

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: CIVIC GOVERNMENT LICENSING – STEWART -V- PERTH & KINROSS COUNCIL
From: DIRECTOR OF ADMINISTRATION		
Date: 30 APRIL 2004	Ref: WBK/KH	

1. **Purpose of report**

- 1.1. To advise the Committee of the decision of the court in Stewart -v- Perth & Kinross Council (2 April 2004) and to advise of a request for financial assistance with the cost of the litigation that has been received from Perth & Kinross Council.

2. **Background**

- 2.1. On 2 April 2004 the House of Lords issued judgement in the case of Stewart -v- Perth & Kinross Council. The case, which was a legal debate on the powers of licensing authorities to impose licence conditions, had been through the Sheriff Court, Court of Session and House of Lords.
- 2.2. The case related to certain conditions that had been imposed on a second-hand (car) dealer's licence. Those conditions required the dealer to complete and display certain paperwork relative to the condition and mileage of second-hand cars for sale and to make such information available to any purchaser. The case involved detailed legal arguments as to the powers of local authorities to impose such conditions. The Civic Government (Scotland) Act 1982 provides, on the face of it, a wide discretion to impose conditions designed to properly regulate licensed activity in the public interest. However, the defeat of Perth & Kinross Council at the House of Lords is a clear reminder that, however well intentioned particular conditions may be having regard to the public interest, if they are not within the scope of what parliament originally intended as the purpose of the statute, then they will be unlawful. In this case, the House of Lords considered that the conditions imposed certain legal obligations on the dealer which were of a contractual and consumer protection nature but which were not to be found in the principal legislation relating to consumer protection, for example, the Sale of Goods Act 1979. The case underlines the importance of the licensing authority carefully considering the relevance and appropriateness of proposed conditions to be attached to licences.
- 2.3. In the event, this Council, in common with most Councils in Scotland, has similar conditions included in the standard conditions attached to second-hand dealers' licences. The conditions are in fact of long standing throughout Scotland. Perth & Kinross Council have sought Counsel's opinion on how best to amend the conditions to achieve similar aims whilst not falling foul of the decision in the Stewart case. The Head of Legal Services is giving similar consideration to the issue on behalf of this Council.

3. **Issues for consideration**

- 3.1. Perth & Kinross Council has requested that Councils provide assistance with the expenses of the Stewart case. The matter has been referred to the COSLA Environment, Sustainability and Community Safety Executive Group. That group has issued a letter to all Council Leaders supporting Perth & Kinross Council's request to Councils for financial support. The principal issues that arise from the Stewart case are also to be raised by COSLA with the Scottish Executive in the context of the current review of licensing provisions of the Civic Government (Scotland) Act 1982.
- 3.2. Perth & Kinross Council has now formally written to this Council seeking financial support. Two questions have been posed. Firstly, is the Council, in principle, willing to contribute to the costs of the case? Secondly, in the event that the Council is willing to contribute to the costs of the case, would that be dependent on all Councils agreeing?
- 3.3. The Committee requires to consider whether to agree to make a financial contribution to Perth & Kinross Council's costs in respect of the Stewart case. If so minded, the Committee would also require to consider whether that support is to be contingent on all Councils agreeing to contribute to the costs of the case.
- 3.4. There is no doubt that the court process will have been very expensive and, even if successful, Perth & Kinross would probably have sustained a level of unrecoverable expenses from the dealer. At this stage, this Council is unaware of the level of those expenses or indeed what level of contribution is sought. It is being asked to indicate support in advance of any such information. Additionally, it is somewhat disappointing that Perth & Kinross Council failed to consult with fellow Councils prior to proceeding so far with the litigation, if there was an intention to seek financial support. In the event, this Council is faced with a request for financial assistance, for an undisclosed amount, in respect of a case in which it had no opportunity for prior involvement or even comment. Regrettably, against that background it is difficult to make a case for providing financial support from this Council's public funds.

4. **Corporate consideration**

- 4.1. Any decisions in the context of this report should not significantly affect any of the Council's wider policies or positions.

5. **Recommendation**

- 5.1. It is recommended that the Committee decline the request from Perth & Kinross Council for a financial contribution to the costs of the Stewart case.


Director of Administration

Members seeking further information on the contents of this report are asked to contact Kenny Hannaway, Senior Solicitor (Licensing) on Extension 2214.