

**EAST AYRSHIRE COUNCIL****LOCAL GOVERNMENT LICENSING PANEL - 22 MAY 2003****PERTH AND KINROSS COUNCIL – APPEAL TO THE HOUSE OF LORDS****Report by the Director of Community Services****1 PURPOSE**

- 1.1 To advise Licensing Panel of a report submitted by Perth & Kinross Council to the CoSLA Environment, Sustainability and Community Safety Executive Group on 11<sup>th</sup> March 2003 setting out some concerns about an on-going legal case and inviting consideration of a financial contribution towards the Council's costs in the event of an appeal to the House of Lords.

**2 BACKGROUND**

- 2.1 The former Perth & Kinross District Council refused to renew a second hand car dealers licence for an individual because of his failure to comply with a licence condition. The condition required licensees to display notices in cars for sale stating that the vehicles had been inspected and that an inspection report was available for perusal. Licensees were also required to prepare inspection reports. East Ayrshire Council has adopted a similar condition which has been applicable since 1<sup>st</sup> April 1996.
- 2.2 On being advised of the Council's refusal to renew his licence, the individual appealed to the Sheriff Court. The Sheriff decided to remit the case back to the District Council to allow it to consider new evidence of non-compliance by other dealers. The Council then made a successful appeal to the Court of Session where in the Outer House, the decision was that the Sheriff had been wrong in quashing the original decision because of alleged breaches by other licensees. In 1996 the individual was prosecuted for operating without a licence: on conviction he appealed to the High Court (the appeal was dismissed) and he was eventually admonished.
- 2.3 The individual then commenced a petition for judicial review in 2000 on the basis of the District Council failing to follow due process when it adopted its original licensing scheme in the mid 1980s. Although the petition was dismissed, the licensee then appealed from the Outer House to the Inner House of the Court of Session. At this point the licensee conceded that the Council's scheme was properly introduced but argued

that it went beyond what the enabling statute allowed for in so far as the scheme sought to introduce an element of consumer protection. This argument was upheld by the Inner House by a majority of 2 to 1.

- 2.4 The dissenting judge took the view that the Council had acted properly and had taken reasonable steps to protect and safeguard the public's interest.
- 2.5 As it stands however, the majority decision means that the Council's second hand car dealer scheme is undermined and as the scheme is similar to one used by a number of Scottish Councils then in turn their schemes must be undermined also.
- 2.6 Perth & Kinross Council is currently considering making a further appeal to the House of Lords on the basis of a sympathetic Opinion of Counsel that the argument submitted to the Inner House had not been debated in the earlier cases - which seems in itself to be unfair to the Council. If an appeal to the House of Lords is to be mounted then Perth & Kinross will incur significant costs.
- 2.7 Perth & Kinross have therefore canvassed all licensing authorities in Scotland seeking their views on the legal judgements made so far and also to ask if other authorities would be prepared to make some contribution to their costs if an appeal to the House of Lords is taken forward. Any appeal of this nature will be expensive and even if the Council were to win, there is the possibility that the licensee would not be able to pay the Council's expenses (which could amount to a six figure sum).

### 3 **DISCUSSION**

- 3.1 The scheme which the former Perth & Kinross District Council adopted is more or less the same as the one which East Ayrshire Council adopted in 1996 and is on-going.
- 3.2 The views of the Licensing and Trading Standards Services are that the scheme as adopted makes a significant contribution to the prevention of crime in terms of allowing investigation into allegedly "clocked" cars and also protection of public safety for example ensuring that these vehicles have satisfactory steering, lights, brakes etc.
- 3.3 If Perth & Kinross Council do not make further appeal to the House of Lords then there is every possibility that the existing situation will become widely known throughout Scotland via the second hand dealers network and it could only be a matter of time until some traders in East Ayrshire decide that they will not comply with the scheme.

- 3.4 It is therefore in the Council's interests to confirm support for Perth & Kinross Council if they choose to make an appeal to the House of Lords.

#### **4 FINANCIAL IMPLICATIONS**

- 4.1 Perth & Kinross Council are seeking financial support from other Scottish Councils but have not specified any particular sum.

#### **5 LEGAL IMPLICATIONS**

- 5.1 The adoption of the second hand car dealers scheme is considered to be lawful; appropriate in terms of the Civic Government Scotland Act 1982; and makes a positive contribution to control and reduction of crime.

#### **6 POLICY IMPLICATIONS**

- 6.1 None at this time.

#### **7 CONCLUSIONS**

- 7.1 As a result of an ongoing court case, Perth & Kinross Council finds itself in a position where unless they make an appeal to the House of Lords, a licensed trader in their area will be able to ignore their second hand car dealers scheme which requires notices to be displayed in cars for sale stating that the vehicle has been inspected and an inspection report is available and in turn, to prepare inspection reports.

- 7.2 Unless the most recent decision of the Inner House of The Court of Session is tested in the House of Lords then it is possible that other second hand car dealers throughout Scotland will adopt the same position, making it virtually impossible for Council staff to enforce current licensing conditions.

- 7.3 Perth & Kinross Council have obtained an Opinion of Counsel which infers that an appeal to the House of Lords will be successful but has considerable concerns about the costs involved. Perth & Kinross Council are therefore inviting other Scottish local authorities to consider making some financial contribution to their costs of taking an appeal to the House of Lords.

#### **8 RECOMMENDATIONS**

- 8.1 Licensing Panel is invited to:-

- 8.1.1 Agree in principle to support the Perth & Kinross decision to take an appeal to the House of Lords;
- 8.1.2 Agree to make a financial contribution of 1/32 of Perth and Kinross' Council's judicial expenses (subject to a maximum of £1000 at the present time) if they proceed with this appeal;
- 8.1.3 Otherwise note the report.

William Stafford  
**Director of Community Services**

8<sup>th</sup> May 2003

WS/JFC/FMT

#### **LIST OF BACKGROUND PAPERS**

Memo from Head of Administration and Legal Services to Head of Protective Services (with enclosures) dated 18<sup>th</sup> March 2003.

Memo from Head of Protective Services to Head of Administration and Legal Services of 25<sup>th</sup> March 2003.

**Implementation Officer** – [john.crawford@east-ayrshire.gov.uk](mailto:john.crawford@east-ayrshire.gov.uk)