

Report to Licensing Review Task and Finish Panel

Date of meeting: 24 January 2013

Portfolio: Safer Greener and Highways

Subject: Delegation of Taxi Licence Applications

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Committee Secretary: Adrian Hendry, ext. 4246



Decisions Required:

That the Task and Finish Panel decide whether to recommend to the Council that:

(1) the decisions regarding Taxi Licensing be delegated the Director of Corporate Support Services and the Assistant Director (Legal), and

(2) that the Constitution be amended as shown on the extracts attached to this report..

Report:

1. At the last meeting of the Task and Finish Panel officers were asked to report on the extent to which taxi applications can be delegated to officers.

Applications that come before the Sub-committee

2. There are five types of taxi licences. There are:

- Hackney Carriage Proprietors Licence
- Hackney Carriage Drivers Licence
- Private Hire Operators Licence
- Private Hire Vehicle Licence, and
- Private Hire Driver's Licence.

3. The applications which come before the sub-committee are for the grant, renewal or for revocation of these licences.

Delegated Authority.

4. S101 of the Local Government Act 1972 states that a Council may delegate the licensing functions to either:

- A committee of the Council;
- A sub-committee; or
- An officer.

5. There is attached to this report extracts from the Council's Constitution which set out the amendments which would be required to give delegated authority to the Director of Corporate Support Services and the Assistant Director (Legal) to make all decisions in respect of applications and revocation of licences except where in those officer's view the delegation should not be exercised. Where a deletion is required to the Constitution the text is shown as

struck through and any amendments are shown in bold.

Right to a hearing

6. Any applicant would have the right to a fair hearing before a decision is made. The hearing would follow the same format as that before the sub-committee. It would be necessary for formal minutes to be taken. This is not a type of work currently undertaken by the Committee Service. A decision would have to be given by the officers with reasons. The applicant or licence holder would have the right of appeal against the decision to the magistrates' court.

Numbers of Hearings.

7. There were 10 meetings in 2012 which involved applications for taxi licences. In each of these meetings applications for premises licences were also taken place.

Consultation undertaken:

None

Resource implications:

Budget provision: None

Personnel: None.

Land: None

Community Plan/BVPP reference: None

Relevant statutory powers:

Town and Police Clauses Act 1847 and 1889

Local Government (Miscellaneous Provisions) Act 1976

Human Rights Act – Article 6 - right to a fair hearing

Background papers:

Environmental/Human Rights Act/Crime and Disorder Act Implications:

Key Decision reference: (if required) none

Minutes of the Task and Finish Panel – 17th December 2012

EXTRACT FROM THE COUNCIL'S CONSTITUTION

PART 3

RESPONSIBILITY FOR FUNCTIONS

RESPONSIBILITY FOR FUNCTIONS

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 give effect to Section 13 of the Local Government Act 2000 by specifying which functions are not to be the responsibility of the executive, which may (but need not) be the responsibility of the executive (the 'local choice functions') and which are to some extent the responsibility of the executive. All other functions not so specified are to be the responsibility of the executive. The executive arrangements contained in the Constitution show how these distinctions are given effect by indicating whether:

- (a) they are the responsibility of the Council and/or its committees; or
- (b) they are the responsibility of the executive; or
- (c) they are, or are not, the responsibility of the executive to a specified extent; and
- (d) this requirement is included in Article 4 (The full Council) and Article 7 (The Executive). The tables below provide a means of meeting this requirement. Table 1 covers local choice functions. Table 2 covers functions which are not the responsibility of the executive. Table 3 covers executive responsibilities.

2. RESPONSIBILITY FOR COUNCIL FUNCTIONS

Responsibility for Council functions in accordance with the following table.

