

## ABERDEEN CITY COUNCIL

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COMMITTEE: Licensing

DATE: 24 February 2010

DIRECTOR: Stewart Carruth

TITLE OF REPORT: Coutie v Dundee City Council, Court of Session decision

REPORT NUMBER: CG/10/026

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### 1. PURPOSE OF REPORT

To advise Members of the recent Court of Session decision on wheelchair accessible taxi vehicles (“WAV”)

### 2. RECOMMENDATION(S)

That the Committee notes the report

### 3. FINANCIAL IMPLICATIONS

None

### 4. SERVICE & COMMUNITY IMPACT

None

### 5. OTHER IMPLICATIONS

This decision confirms that the Council has taken the correct decision with regard to its policy on WAVs

### 6. REPORT

#### **Synopsis of the decision**

Mr Coutie is a taxi driver who challenged a decision made by Dundee City Licensing Committee (the “DLC”) in September 2006. DLC required him to provide a WAV despite the fact his bad back would stop him from providing assistance to disabled passengers. The DLC has a taxi licence condition that requires new taxi licence operators to provide a WAV and that every subsequent replacement vehicle must be a WAV.

Mr Coutie’s appeal was heard in the Sheriff Court in April 2008. In that appeal decision the Sheriff said that the DLC had exercised its discretion in an unreasonable manner by requiring a disabled taxi operator to provide a WAV. The Sheriff also told the DLC to grant Mr Coutie’s taxi licence without the requirement to provide a WAV. DLC were of the opinion that the Sheriff had

reached the wrong decision and appealed the Sheriff's decision to the Court of Session.

In December 2009 the Court of Session (the "CoS") ruled that the Sheriff's decision was wrong. It said that the Sheriff had made an error in a crucial point. This was that under the circumstances it was important to distinguish between a taxi driver's licence and a taxi operator's licence. With regard to a taxi driver's licence if the licence holder cannot assist disabled, elderly or infirm people in and out of a taxi because the licence holder themselves has a disability, then that licence holder could not be expected to provide assistance to passengers who have a disability. Because it would be unreasonable to expect a disabled driver to assist disabled passengers a licence condition which requires the driver to assist could not be attached to a disabled taxi driver's licence. In the case of Mr Coutie, there was a detailed GP's letter which explained that he could not help with lifting and pushing.

The same argument cannot be applied to a taxi operator's licence because it relates to a vehicle rather than a specific driver. Although a taxi driver operating a vehicle may have a disability, and cannot help passengers who require assistance, taxis are often double or triple shifted and therefore a Licensing Committee cannot be certain that only one driver would use a vehicle. The CoS said that DLC could reasonably ask a disabled taxi operator to provide a WAV because it was probable that the vehicle will be used by more than one driver. The CoS also said the DLC had no way of knowing who would drive the taxi even if the applicant said they would only drive it themselves.

In Coutie the CoS also explained that contrary to suggestions made by the Sheriff, it could not rule that Mr Coutie would have a condition attached to his taxi operator's licence allowing a saloon car, but only for his use (i.e. one named driver). The CoS said that ruling could cause problems because it may be beyond the power of a Licensing Committee to put a condition on a taxi operator's licence restricting it to one named driver.

Furthermore, the CoS said that the Sheriff should not have taken the Disability Discrimination Act 1995 ("the DDA") into consideration because it is not relevant to the relationship between a Licensing Committee and taxi operators/taxi drivers. The DDA does not apply because the relationship between the parties is not an employee to employer relationship.

#### **Other recent decisions in the same area**

The Coutie CoS appeal decision follows two other recent CoS appeal cases in relation the WAV policy of Scottish Councils.

The decision in *Sneddon v Renfrewshire Council* confirmed that Scottish Councils have the necessary legal powers to require taxis to be wheelchair accessible in advance of the Scottish Government introducing regulations on this matter.

The *Wilson v Aberdeen City Council* ("ACC") case decided that the ACC Licensing Committee policy in relation to WAVs was lawful. The CoS ruled in

favour of, i) the Licensing Committee's policy regarding the saloon car exemption for pre-1994 taxi licence holders, and ii) the Committee's requirement that new applicants for a taxi licence must provide a WAV. The CoS indicated that it was sympathetic to the Committee's policy because it envisages an end position where the whole taxi fleet in Aberdeen City will be wheelchair accessible.

### **Conclusions**

These Court of Session cases have clarified some contentious points in relation to Scottish Councils duties and powers regarding the implementation of their WAV policies. These points are, that it is legal for a Licensing Committee to:-

- a) operate its own policy in relation to implementation of WAV matters;
- b) operate its own policy requiring a disabled taxi operator to provide a WAV, and;
- c) require new applicants for a taxi operator's licence to provide a WAV even when the Committee also has a saloon car exemption policy for pre-1994 taxi operator's licences.

### 7. REPORT AUTHOR DETAILS

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### 8. BACKGROUND PAPERS

Court of Session judgments: -

- 1) John Robert Coutie v Dundee City Council [2009] CSIH 88
- 2) Thomas Sneddon v Renfrewshire Council [2009] CSIH 40
- 3) Mr. James Wilson v Aberdeen City Council [2008] CSIH 8