

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 29th September 2009

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WARD(S): All

PART I **FOR DECISION**

REVIEW OF DELEGATED POWERS

1. **Purpose of Report**

This report recommends that powers to be delegated from the Licensing Committee to the Assistant Director, Public Protection in respect of private hire and hackney carriage licensing.

2. **Recommendation to Council**

That the powers as recommended and outlined in this report to be delegated to the Assistant Director, Public Protection and that the Council's Constitution to be amended accordingly.

3. **Community Strategy Priorities**

Being Safe, Feeling Safe & Prosperity for All

4. **Other Implications**

(a) **Financial**

The proposals outlined in this report are likely to generate significant savings by reducing the number of Sub-Committee meetings required to be called, thereby reducing the cost to the licensing budget of officer time in respect, for example, of Legal and Democratic Services in calling and attending meetings.

(b) **Risk Management**

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
From section 2 and as detailed within this report at points 5.10, 5.11, 5.12, and 5.13.	The provisions for the recommendations are already contained within the relevant legislation. These provide for matters to be dealt with far more expeditiously.	By approving the recommendations this will serve to provide an effective, expedient and cost effective way of dealing with matters at the earliest opportunity whilst maintaining the statutory right of appeal to the Magistrates' Court.

(c) Human Rights Act and Other Legal Implications

Articles 1 and 6 of The Human Rights Act apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(d) Equalities Impact Assessment

An Equalities Impact Assessment screening has been completed and the conclusions are that there are no adverse or negative impacts of opportunity for any equality target group or for any reasons.

5. Supporting Information

5.1 Legislation – Local Government (Miscellaneous Provisions) Act 1976

- (a) Section 48 (1) to (6) – licensing of private hire vehicles.
- (b) Section 51 (1) to (3) – licensing of private hire drivers.
- (c) Section 55 (1) to (3) – licensing of private hire operators.
- (d) Section 59 (1) and (1A) - licensing of hackney carriage drivers.
- (e) Section 47 (1) and (2) – licensing of hackney carriage vehicles.
- (f) Section 61 (1) and (2) - provisions and criteria for the Council to suspend or revoke or refuse to renew the licence of a private hire or hackney carriage driver.
- (g) Section 60 (1) and (2) - provisions and criteria for the Council to suspend or revoke or refuse to renew the licence of a private hire or hackney carriage vehicle.

In each case above there is provision for an appeal to the Magistrates' Court.

6. Current Delegations

- 6.1 The current Constitution delegates responsibilities for the purposes of private hire and hackney carriage licensing under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 to both the Licensing Committee, Licensing Sub-Committee and to Officers. The specific powers for Officers in relation to the refusal to grant or renew licences and for licences to be suspended or revoked (other than those approved by the Council in respect of Section 52 of the Road Safety Act 2006) are very limited and lie with the Licensing Committee and Licensing Sub-Committee.

6.2 The Constitution (Responsibility for Functions) provides delegated powers to the Licensing Committee and Licensing Sub-Committee with those applicable to private hire and hackney carriage licensing contained at **Appendix A** and The Scheme of Delegation to Officers currently to the Head of Public Protection (now Assistant Director, Public Protection) contained at **Appendix B**.

7 Areas Encountered

- 7.1 Currently where any new applicant for a private hire or hackney carriage driver licence is deemed not to be 'fit and proper' under the Act or in accordance with the current policy on 'Convictions and Cautions' the applicant can have his application heard by a Licensing Sub-Committee. Likewise, where a current holder of a driver's licence has received any caution, conviction or sentence for other specific offences, or where there is a specific matter of misconduct and in the opinion of the Licensing Officers is again deemed to be not 'fit and proper' the matter has to be referred to the Licensing Sub-Committee.
- 7.2 Officers will have to prepare a report to the Licensing Sub-Committee containing all relevant information, evidence and fact. A hearing will be arranged which requires the attendance (other than the sitting Members) of a Licensing Officer (or sometimes two because of the length of the agenda), a Democratic Services Officer and a legal officer.
- 7.3 On occasions there can be and has been some considerable time between the Licensing Officers preparing and submitting the report and the matter being heard by the Licensing Sub-Committee. This has the effect of being prejudicial to the applicant or licence holder as the matter has not been dealt with as expeditiously as possible, and secondly the Committee's resolution being ineffective as some considerable time has elapsed since the application originally being made or the matter coming to light. In addition, there has been an increase in the number of appeals against the Sub-Committee's decisions to the Magistrates' Court which, dependant on court availability, can take between 4 to 9 months for the appeal to be heard.
- 7.4 All referrals to the Licensing Sub-Committee and any subsequent appeals can be time consuming and costly for the Licensing Team, and with the recent reduction of two staff within the team now even more so. The recommendations contained within this report aim to streamline the procedures.
- 7.5 Since January 2007 and to the date of preparing this report the Licensing Team have prepared a total of **99** reports (55 in 2007, 35 in 2008 and 9 to date in 2009) to the Licensing Sub-Committee involving 17 separate Sub-Committee hearings specifically for private hire or hackney carriage licensing alone. This has resulted in approximately five referrals for every hearing. (This does not include hearings for matters relating to the Licensing Act 2003 or the Gambling Act 2005).