Committee (1)	Membership (2)	Functions (3)	Delegation (4)
Licensing Committee or Licensing Sub Committee	11 members of the Authority 3 members of the Licensing Committee	Licensing Functions 1. Functions which are delegated to the Director of Corporate Support Services where in that officer's view the delegation should not be exercised relating to licensing and registration as set out in Schedule 1 to the Functions Regulations including those summarised below: (a) Hackney Carriages and Private Hire Vehicles; (b) Lotteries; (c) Premises for acupuncture, tattooing, ear piercing and electrolysis;	Director of Corporate Support Services

		<p>(d) Markets and street traders;</p> <p>(e) Poisons;</p> <p>(f) Selling of Game;</p> <p>(g) Dogs;</p> <p>(h) Dangerous Wild Animals</p> <p>(i) Licensed Premises/Persons including any appeal against a decision of the Director of Corporate Support Services taken under delegated authority but excluding enforcement of the above.</p> <p>2. Functions which are delegated to the Director of Housing namely:</p> <p>(a) Caravan Sites;</p> <p>3. Functions which are delegated to the Director of Environment and Street Scene namely:</p> <p>(a) Premises for the Preparation of Food.</p> <p>4. Functions which are reserved for determination by the Licensing Committee or a Licensing Sub Committee in certain circumstances as set out in Appendix 4 (Annex 1) in Part 3 of the Constitution or Appendix A to the Scheme of Delegation (Council</p>	<p>Director of Housing</p> <p>Director of Environment and Street Scene</p> <p>No Delegation</p>
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		<p>functions)</p> <p>Entertainments</p> <p>Gambling Acts</p> <p>Late Night Cafes and Takeaway Food</p> <p>Shops</p> <p>Licensed Premises and Persons</p> <p>Hackney Carriage/Private Hire Vehicle Licences</p> <p>Functions which are reserved for determination by the Licensing Committee or a Licensing Sub Committee: Sex Shops, Sex Cinemas and Sexual Entertainment Venues</p>	<p>Director of Corporate Support Services and the Assistant Director (Legal)</p>
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LICENSING COMMITTEE – TERMS OF REFERENCE

(1) The full Committee shall comprise 15 Councillors appointed by the Council at its annual meeting, including a Chairman and Vice-Chairman. **There shall be ?? members for the area north of the district and ?? from south of the district as shown on the attached plan.**

(2) For the functions set out in Annex 1, and the legislation listed in Annex 2, a Sub-Committee consisting of no more than any three Councillors drawn, in alphabetical order, from the members of the full Committee **who represent one of the wards in the same area as the premises concerned shall be formed. If it is not possible to form a sub-committee from members of the licensing committee in the appropriate area another member of the Licensing Committee from the other area will act as a member of the sub-committee** Any such Sub Committee shall include, by rota, one of the **six** Licensing Sub Committee Chairmen appointed at each Annual Council meeting **preferably one who represents a ward in the area of the premises. If no premises are concerned then the Sub-Committee shall consist of no more than three Councillors, drawn in alphabetical order from the members of the Full Committee.**

(3) For the transaction of business at full Committee meetings, the quorum shall be a minimum of five Committee members save that no business shall be transacted unless either the Chairman or Vice-Chairman of the Committee is present.

(4) The Committee and Sub-Committees shall have full authority to hear and determine licensing applications.

(5) The Committee and Sub-Committees shall be further empowered to determine appeals made against the decisions of the Head of Environmental Services **and the Director of Corporate Support Services, Assistant Director (Legal) or the Senior Licensing Officer** taken under delegated authority on licensing applications.

(6) The Committee shall at all times carry out its duties solely within the policy from time to time determined by the Council and shall conduct its proceedings in accordance with the requirements set out in Annex 3 (Conduct of Business by Licensing Committee and Sub-Committees).

(7) The Licensing Committee shall take no part in the production or revision of the statement of licensing policy made under Section 5 of the Licensing Act 2003, however, they may determine policy under the legislation listed in Annex 3.

(8) To be responsible for the consideration and approval of Designation Orders under Section 13 of the Criminal Justice and Police Act 2001 (Exercise of Controls of the over consumption of alcohol in public places).

