

Second-Hand Dealers Exemption from 48-Hour Rule - Remitted Appeal - Arnold Clark Automobiles Limited, 20-23 Seafield Road, Edinburgh

Licensing Sub-Committee

18 November 2011

Purpose of report

- 1 To advise the Committee of the outcome of an appeal against the refusal of an application for an order providing that section 25(1) of the Civic Government (Scotland) Act 1982 shall not apply which has been remitted to the Committee for reconsideration.

Main report

- 2 Section 25(1) of the Civic Government (Scotland) Act 1982 (the 1982 Act) provides that a second-hand dealer shall not dispose of stock-in-trade until the expiry of 48 hours after acquiring it. Section 25(3) of the 1982 Act provides that on application by the dealer a licensing authority may, after consultation with the Chief Constable, order that the requirement to hold stock for 48 hours does not apply. Any such order may apply to any item, a specific item or a class of items.
- 3 On 20 May 2011 the Committee considered an application by Arnold Clark Automobiles Limited (the applicant) for an order under section 25(3) of the 1982 Act providing that the 48 hour restriction on trading would not apply to stock-in-trade at the applicant's premises at 20 – 23 Seafield Road, Edinburgh.
- 4 The application had been referred to the Committee for consideration as it was the subject of an objection lodged by the Chief Constable of Lothian and Borders Police. The objection was circulated to the Committee for consideration and representatives of the applicant presented a detailed verbal submission in response to the objection. The Committee determined not to grant an order providing exemption from the 48 hour restriction.
- 5 The applicant subsequently lodged an appeal in the Sheriff Court. During the appeal process it was established that the main issue of dispute was whether or not the Committee had exercised its discretion to grant or refuse an order in a reasonable manner. In determining any application the Committee is required to balance the submissions made by the applicant and the objector. In this case detailed submissions had been made by the applicant outlining their verification and audit procedures. In order to allow the Committee to make an informed

decision, it would have been appropriate to request that the objector address the evidence submitted by the applicant and provide a view on the procedures outlined. For this reason, the application for a section 25(3) order was remitted by the Sheriff to the Committee for reconsideration. A copy of the Sheriff's interlocutor in this respect is attached as appendix 1 to this report.

Financial Implications

- 6 There are no financial implications arising from the report at this stage. The appeal has been remitted to the Committee on the basis that no court expenses are due to or by either party to the action.

Environmental Impact

- 7 There are no environmental implications arising from this report.

Recommendations

Having been remitted to the Committee by the Sheriff, the Committee is required to reconsider the application for an order under section 25(3) of the 1982 Act.

Alastair Maclean
Director of Corporate Governance

Appendices	1. Copy Sheriff's interlocutor dated 8 September 2011
Contact/tel/Email	Caitlin Tilbury, Senior Solicitor (Licensing) / 0131 529 4424 / caitlin.tilbury@edinburgh.gov.uk
Wards affected	citywide
Single Outcome Agreement	Not applicable
Background Papers	none