



REPORT OF THE DIRECTOR OF PUBLIC HEALTH

LICENSING AND SAFETY COMMITTEE

3rd APRIL 2019

DELEGATIONS OF POWERS TO OFFICERS

1. Summary of Report

1.1 To seek guidance from the Licensing and Safety Committee as to the extent to which the Director of Public Health (and officers subsequently authorised by the same) exercise their existing delegations relating to:-

- The issuing of Private Hire and Hackney Carriage Driver Licences;
- The issuing of Private Hire and Hackney Carriage Vehicle Licences;
- The approval of discrete plate applications whereby a new vehicle is purchased and the applicant had discrete plates on the previous vehicle; and
- Enforcement matters relating to drivers in breach of applicable legislation, the Walsall Council Private Hire and Hackney Carriage Licence Conditions and Walsall Council Licensing Policies.

2. Recommendations

2.1 That the Licensing and Safety Committee determine whether the Director of Public Health (and officers subsequently authorised by the same) should be requested to exercise their existing delegations to:-

- Determine applications for Private Hire and Hackney Carriage Driver Licences and Private Hire and Hackney Carriage Driver Licences where to issue a licence would be in accordance with the Council's Policy;
- Determine discrete plate applications on new vehicles (when an existing approval is already in place for a previous vehicle and there has not been a material change) subject to the vehicle meeting all necessary requirements;

- Determine enforcement matters whereby a driver has accumulated 9 points on their licence and there are no other matters, or only minor issues of concern.

2.2 Note that all applicants have a right of appeal to either the Magistrates Court or the Licensing and Safety Committee when an officer has made a decision using delegated authority.

3. Report Detail

3.1 On numerous occasions during the 2018/19 municipal year, members of the Licensing and Safety Committee (and its Taxi Sub Committees) have requested clarity regarding the delegations in place for officers to determine matters that are in line with Policy.

3.2 Whilst delegations exist for officers to make decisions on issuing licences to drivers, operators and their vehicles and to undertake enforcement activity, the Licensing and Safety Committee has retained decision-making powers for any matter deemed to be 'controversial'.

3.3 In line with this decision, all applications, where there is a conviction or caution recorded against a driver (regardless of the date of the offence or how minor the matter), are considered by the Licensing and Safety Committee.

3.4 Due to the number of cases, the Licensing and Safety Committee establishes two Taxi Licensing Sub Committees each municipal year to administer this process.

3.5 In practice, some applications before the Licensing and Safety Committee, whilst deemed 'controversial', are in line with Policy. For example, an applicant with a minor traffic offence from 2005 would still be a matter for consideration by committee even though it is in line with Policy and the Taxi and Private Hire Vehicle Licensing, Motoring and Criminal Convictions Guidelines.

3.6 Whilst officers ensure that controversial matters are submitted to the Licensing and Safety Committee for consideration, there are occasions when action needs to be taken swiftly. Currently, the Regulatory Services Managers do revoke or suspend licences should the Community Protection Team become aware of an issue that is of such a serious nature that it cannot wait for determination by committee. Public safety is paramount and so this use of delegations is both proper and necessary.

4. Applications for drivers and vehicles

4.1 The Regulatory Services Manager (Business Compliance) has advised that, of the 21 applications considered by the Licensing and Safety Committee during the 2018/19 municipal year to date, 11 could have been determined by officers should they have been permitted to act on their existing delegations.

The remaining 10 reports related to allegations of a serious nature but where no conviction followed, or there were some other factors which officers would still have felt serious enough to refer to the Licensing and Safety Committee for a decision and allow the applicant to present their case.

- 4.2 The table at appendix 1 to this report provides an overview of the activity of Taxi Sub Committees 'A' and 'B' during 2018/19 municipal year to date.
- 4.3 Members are assured that should they request managers and officers to act on their delegations, any matter which officers consider borderline (even if they are in line with Policy), shall be referred back to the Licensing and Safety Committee or its Sub Committees for determination.

5. Applications for Discrete Plates

- 5.1 The Licensing and Safety Committee currently considers all applications for discrete plates. This includes applications from individuals that already have approval to use discrete plates but have purchased a new vehicle.
- 5.2 Members are asked to consider whether to authorise officers to approve discrete plates on new vehicles (when an existing approval is already in place for a previous vehicle) subject to the vehicle meeting all necessary requirements.
- 5.3 As with matters relating to applications, should officers consider that there has been a material change to the application, they would refer the matter to committee for determination.

