

LICENSING COMMITTEE – 6 OCTOBER 2020

DELEGATED AUTHORITY IN RESPECT OF TAXI AND PRIVATE HIRE LICENSING**Executive Summary**

The Licensing Committee has requested a review of the current scheme of delegated authority in respect of Taxi and Private Hire licensing. A thorough review has been undertaken and it is considered that the current scheme operates in line with best practice and should continue as drafted, subject to any changes adopted with the proposed introduction of a penalty points system.

Recommendations

The Committee is requested to:

RESOLVE That

- (i) the scheme of delegations continues to have effect.

The Committee has the authority to determine the recommendation(s) set out above.

Background Papers: Part 3 – Delegated Authority – The Constitution
<https://moderngov.woking.gov.uk/documents/s1209/Part%203%20-%20Responsibility%20of%20Functions%20Management%20Arrangements%20and%20Scheme%20of%20Delegations.pdf>

Reporting Person: Joanne McIntosh, Legal Services Manager
Tel: 01483 743038, Email: Joanne.McIntosh@woking.gov.uk

Matthew Cobb, Senior Licensing Officer
Tel: 01483 743650, Email: Matthew.Cobb@woking.gov.uk

Contact Person: Joanne McIntosh, Legal Services Manager
Tel: 01483 743038, Email: Joanne.McIntosh@woking.gov.uk

Matthew Cobb, Senior Licensing Officer
Tel: 01483 743650, Email: Matthew.Cobb@woking.gov.uk

Date Published: 28 September 2020

Delegated Authority in Respect of Taxi and Private Hire Licensing

1.0 Introduction

- 1.1 The Licensing Committee has requested a review of the current scheme of delegated authority in respect of Taxi and Private Hire licensing.

2.0 Delegated Authority

- 2.1 The current powers delegated to the Legal Services Manager can be found in Part 3, Responsibility for Functions, Management Arrangements, and Scheme of Delegations of the Constitution at page 115. The Legal Services Manager is delegated the following authority in respect of Taxi and Private Hire Licensing:

Taxi and Private Hire Licensing:

- (1) to determine applications for licences for:

- (a) private hire operators, private hire drivers and taxi drivers, and
- (b) private hire vehicles and taxis.

(2). Revocation/Suspension of Licences: In consultation with the Chairman of the Licensing Committee (or in his/her absence, the Vice-Chairman) to suspend or revoke private hire operators' and drivers' and taxi drivers' licences in appropriate cases

- 2.2 It was agreed that an annual report providing an overview of the year would be presented to the Licensing Committee providing anonymized details of the exercise of the delegated authority to, in consultation with the Chairman of the Licensing Committee, suspend or revoke a licence. The annual Overview of the Year report is also before the Licensing Committee tonight. This provides transparency and accountability. Should any Councillors wish further details or to discuss these matters then they are encouraged to contact the Legal services Manager who is happy to provide such information.
- 2.3 It should be noted that any decision to suspend or revoke a licence is subject to a right to make an appeal to the Magistrates Court. Since we started recording revocations and suspension and reporting them to the Licensing Committee in 2017, there has been 71 suspensions and revocations. It should be noted that 37 of the 71 relate to suspension of licences for failing to complete the mandatory CSE training. 10 appeals have been lodged, we are waiting the outcome of three appeals and of those appeals determined all appeals but one have been dismissed. 8 appeals were against the revocation of licences and 2 against refusal.
- 2.4 Appendix 1 provides a copy of the overview of revocations and suspensions which has been reported to the Licensing Committee for the last few years. It is proposed that appeals lodged and the outcome of the same shall be reported to the Licensing Committee as part of the overview of the year report.