8 Costs

A reduction in the number of Sub-Committee meetings called will lead to significant savings in the recharge made to the licensing budget for Member allowance claims, officer time in Democratic and Legal Services preparing for and attending the meetings and the cost of providing accommodation/ refreshments, etc.

9. Benchmarking – Other Local Authorities

- 9.1 A benchmarking exercise has been conducted with twelve other local authorities which include Surrey Heath, Spelthorne, Runnymede, Wokingham, Reading, South Bucks, Royal Borough of Windsor and Maidenhead, West Berkshire, Bracknell Forest, Basingstoke and Deane, Elmbridge, Reigate and Banstead. This benchmarking exercise has shown that most local authorities have introduced an officer delegation scheme similar to that being proposed. The Benchmarking Summary is attached at **Appendix C**.

10 Recommendations

- 10.1 As can be seen from the provisions set out in each area of the legislation as detailed in **5.1** above, any person aggrieved by the refusal to grant, renew, suspend or revoke any licence has a statutory right of appeal to the Magistrates' Court. At this time only the Licensing Committee have these powers. To ensure that all matters are dealt with in an efficient, expedient, and cost effective manner the proposed recommended changes to delegated powers are as follows:

10.2 Power to Refuse to Grant a Private Hire or Hackney Carriage Driver or Operator Licence

That the power to refuse to grant a private hire driver licence (Section 51), a hackney carriage driver licence application (Section 59) or a private hire operator's licence application (Section 55) of the Act in that the applicant is deemed not to be a 'fit and proper person' in accordance with the legislative requirements of the Act, and the approved Council policy on 'Convictions and Cautions' as approved in January 2008, or any other special circumstances where the Officers consider it appropriate be delegated to the Assistant Director, Public Protection.

10.3 Power to refuse to Renew a Private Hire or Hackney Carriage Driver Licence

That the power to refuse to renew a private hire driver licence (Section 51) and a hackney carriage driver licence application (Section 59) of the Act in that the applicant is no longer deemed to be a 'fit and proper person' in accordance with the legislative requirements of the Act, and the approved Council policy on 'Convictions and Cautions' as approved in January 2008, or any other special circumstances where the Officers consider it necessary be delegated to the Assistant Director, Public Protection.

10.4 Power to Suspend or Revoke a Private Hire or Hackney Carriage Driver Licence

That the power to suspend or revoke a private hire or hackney carriage driver licence under Section 61 of the Act where, that since the grant of the licence – (a) (i) the holder has been convicted of an offence involving dishonesty, indecency or violence; or (a) (ii) has 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, be delegated to the Assistant Director, Public Protection.

10.5 **Section 52 Road Safety Act 2006 as approved by the Licensing Committee on 27th September 2007**

Following the implementation of Section 52 of the Road Safety Act 2006 the Licensing Committee formally resolved that – ‘The power given to the Licensing Authority to suspend or revoke a taxi or private hire driver’s licence with ‘immediate effect’ where they are of the opinion that the interests of public safety require such a course of action, should be delegated to the Licensing Manager, in consultation with the Chair of the Licensing Committee’.

