

WALSALL COUNCIL

**REPORT OF ASSISTANT DIRECTOR,
LEGAL AND CONSTITUTIONAL SERVICES TO THE
LICENSING AND SAFETY COMMITTEE**

7TH JUNE, 2006

**DELEGATIONS UNDER LOCAL GOVERNMENT
(MISCELLANEOUS PROVISIONS) ACT, 1976**

1.0 Purpose of the Report

1.1 To submit the attached report, which was originally submitted to Committee on 7th December, 2005, for re-consideration by the Committee.

2.0 Recommendation

2.1 In the light of the information given in the report, Committee is asked to re-consider the recommendations contained in the report submitted to Committee on 7th December, 2005, as appended hereto.

3.0 Legal Implications

3.1 As per report to Committee on 7th December, 2005, attached.

4.0 Financial Implications

4.1 As per report to Committee on 7th December, 2005, attached.

5.0 Equal Opportunities Implications

5.1 None.

6.0 Environmental Impact

6.1 None.

7.0 Other Policy Implications

7.1 None.

8.0 Background

8.1 Committee received the attached report at its meeting on 7th December, 2005 and, after a period of discussion, voted **not** to approve either of the recommendations in that report.

8.2 Members will be aware that the failure to approve delegations has resulted in an increase in the number of cases submitted to the Committee. In consequence of this, the Chairman has asked that the report be submitted to the Committee for re-consideration.

9.0 Conclusion

9.1 In view of the build up of applications for determination, there is obviously a need to re-introduce a scheme of delegations to reduce the number of applications being submitted to Committee. In addition, to further reduce the workload of the whole Committee in relation to taxi appeals, the Committee is asked to consider the establishment of a Panel to determine taxi appeals on its behalf.

9.2 The report is, therefore, submitted for reconsideration.

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Agenda Item No

WALSALL METROPOLITAN BOROUGH COUNCIL

REPORT OF THE HEAD OF PUBLIC PROTECTION AND
ASSISTANT DIRECTOR OF LEGAL SERVICES TO THE
LICENSING AND SAFETY COMMITTEE

ON 7TH DECEMBER 2005

DELEGATIONS UNDER LOCAL GOVERNMENT
(MISCELLANEOUS PROVISIONS) ACT 1976

1.0 Purpose of the Report

The purpose of the Report is to delegate to Officers various functions under the Local Government (Miscellaneous Provisions) Act 1976 to make decisions to grant, revoke or suspend Private Hire/Hackney Carriage licences to support the Licensing Authority in reaching decisions. This is in addition to the delegations which are already in place.

2.0 Recommendations

The Committee is asked:-

- a) To delegate to the Head of Public Protection (as identified in paragraph 8) authority to make decisions under the Local Government (Miscellaneous Provisions) Act 1976 in relation to the granting/suspending and revocations of Private Hire/Hackney Carriage licences who may delegate this function to the Trading Standards Manager.
- b) To establish a panel, solely to determine applications under the Local Government (Miscellaneous Provisions) Act 1976. The panel is to comprise of five members of the Licensing and Safety Committee on a rota basis and subject to availability.

3.0 Legal Implications

- 3.1 Section 51(1) of the Local Government (Miscellaneous Provisions) Act 1976 states that a District Council shall, on receipt of an application from any person for the grant to that person of a licence to drive Private Hire vehicles, grant to that person a driver's licence:-

Provided that a District Council shall not grant a licence:

- a) Unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or

- b) To any person who has not for at least twelve months been authorised to drive a motor car or is not at the date of the application for a driver's licence so authorised.
- 3.2 There is no legal definition of a "fit and proper person", the ordinary meaning must therefore be attached to these words. The Licensing Authority may make such enquiries, as they deem necessary to establish whether an applicant is a "fit and proper person". The application from a Private Hire/Hackney Carriage licence requires the applicant to disclose any convictions and a routine check is made with the Criminal Records Bureau, which is an executive agency of the Home Office, for confirmation of any convictions or pending convictions. Information relating to motoring convictions is obtained from the applicant's driving licence or by application to the DVLA for a Mandate.
- 3.3 Members should consider each case on its own merits, including:
- i) the nature of the offence;
 - ii) how long ago the offence was committed;
 - iii) age of the person when convicted;
 - iv) any other relevant facts considered appropriate;
 - v) was the offence an isolated incident;
 - vi) any change in the person's circumstances from when the offence was committed.
- 3.4 The fact that an applicant has convictions does not necessarily mean he/she is unfit to hold a drivers licence. A balanced judgment should be made about a person's suitability to hold a licence looked at as a whole in the light of all information available.
- 3.5 There is case law to support a Licensing Authority's decision to ensure as far as possible that those licensed to drive a Private Hire or Hackney Carriage vehicle are suitable persons to do so.
- 3.6 A District Council may attach to the grant of a license such conditions as they may consider reasonably necessary.
- 3.7 Section 52 of the 1976 Act states that any person aggrieved by: -
- i) The refusal of the District Council to grant a licence under Section 51 of the Act; or
 - ii) Any conditions attached to the grant of a driver's licence may appeal to a Magistrates' Court.
- 3.8 Any appeal must be made to the Magistrates' Court within 21 days of notification of such a decision.
- 3.9 Suspension and Revocation of Driver's Licences
- (1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a District Council may suspend or revoke or (on application therefore

under Section 46 of the Act of 1847 or Section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a Hackney Carriage or a Private Hire vehicle on any of the following grounds:-

- a) that he has since the grant of the licence:-
 - i) been convicted of an offence involving dishonesty, indecency or violence; or
 - ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or
 - b) any other reasonable cause.
- (2) a) Where a District Council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the District Council the driver's badge issued to him in accordance with Section 54 of this Act.
- b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding (level 1 on the standard scale).
- (3) Any driver aggrieved by a decision of a District Council under this section may appeal to a Magistrates' Court.