**PART TWO – COUNCIL AND
REGULATORY FUNCTIONS
DELEGATION APPROVED BY
OR ON BEHALF OF THE COUNCIL**

	Authorising Committee And Minute Ref or Other Authority	Officer Authorised	Subject or Function Delegated
CL46	Licensing Committee (Min 12 – 15.10.08)	DIRECTOR OF CORPORATE SUPPORT SERVICES ASSISTANT DIRECTOR (LEGAL SERVICES) SENIOR LICENSING OFFICER or suitably qualified officer authorised by them	LICENSING – HACKNEY CARRIAGE AND PRIVATE VEHICLE LICENCES To determine Licences in respect of hackney carriage and private hire licensing (as set out in Appendix B) except in those circumstances where under the Council’s policy they should be referred to the Director of Corporate Support Services or the Assistant Director (Legal Services). Licensing Sub Committee (see Minute 12 opposite).
		CORPORATE SUPPORT SERVICES ASSISTANT DIRECTOR (LEGAL SERVICES)	LICENSING – HACKNEY CARRIAGE AND PRIVATE VEHICLE LICENCES To determine Licences in respect of hackney carriage and private hire licensing (as set out in Appendix B) Except where in the officer’s view the delegation should not be exercised

Licensing

Hackney Carriage and Private Hire Licences
Town and Police Clauses Act 1847 (Sections 37, 41, 42, 43, 45, 46, 47, 50, 68)
Town and Police Clauses Act 1889 (Sections 4, 5 and 6)
Local Government (Miscellaneous Provisions) Act 1976 (Part II)

Licensing Committee Min 12 – 15.10.08

That the delegated authority to grant and renew Hackney Carriage and Private Hire Drivers' Licences be amended as follows:

“(1) All applications for Hackney Carriage and Private Hire Vehicle Driver's licences will be determined by the Director of Corporate Support Services, the Assistant Director Legal Services and the Senior Licensing Officer or suitably qualified officers authorised by them to exercise this function except in the following circumstances when the application will be referred to the Sub-Committee:

- (a) where there have been breaches of condition of a previous driver's licence or related law in the preceding twelve months;
- (b) an applicant fails to comply with the Council's licensing procedure or meet the experience or medical fitness requirements;
- (c) where in the opinion of the Council's medical advisor (or doctor nominated by them), an applicant is not medically fit to hold a driver's licence;
- (d) an applicant for a driver's licence has any unspent criminal convictions;
- (e) an applicant has motoring convictions listed below:
 - (i) disqualification from driving by a court for any reason within the preceding ten years;
 - (ii) an accumulation of a total of 10 or more penalty points from endorsable motoring offences in any of the preceding five years; or
 - (iii) any unspent conviction for an offence or offences within the following categories:
 - CD10 Driving without due care and attention;
 - CD20 Driving without reasonable consideration for other road users;
 - CD30 Driving without due care and attention or without reasonable consideration for other road users;
 - CD40 Causing death through careless driving when unfit through drink;
 - CD50 Causing death by careless driving when unfit through drugs;
 - CD60 Causing death by careless driving with alcohol level above the limit;
 - CD70 Causing death by careless driving then failing to supply a specimen for analysis; or
 - DD30 Reckless driving;
 - DD40 Dangerous driving; or
 - IN10 Using a vehicle uninsured against third party risks; or
 - SP60 Undefined speed limit offence;

(2) Where the Director of Corporate Support Services, the Assistant Director Legal Services or the Senior Licensing Officer consider it appropriate to exercise their discretion by reason of their concern as to the suitability of the applicant they may refer the application to the licensing sub-committee; and

(3) The Director of Corporate Support Services, the Assistant Director (Legal) and the Senior Licensing Officer may grant at their discretion a licence for a short period until the next meeting of the licensing sub-committee if a driver wishing to renew his or her licence has committed an offence such that there is no delegated authority to renew the licence.”