This system has worked effectively since its implementation. However there may be occasions whereby either the Licensing Manager or the Chair of the Licensing Committee may not be available either separately or at the same time. It is therefore asked that consideration be given to the following amendment;

- The principal power to remain with the Licensing Manager and the Chair of the Licensing Committee. In the absence of the Licensing Manager this power should be delegated to any Senior Licensing Officer or Licensing Officer in consultation with the Chair. In the absence of the Chair the power should be delegated to the Vice-Chair and in his absence to any of the three nominated Chairs of the Licensing Sub-Committee.

This proposal would ensure that where the use the power under Section 52 of the Road Safety Act 2006 is required, a decision in consultation between principally the Licensing Manager and then any member of the Licensing Team with the Chair or Vice-Chair of the Licensing Committee or in their absence any Chair of the three Licensing Sub-Committees can be made without unnecessary delay.

11 **Exceptions to the Recommendations**

- 11.1 Private Hire or Hackney Carriage Driver Misconduct – The above recommendations do not include matters of misconduct of private hire or hackney carriage drivers where they do not fall within the above categories. The reason for this being is that such misconduct matters may involve complaints and/or evidence from members of the public, the police, other outside agencies or other licence holders which may require their evidence to be given orally. In addition the licence holder may deny the matter of misconduct and or provide mitigation on the matter and therefore the matter should only be heard and determined by a Licensing Sub-Committee.
- 11.2 Private Hire or Hackney Carriage Vehicles – Where the driver’s licence has been suspended or revoked and it is felt that suspending or revoking the vehicle licence is not necessary as it would deprive the licence holder of financial income as the vehicle may be rented out to or used by another driver. The main reasons for suspending or revoking vehicle licences would be where the vehicle is in such a dangerous condition that it cannot be used as a private hire or hackney carriage vehicle or where the vehicle is not insured.
- 11.3 Private Hire Operators – Private hire operator owners provide employment either directly or indirectly by using or employing drivers and vehicles. Where the circumstances are such that Officers feel that any private hire operator’s licence should be considered for refusal to renew or suspended or revoked the matter should be automatically referred to a Licensing Sub-Committee to determine. Any

decision to refuse to renew or suspend or revoke an operator's licence would have immense implications on the service they provide to the public and for the drivers and vehicle licence holders that work for the operator. There would in any case be great opposition and/or mitigation by the licence holder for any these courses of action and this can only be dealt with by a Licensing Sub-Committee.

12 **Decision Making**

The approved policy on 'Convictions and Cautions' has been tested at appeals in the Magistrates' Court and has been proved to be a 'sound' and 'reliable' policy document. In using this policy document, if the above recommendations are approved it will be the responsibility of the Assistant Director, Public Protection and the Licensing Manager to ensure that all decisions are made in a **consistent, reasonable and proportionate, transparent, legal, accountable, necessary and justifiable, non-discriminatory** manner. Every decision made will necessitate written justification being provided to the applicant or the licence holder and will be the evidence as to why the decision has been made. This written justification will be the base on which to defend any appeal that may be made against the decision.

13 **Conclusion**

The Committee is requested to recommend to Council that the proposed powers as recommended and outlined in this report to be delegated from the Licensing Committee to the Assistant Director, Public Protection and for the Council's Scheme of Delegation to be amended accordingly.

14. **Appendices Attached**

- 'A' - Council Constitution – Responsibility for Functions – Licensing Committee and Licensing Sub-Committee
- 'B' - Council Constitution – Scheme of Delegations to Officers
- 'C' - Benchmarking Summary

9. **Background Papers**

Local Government (Miscellaneous Provisions) Act 1976
Equality Impact Assessment Screening

PART 3 OF THE COUNCIL CONSTITUTION

Responsibility for Functions

Body Responsible	Function	Delegation of Functions
<p>Licensing Committee (11 Members of the Authority) No Executive member other than the Commissioner with responsibility for Licensing functions or Mayor</p>	<ol style="list-style-type: none"> 1. To determine annually the number and allocation of Hackney Carriages. 2. Within the Policy Framework agreed by the Council to determine operational guidelines on Taxi Licensing 3. To consider and determine applications for licenses for Private Hire Vehicles, Operators and Drivers and Hackney Carriage Drivers where <ol style="list-style-type: none"> (1) the individuals involved have been convicted of traffic or other offences (2) Where the CRB checks on an individual gives cause for concern with regard to their suitability as a fit and proper to hold such a licence (3) in any other special circumstances where the Officers consider it appropriate to refer the matter to the Committee. 6. To determine conditions of licenses; set fares and charges; and to determine the extent of delegation to Officers regarding the issue or suspension of licenses under Part II of the Local Government (Miscellaneous Provisions) Act 1976 relating to Hackney Carriages and private Hire Vehicles and to authorise enforcement action. 	<p>1-11 (inclusive) Most Operational aspects fall to be dealt with by Officers under the Scheme of Delegation.</p> <p>A Licensing Hearing Sub Committee will be appointed to hear licensing applications referred to Committee</p>