6. Enforcement

- 6.1 Enforcement matters include serious breaches of legislation, conditions and policy along with lesser offences such as not returning a medical form/not providing a DVLA mandate and/or disclosure and barring certificates. It also includes where a driver, with no other cautions or history of poor conduct or only minor matters, accumulates 9 points.
- 6.2 When considering enforcement matters the Licensing and Safety Committee decides whether to take no further action; issue the driver with a caution, suspend the private hire driver licence for a prescribed period of time; undertake further training at their own expense or; revoke the licence.
- 6.3 Given the nature of these reports, it is quite right and proper that the majority of matters continue to be determined by the Licensing and Safety Committee. However, Members may determine that the Director of Public Health (and officers subsequently authorised by the same) be requested to deal with enforcement matters whereby a driver accumulates 9 points on their licence where there are no other matters or only minor matters of concern.

6.4 The Regulatory Services Manager (Community Protection) has confirmed that where a driver accumulates 9 points on their licence and there are no other matters, or only minor issues of concern, they would exercise their discretion (should Licensing and Safety Committee request them to do so). The penalties issued would be appropriate to the particular circumstances in question and may include sanctions such as a requirement to undertake further training, issue a strong warning as to future conduct, short periods of suspension or a combination thereof. This list is not exhaustive but the manager is cognisant of the need to operate within the Private Hire and Hackney Carriage Conditions and policies and the Black Country Regulatory Services Enforcement Policy in ensuring that any sanctions are relevant and proportionate to the nature of the breach. For any matters more complex, officers would refer the matter to the Licensing and Safety Committee for determination.

6.5 Members are asked to consider whether they wish to delegate any decision making with regard to enforcement matters or continue to consider all enforcement matters at committee.

7. Delegations

7.1 Section 17 of the Councils Constitution confirms that the Director of Public Health has authority to determine and otherwise deal with (amongst other things) the following matters, provided that controversial matters may be submitted to the Licensing and Safety Committee in accordance with the Committee's Scheme of Delegations:-

- Issuing Private Hire and Hackney Carriage Driver Licences;
- Issuing Private Hire and Hackney Carriage Vehicle Licences;
- Issuing Base Operators Licences;
- To suspend and revoke licences.

7.2 The Director of Public Health may also authorise members of staff employed in Public Health and Regulatory Services which comprises Community Protection, Environmental Health, Trading Standards and Licensing, and members of staff employed in other services where applicable, to act on behalf of the Council in enforcing and administering the legislation. This includes the issuing of licences, permits and authorisations and taking any action including the power to suspend and revoke licences.

7.3 The Licensing and Safety Committee has the power to:-

- Licence Hackney Carriages and Private Hire Vehicles;
- Licence drivers of hackney carriages and private hire vehicles;
- Licence operators of hackney carriages and private vehicles;
- Suspend and revoke private hire/hackney carriage licenses.

7.4 It is important to note that whilst delegations are in place, officers are able to refer matters to committee should they feel that the matter requires consideration at member level. Delegations are a matter of choice and can

be referred back to the decision making body. This ensures balance between officer and member level decisions.

8. Conclusion

- 8.1 It is a matter for the Licensing and Safety Committee to decide whether applications, such as the example referred to in 3.3 above, should continue to be determined by the committee or whether officers should be empowered to use their existing delegated powers.
- 8.2 Should the Licensing and Safety Committee agree to allow officers to increase use of their delegations, it is important to note that existing drivers or applicants can appeal any decision taken by officers under delegated powers and request that the matter be heard by the Licensing and Safety Committee.
- 8.3 The Licensing and Safety Committee can review the delegations at any stage. Should Members agree to authorise officers to exercise their discretion relating to delegations, the Licensing and Safety Committee may wish for a six monthly monitoring report so that they are aware of decisions made.

9. Resource Considerations

- 9.1 **Financial:** Nothing arising from this report.
- 9.2 **Legal:** The Council can exercise its functions by way of committees or officers. When exercising delegated authority both committees and officers are bound by natural justice, human rights, the legal framework and any statutory guidance, in addition to any policies the Council may have.

Decisions of either a committee or an officer can be appealed to a court, However, in the case of officer decisions, by virtue of the Constitution the Committee can also hear appeals against decisions made by officers carrying out delegated licensing functions.

- 9.3 **Staffing issues:** None

10. Citizen Impact

- 10.1 Authorising the Director of Public Health (and officers subsequently authorised by the same) to exercise their discretion in relation to matters could improve the efficiency of processing matters for drivers as they will not be required to await the next available meeting of committee or sub-committee for a decision.

11. Community Safety

- 11.1 Nothing arising from this report.

12. Environmental Impact

12.1 Nothing arising from this report.

13. Performance and Risk Management Issues

13.1 Decisions by officers and the committee are taken in line with legislation, the Walsall Council Private Hire and Hackney Carriage Licence Conditions and Walsall Council Licensing Policies to mitigate risk of challenge.

