would have to be a full Hearing before the Licensing Committee before any such decision could be taken.
- 3.2 It appears that the present dispute has largely arisen as a result of a misunderstanding of the legal status of the TOA. Many drivers appear to think that it should be run as a co-operative for their benefit. This has never been its legal status. Members of the company are perfectly entitled to form a new company limited by shares for their financial benefit. If the drivers who are their main customers are unhappy with this arrangement, there is nothing to stop them setting up their own taxi booking office (subject to obtaining a licence).
- 3.3 This notwithstanding, the dispute is a matter of regret for a number of reasons. Firstly it has a detrimental effect on the reputation of the taxi and private car hire trade in Dumbarton. Secondly, it is regrettable that positions have become so entrenched as this makes it difficult to identify a way forward. Thirdly, any application to the Licensing Committee for a new Taxi Booking Office Licence for the new company will almost certainly be subject to objections. This will result in the application coming before the Licensing Committee with an unjustified expectation that the Licensing Committee can sort out the underlying dispute.

#### **4. People Implications**

- 4.1 There are no people issues for the Council.

#### **5. Financial Implications**

- 5.1 There are no financial issues for the Council.

#### **6. Risk Analysis**

- 6.1 If the Committee decided to review the licence of the TOA on the basis that it may no longer be a fit and proper person and if it thereafter decided to suspend or revoke the licence, there would almost certainly be an appeal to the Sheriff Court. Based on the information presently before the Council, there would be no grounds to substantiate any suspension or revocation. Accordingly such a decision would simply be overturned at Appeal with costs awarded against the Council.

#### **7. Equalities Impact**

- 7.1 There are no equalities issues as the dispute has not yet had any impact on the availability of taxis in the Dumbarton and Vale of Leven area.

#### **8. Conclusions and Recommendations**

- 8.1 The sole issue for the Council as licensing authority is whether Dumbarton and Alexandria TOA is a fit and proper person to hold a Taxi Booking Office Licence. The Council as licensing authority has no remit to become involved in what is essentially a private dispute between the members of the TOA and drivers who get services from it.
- 8.2 There is no factual evidence to substantiate a complaint that the TOA are no longer a fit and proper person to hold a Taxi Booking Office Licence. Accordingly the committee is recommended to take no further action in relation to this complaint.
- 8.3 The polarised position of the parties is a matter of regret. Not only does this impact on the reputation of the trade in Dumbarton, it is likely to have a detrimental effect on both the TOA and the drivers. The TOA rely on the drivers for a large part of their income and should the drivers leave to form another company this income will be lost. The drivers rely on the TOA for its well known booking numbers and will undoubtedly lose income if they set up their own booking office using different numbers. For this reason it is recommended that the committee urge the TOA and drivers to take steps to resolve their differences as soon as possible.

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**Andrew Fraser**  
**Head of Legal, Administrative and Regulatory Services**

**Person to Contact:** Andrew A Fraser, Clerk to the Licensing Board and Head of Legal, Administrative and Regulatory Services, Council Offices, Garshake Road, Dumbarton, G82 3PU.  
Telephone 01389 737800  
e-mail: [andrew.fraser@west-dunbarton.gov.uk](mailto:andrew.fraser@west-dunbarton.gov.uk)

**Appendices:** None

**Background Papers:** None

**Wards Affected:** All