PART 3 OF THE COUNCIL CONSTITUTION

Scheme of Delegation to Officers

	<u>Hackney Carriages and Private Hire Vehicles</u>	
69.	(a) Substitution of vehicles under existing Hackney carriages and Private Hire Licenses	Head of Public Protection
	(b) Transfer of ownership of Hackney Carriages and private Hire Vehicles	Head of Public Protection
	(c) The grant or renewal of Hackney Carriage Drivers and Private Hire Vehicles, Operators and Driver's Licenses (except when drivers have convictions) in accordance with guidelines laid down.	Head of Public Protection

APPENDIX C

	BENCHMARKING	
Local Authority	Function	Delegation
Surrey Heath	Issue, revoke, suspend or refuse all PH and HC licences	<ul style="list-style-type: none"> • Head of Legal and Corporate Services • Licensing Manager
Spelthorne	Issue PH and HC licences	<ul style="list-style-type: none"> • Strategic Director – Licensing Officers
	Suspend PH and HC licences	<ul style="list-style-type: none"> • Strategic Director with Chair of the Licensing Committee
	All other functions for PH and HC licensing i.e. Conduct etc	<ul style="list-style-type: none"> • Licensing Committee
Runnymede	Issue PH and HC licences and suspend vehicle licenses	<ul style="list-style-type: none"> • Licensing Officers
	All other functions including suspension or revocation of drivers licences etc	<ul style="list-style-type: none"> • Director of technical Services and or Licensing Committee
Wokingham	All functions and powers for PH and HC licensing	<ul style="list-style-type: none"> • Licensing Officers
Reading	To issue all PH and HC licences	<ul style="list-style-type: none"> • Head of Environmental and Consumer Services – Licensing Officers
	All other functions including suspension or revocation of licences	<ul style="list-style-type: none"> • Licensing Committee
South Bucks	To issue all PH and HC licences	<ul style="list-style-type: none"> • Licensing Officers
	All other functions including suspension or revocation of licences	<ul style="list-style-type: none"> • Licensing Committee
RBWM	License or refuse to license HC and PH vehicles and vary conditions. To prosecute for offences. Prepare and vary guidance. Consult on HC ranks. To suspend and or revoke HC and PH drivers and vehicle licences	<ul style="list-style-type: none"> • Licensing Officers

West Berks	All powers to issue, refuse to grant and or renew licences and to suspend or revoke any PH or HC licences	<ul style="list-style-type: none"> • Head of Public Protection Services – Licensing Officers
Bracknell Forest	To issue or refuse to grant and to suspend all PH and HC licences.	<ul style="list-style-type: none"> • Licensing Officers
	Revocation of PH and HC licences	<ul style="list-style-type: none"> • Head of Service
Basingstoke	Issue all PH and HC licences	<ul style="list-style-type: none"> • Licensing Officers
	Refuse to grant, refuse to renew suspend or revoke any PH or HC Driver's licence	<ul style="list-style-type: none"> • Head of Service
Elmbridge	Issue all PH and HC licences, to suspend PH and HC vehicle licences	<ul style="list-style-type: none"> • Strategic Director of Services – Licensing Officers
	To suspend PH and HC vehicle licences	<ul style="list-style-type: none"> • Strategic Director of Services – Licensing Officers
	To suspend HC and PH Operator's and Driver's licences	<ul style="list-style-type: none"> • Subject to notifying Portfolio Holder or Regulatory Affairs, or Chairman or Vice Chairman of the Licensing Committee as soon as possible thereafter
	To revoke, refuse to grant or renew HC and Ph licences	<ul style="list-style-type: none"> • Licensing Sub Committee
Reigate and Banstead	Grant, renew transfer, suspend, refuse, revoke all PH and HC licences	<ul style="list-style-type: none"> • Delegated to Head of Environmental Health Services. – Licensing Officers