4.0 Financial Implications

The costs of any appeals to the Magistrates' Court by any person aggrieved by the refusal of Walsall Metropolitan Borough Council to grant a Private Hire/Hackney Carriage licence, or any conditions attached to the grant of a driver's licence will be met from within existing budgetary provisions.

The costs of any appeals to the Magistrates' Court by the suspension or revocation of a Private Hire/Hackney Carriage licence will be met from within budgetary provisions.

5.0 Equal Opportunities Implications

5.1 None.

6.0 Environmental Impact

6.1 None.

7.0 Other Policy Implications

7.1 None.

8.0 Scheme of Delegations

The Trading Standards Manager within the Public Protection Unit along with the assistance of Legal Services will normally refuse an application for a Private Hire/Hackney Carriage licence, or take action in relation to an existing licence if:-

- The applicant has not held a driving licence for at least twelve months, following the expiry of any disqualification period
- The applicant has not successfully completed all parts of the Council's written examination
- The applicant has failed Walsall MBC's driving assessment
- The applicant has been convicted of any driving offence involving drinks/drugs or disqualification within the last five years
- The applicant has been convicted of any moving traffic offence, e.g. careless driving/reckless driving etc within the last three years
- The applicant has been convicted of a driving offence involving vehicle safety or insurance within the last three years e.g. overloading, defective tyres/brakes/steering, no insurance etc
- The applicant has sustained more than two driving convictions within the last three years
- The applicant has any unspent convictions under the Local Government (Miscellaneous Provisions) Act 1976 or associated legislation, i.e. taxi related offences
- The applicant has an unspent conviction involving the following:-
 - drugs, indecency, burglary, Section 18, 20, 47 assault, i.e. grievous bodily harm, grievous bodily harm (with intent), assault occasioning actual bodily harm
- Murder, manslaughter or related violent offences
- Sexual offences
- Drunkenness (other than driving related)
- Dishonesty (other than burglary)

This list is not exhaustive.

Applicants will be required to attend Committee if they have been convicted of any offences in the list above. In these cases, the applicant will be informed by the Licensing Office upon receipt of the CRB disclosure.

The applicant has previously been a licence holder, either with Walsall MBC or any other Local Authority, and that licence had been revoked during the past twelve months.

In the case of a Private Hire driver, the applicant is not employed by a Walsall Private Hire operator.

The applicant has exhibited behaviour which, in the opinion of the Authority, is inconsistent with that expected of a Walsall Metropolitan Borough Council licence holder.

All Licences

The Trading Standards Manager in Public Protection will normally suspend, revoke or refuse to renew a licence if:-

- The applicant is in breach of any conditions of his licence during its lifetime
- The applicant exhibits behaviour which, in the opinion of the Authority, is inappropriate to a Walsall licence holder
- The applicant breaches any of the conditions outlined, for refusal of a licence, applied to the licence holder, after a grant of licence
- The applicant has carried out or has cause to be carried out a Walsall Metropolitan Borough Council Transport Contract when either the driver, or vehicle or both were not correctly licensed or insured.

Hackney Carriage Licences

The Trading Standards Manager within Public Protection will normally refuse an application for a licence or take action in relation to an existing licence if:-

- The vehicle is not an FX 4, TX 1, Metro Cab, London Star Taxi or a Fiat/Mercedes Euro Cab or any other Council approved vehicle
- The vehicle fails the vehicle examination test carried out on behalf of the Authority
- The vehicle is unsafe or uncomfortable
- The applicant has not successfully completed all parts of the Council's written test
- The vehicle is fitted with a taxi meter incapable of adjustment to Walsall Metropolitan Borough Council rates, and the applicant has not supplied a valid calibration certificate in the form required by the Council
- The vehicle is not covered by a policy of insurance incorporating cover for use of the Hackney Carriage and covering passenger indemnity

- The applicant has previously had a licence revoked by the Licensing Committee in the last twelve months
- The driver of the vehicle is not a Walsall licence Private Hire/Hackney Carriage Driver and/or has not been identified to the Licensing Office
- The applicant has any unspent convictions under the Local Government (Miscellaneous Provisions) Act 1976, Town and Police Clauses at 1847 or associated legislation
- The applicant has not produced all documents requested by the Licensing Office
- The vehicle is not fully compliant with the Disability Discrimination Act 1995 and its associated regulations

The Trading Standards Manager within Public Protection will, normally suspend, revoke or refuse to renew an application if:-

- The licence holder is in breach of any of the conditions of the licence during its lifetime
- The licence holder exhibits behaviour which, in the opinion of the Authority, is inappropriate to a Walsall licence holder
- The licence holder breaches any of the conditions outlined for refusal of a licence, apply to the licence holder, after the grant of a licence
- The licence holder has carried out, or has cause to be carried out at Walsall Metropolitan Borough Council Transport Contract when either the driver, or vehicle, or both were not correctly licensed or insured.

In relation to all the above delegations, if the Trading Standards Manager within Public Protection has any concerns, then a decision can be made with advice and assistance from Legal Services.

Conclusion

Members are asked to delegate to the Trading Standards Manager within Public Protection, the scheme of delegations as identified in paragraph 8 above.

Members are asked to agree to their functions being delegated to a panel of five members of the Licensing and Safety Committee on a rota basis and subject to availability.

Signed
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Signed
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