14. Equality Implications

14.1 Nothing arising from this report.

15. Consultation

15.1 Internal consultation with Licensing and legal services colleagues.

16. Contact Officer

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Appendix 1 – Overview of the activity of Taxi Sub Committees ‘A’ and ‘B’ during 2018/19 municipal year to date

	Cttee	Issue	Policy (in/out)	Decision of Cttee	Would officers have used delegated powers?	What would the officers decision have been?
1	Taxi A	3 points for exceeding the speed limit on a public road in 2015. No other convictions. Current Council Convictions Policy requires two or more convictions in the last three years or an accumulation of 9 or more points before consideration needs to be given to refusing a licence.	In	Granted	Yes	Granted
2	Taxi A	3 Points for exceeding the speed limit on a public road in 2015. No other convictions. Current Council Convictions Policy requires two or more convictions in the last three years or an accumulation of 9 or more points before consideration needs to be given to refusing a licence.	In	Granted	Yes	Granted
3	Taxi A	2 x 3 points for exceeding the speed limit on a public road in 2014&15. No other convictions. Current Council Convictions Policy requires two or more convictions in the last three years or an accumulation of 9 or more points before consideration needs to be given to refusing a licence.	In	Granted for 6 months	Yes	Granted
4	Taxi A	3 points for exceeding the speed limit on a public road in 2018. No other convictions. Current Council Convictions Policy requires two or more convictions in the last three years or an accumulation of 9 or more points before consideration needs to be given to refusing a licence.	In	Granted	Yes	Granted

	Cttee	Issue	Policy (in/out)	Decision of Cttee	Would officers have used delegated powers?	What would the officers decision have been?
5	Taxi A	3 points for exceeding the speed limit on a public road in 2015. No other convictions. Current Council Convictions Policy requires two or more convictions in the last three years or an accumulation of 9 or more points before consideration needs to be given to refusing a licence.	In	Granted	Yes	Granted
6	Taxi A	Driving or attempting to drive with alcohol level above the legal limit 2016. Destroying or damaging property 2000. Failing to provide a specimen for analysis. Driving a motor vehicle with excess alcohol 2011.	In	Refused	Yes	Refused
7	Taxi A	Assault of a police officer – evading arrest (court date pending)	Out	Refused	Yes	Refused
8	Taxi A	Possession and intent to supply cannabis more than once 2011/2013/2015.	In	Refused	Yes	Refused
9	Taxi B	Actual Bodily Harm in 2014 Under Walsall Council Convictions Policy applications are to be refused if a conviction for common assault is within 5 years. 3 points on driving licence in 2016 for exceeding the speed limit on a public road.	Out	6 month licence	Yes	Granted
10	Taxi B	2 convictions for driving under the influence of alcohol 2008 & 2012 and failing to surrender to custody at the appointed time 2012.	In	Refused	Yes	Refused
11	Taxi A	3 points exceeding speed limit on a public road in 2015	In	Granted	Yes	Granted

	Cttee	Issue	Policy (in/out)	Decision of Cttee	Would officers have used delegated powers?	What would the officers decision have been?
12	Taxi A	<p>Actual Bodily Harm in 2006.</p> <p>Under Walsall Council Convictions Policy applications are to be refused if a conviction for common assault is within 5 years.</p> <p>Fraud in 2016</p> <p>Under Walsall Council Convictions Policy applications are to be refused unless the applicant is 3 years free of conviction or at least 3 years from completion of a sentence has passed.</p>	In	Refused	No	n/a
13	Taxi A	<p>3 points on driving licence exceeding the speed limit on a motorway in 2017 /Battery in 2003</p> <p>Under Walsall Council Convictions Policy applications are to be refused if a conviction for common assault is within 5 years</p>	In	Granted	No	n/a
14	Taxi A	Theft	In	Refused	No	n/a
15	Taxi A	Failing to provide a specimen. Driving a motor vehicle with excess alcohol. Driving whilst disqualified. Using vehicle while uninsured.	In	Granted	No	n/a
16	Taxi A	<p>Alleged sexual advances</p> <p>* Allegation made but applicant never convicted</p>	Out	Granted	No	n/a
17	Taxi A	4 points on driving licence Cocaine possession and sexual activity in a licensed vehicle	Out	Refused	No	n/a

	Cttee	Issue	Policy (in/out)	Decision of Cttee	Would officers have used delegated powers?	What would the officers decision have been?
18	Taxi A	Theft - alleged rape of male, inappropriate contact with a passenger, sexual assault on a female. * Allegation made but applicant never convicted	Out	Refused	No	n/a
19	Taxi A	3 points in 2015 for the driving of a motor vehicle while using a hand-held mobile telephone or other hand-held interactive communication device & a caution for Battery (common assault) in 2017. Under Walsall Council Convictions Policy applications are to be refused if a conviction for common assault is within 5 years.	In	Granted	No	n/a
20	Taxi A	Racially aggravated assault 2005 /ABH 2007/Battery 2007/common assault 2007.	In	Granted	No	n/a
21	Taxi B	Revoked for failing to produce DBS Certificate	Cttee asked to make a decision based on Councils own conditions not criminal convictions.	Granted	No	n/a