3.0 The determination of applications for licences

- 3.1 The Legal Services Manager has delegated authority to determine applications for licences. This exercise is undertaken in accordance with the Council's policy and relevant guidance and legislation. It should be noted that Licensing authorities have to make difficult decisions; the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If an officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction

Delegated Authority in Respect of Taxi and Private Hire Licensing

- 3.2 It has been requested that consideration be given to the referral of any refusal to issue a licence or licence renewal to a Licensing Sub-Committee for determination.
- 3.3 Consideration has been given to this request and potential alternate methods that could be introduced explored. However, it is not considered that this is the most appropriate method to determine such applications. Such decisions are made in line with the Council's adopted policy as outlined in the Taxi Driver Handbook. This ensures transparency and consistency of decision making. It also ensures that an application is determined as quickly as possible. It is considered that such a change could give rise to numerous unnecessary Licensing Sub-Committee's being held. If an application should be clearly refused in line with adopted policies and government guidance but provision is made for a referral to a Licensing Sub-Committee then it is argued that this will be an unnecessary and time consuming procedure for all those involved.
- 3.4 Consideration has been given to a "call in" procedure in respect of proposed licence refusals. The proposal being that should an Officer consider that an application should be refused in line with the Council's policy then a 21 day "standstill" period should be put in place in which a member of the Licensing Committee or Ward Councillor shall be able to "call in" a decision to the Licensing Sub-Committee. The reasons as outlined above similarly apply to this type of "call in" procedure, I have not repeated them again. A decision to refuse an application for a licence is usually based on sensitive personal information such as an enhanced DBS check or detailed medical information. The nature of the information relied on to make a decision of this nature is sensitive and not the type of information that should be widely shared if not necessary. Unlike planning applications, licensing applications are not a matter of public record and the information submitted is not published on a portal. There is an expectation that such matters are considered with a level of confidentiality.
- 3.5 It is proposed that the delegated authority be retained for the determination of applications and refusals. There is no indication that any applications have been granted when they should not have been done so.
- 3.6 It should be noted that any applicant who is refused a licence has the right to appeal to the Magistrates Court. An appeal mechanism is in place which allows an appropriate route to for the applicant to challenge the decision.
- 3.7 There has been 2 appeals against the refusal of a licence since 2017. The Magistrates upheld the Council's decision in one appeal and the other appeal is listed for a hearing in May 2021. The current system works well and ensures that decisions are made quickly and in accordance with the Council's adopted policy and relevant legislation and guidance.

4.0 The revocation and suspension of licences

- 4.1 Under Section 61 (1) of the Local Government (Miscellaneous Provisions) Act 1976 a District Council may suspend, revoke or refuse to renew a hackney carriage / private hire driver's licence. This may be for the following reasons:
- a) since the grant of the licence they have been convicted of an offence involving dishonesty, indecency or violence; or
 - b) any other reasonable cause.

Under this Section the driver has 21 days to appeal against the decision to the Magistrates' Court and, during the appeal period, the licence holder can continue to drive hackney carriage / private hire vehicles.

- 4.2 Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976 enables a decision to suspend or revoke a hackney carriage / private hire driver's licence to take immediate effect, should the Council believe it to be necessary in the interests of public

Delegated Authority in Respect of Taxi and Private Hire Licensing

safety. This means the driver cannot continue to drive hackney carriage / private hire vehicles during the appeal period.

- 4.3 To assist the Licensing Committee examples of situations where immediate suspension or revocation might be warranted are listed below. It should be noted that this list is not exhaustive but guidance as to the likely use of the delegated authority:-
- (a) Allegations of violence against a passenger or person wishing to travel;
 - (b) Allegations of indecency, including sexual assault and rape, against a passenger or person wishing to travel;
 - (c) Allegations that the driver is unfit to drive as a result of being under the influence of drugs or alcohol;
 - (d) Admitted sexual contact with a passenger in the vehicle;
 - (e) An immediate suspension may take place when a driver no longer meets Group 2 medical standards. In these circumstances the suspension could have effect until the driver could provide evidence to show they were 'fit' to the required standard.
- 4.4 The Legal Services Manager, in consultation with the Chairman of the Licensing Committee (or in his/her absence, the Vice-Chairman) has been delegated authority to suspend or revoke private hire operators' and drivers' and taxi drivers' licences in appropriate cases. This delegation applies to all suspensions and revocations i.e it does not distinguish immediate suspension and revocation or suspension and revocation after 21 days.
- 4.5 The Legal Services Manager, in consultation with the Chairman of the Licensing Committee (or in his/her absence, the Vice-Chairman), retains delegated authority to suspend or revoke licences immediately. Such decision need to be made quickly to ensure the safety of the public. The decisions are made in consultation with the Chairman of the Licensing Committee (or in his/her absence, the Vice-Chairman) and reported to the Licensing Committee annually for transparency. In such cases, it would not be logistically possible to call a Licensing Sub-Committee to determine the application.
- 4.6 It should be noted that to call a Sub-Committee specific steps need to be undertaken which take time to arrange. Officers need to draft a report, a date on which a Sub-Committee can sit and accommodation is available determined. The Sub-Committee needs to be scheduled and the agenda, together with the Officer report, published within the correct procedural timeframes. Taking all these procedural factors into account, it is unlikely that a Sub-Committee could be held within a month of the need arising.
- 4.7 On 21 July 2020, the Department of Transport issued new standards to improve safety for taxi and private hire vehicle passengers. Paragraph 5.11 states "...**all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence**. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service." This reinforces that the Council's current scheme of delegation is in line with government guidance and best practice.
- 4.8 Councillors will note the above reference to the suspension of 37 licences for failing to complete the mandatory Child Sexual Exploitation training within the required time frame. Nine of the above completed their CSE training after their licence was suspended, resulting in the removal of the licence suspension. No appeals were lodged in respect of the same. The requirement for drivers to complete the BTEC before 31 March 2021 is fast approaching and to date 362 drivers have not yet completed the course. The Licensing Department shall send reminders to drivers that the course must be completed by 31 March 2021 however it is anticipated that multiple licences may have to be suspended until compliance is secured.

Delegated Authority in Respect of Taxi and Private Hire Licensing

5.0 Penalty Points Scheme

- 5.1 It should be noted that should the proposed penalty points scheme be adopted it proposes that should a driver receive a total of twelve points the matter be referred to a Licensing Sub-Committee for consideration. The report outlines the proposed procedure and is separate to this matter before the Committee. The matters which will be subject to the points system are such that would not result in an immediate suspension and would be referred to the Licensing Sub-Committee for determination. These matters are those which would fall under Section 61 (1) of the Local Government (Miscellaneous Provisions) Act 1976.
- 5.2 As outlined in the report, the introduction of a penalty points scheme and matters being referred to a Sub-Committee for determination shall provide a transparent decision making method. It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the licensing functions. It shall avoid the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.

6.0 Implications

Financial

- 6.1 None arising from this report.

Human Resource/Training and Development

- 6.2 There is likely to be human resource implications for the Licensing, Legal Services and Democratic Services teams should the Council be required to hold more Licensing Sub-Committees. It is anticipated that this will be minimal and will be met out of the current resources available to these teams.
- 6.3 Members are currently provided with annual training however further training is recommended specifically relating to Taxi and Private Hire licensing and Licensing Sub-Committees. As a minimum, training for a member of a licensing committee should include: licensing procedures, natural justice, understanding the risks of CSE, disability and equality awareness and the making of difficult and potentially controversial decisions.

Community Safety

- 6.4 The proposals will continue to ensure the safety of the travelling public.

Risk Management

- 6.5 None arising from this report.

Sustainability

- 6.6 None arising from this report.

Equalities

- 6.7 None arising from this report.

Safeguarding

- 6.8 The proposals will continue to ensure the safety of the travelling public.

Delegated Authority in Respect of Taxi and Private Hire Licensing

7.0 Conclusions

- 7.1 That having considered all options available to the Licensing Department it is recommended that the current delegations remain as drafted, however should the Members be minded to adopt the penalty points system, it is noted that matters arising from the issuance of penalty points for minor matters shall be determined under Section 61 (1) of the Local Government (Miscellaneous Provisions) Act 1976 by a Licensing Sub Committee.

REPORT ENDS