

AGENDA FOR

LICENSING AND SAFETY PANEL

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To: All Members of Licensing and Safety Panel

Councillors : Adams, N Bayley, I Bevan, S Briggs,
D Cassidy, J Grimshaw, R Hodgkinson, T Holt, D Jones
(Chair), A Matthews, A Simpson, S Southworth and
J Walton

Dear Member/Colleague

Licensing and Safety Panel

You are invited to attend a meeting of the Licensing and Safety Panel which will be held as follows:-

Date:	Monday, 6 October 2014
Place:	Meeting Room A & B, Town Hall, Bury
Time:	7.00 pm
Briefing Facilities:	If Opposition Members and Co-opted Members require briefing on any particular item on the Agenda, the appropriate Director/Senior Officer originating the related report should be contacted.
Notes:	

AGENDA

1 APOLOGIES FOR ABSENCE

2 DECLARATIONS OF INTEREST

Members of the Licensing and Safety Panel are asked to consider whether they have an interest in any of the matters on the agenda, and if so, to formally declare that interest.

3 MINUTES (*Pages 1 - 6*)

Minutes of the last meeting held on 9th September 2014 are attached.

4 PUBLIC QUESTION TIME

Questions are invited from members of the public present at the meeting on any matters for which this Panel is responsible.

Approximately 30 minutes will be set aside for Public Question Time if required.

5 DELEGATION TO LICENSING AND SAFETY PANEL WITH REGARD TO COUNCIL SCHOOL AND COLLEGE TRANSPORT CONTRACTS (*Pages 7 - 10*)

Report attached.

6 AMENDMENT TO THE SCHEME OF DELEGATION TO LICENSING AND SAFETY PANEL (*Pages 11 - 14*)

Report attached.

7 URGENT BUSINESS

Any other business, which by reason of special circumstances, the Chair agrees may be considered as a matter of urgency.

8 EXCLUSION OF PRESS AND PUBLIC

To consider passing the appropriate resolution under section 100 (A)(4) of the Local Government Act 1972 that the press and public be excluded from the meeting during consideration of the following item of business since it involves the likely disclosure of the exempt information stated.

9 SUSPENSION/REVOCATION OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE (*Pages 15 - 20*)

Report attached.

10 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER

LICENCE (*Pages 21 - 28*)

Report attached.

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Minutes of:	LICENSING AND SAFETY PANEL
Date of Meeting:	Tuesday 9 September 2014
Present:	Councillor D Jones (in the Chair), Councillors: P Adams, N Bayley, I Bevan, D M Cassidy, T Holt, J Grimshaw, R Hodgkinson, A K Matthews, A Simpson and S Southworth
Apologies for absence:	Councillors: K S Briggs and J Walton
Public Attendance:	There were no members of the public in attendance

LSP.226 DECLARATIONS OF INTEREST

There were no declarations of interest raised in relation to any items on the agenda.

LSP.227 MINUTES**Delegated decision:**

That the Minutes of the Licensing and Safety Panel meeting held on 17 July 2014 be approved as a correct record and signed by the Chair.

LSP.228 PUBLIC QUESTION TIME

There were no members of the public present to ask questions under this item.

LSP.229 URGENT BUSINESS

There was no urgent business to report at the meeting.

LSP.230 EXCLUSION OF THE PRESS AND PUBLIC**Delegated decision:**

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items of business since it involved the likely disclosure of information relating to individuals who hold Licences granted by the Authority or applicants for Licences provided by the Authority.

Licensing and Safety Panel, 9 September 2014

LSP.231 PROPOSED SUSPENSION/REVOCATION OF A PRIVATE HIRE DRIVER'S LICENCE

(E)

Client 26/2014 did not attend the meeting and it was agreed by the members of the Licensing and Safety Panel to adjourn their decision until the next meeting in order to give the Licence Holder the opportunity to address the Panel.

LSP.232 APPLICATION FOR A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

(E)

The Licensing Manager presented reports submitted by the Assistant Director (Localities) regarding applications for Public/Private Hire Vehicles Drivers' Licences.

The Applicants were invited to attend the meeting for separate hearings and the Chair outlined the procedure to be followed. The applicants and their representatives were invited to address the Panel separately on their applications and any matters referred to in the Officer's report.

1. Applicant 29/2014 attended the meeting and was represented by Mr Gilmore, from Adamson's Law Solicitors. The Licensing Manager summarised a report detailing a complaint of alleged sexual assault. Mr Gilmore stated that he had difficulty in accepting the report as it mentions a conviction and that following a thorough investigation by Greater Manchester Police in relation to the allegation, no conviction was ever brought against the Applicant and should not be considered as such.

Mr Gilmore explained that the Applicant was a family man with three children to support who had been a taxi driver for 15 years prior to the incident in May 2011 and had subsequently had employment in an off licence and as a delivery driver for Pizza Hut. References were provided to the Licensing and Safety Panel in relation to the Applicant's character. Mr Gilmore stated that if the Applicant was granted a licence he would install a camera in his vehicle and be traceable via GPS tracking. Mr Gilmore stated that as no criminal proceedings had been brought against the Applicant, it was time to 'draw a line' under the incident and he should be given the opportunity to provide for his family and be granted a Private Hire Driver's licence.

Delegated Decision;

The Panel carefully considered the written report and the oral representations made by Mr Gilmore and all the evidence presented including written references, and with due consideration of the potential effect on the applicant's livelihood and family life,

and taking into account the Council's Conviction Guidelines, the Panel found that;

- The Applicant had been convicted of a serious offence of affray in 2007
- The allegation made against the Applicant in May 2011 was of a serious nature
- The Applicant had provided only a limited explanation of his version of events and even based upon that version, he appeared to admit that activities of a sexual nature had occurred in his private hire vehicle on the night in question
- Members of the Licensing and Safety Panel had previously revoked the Applicant's Private Hire Licence and subsequently refused to grant a licence based on the same information and had therefore determined the Applicant not to be 'fit and proper'
- The Applicant had not appealed either of the previous decisions of the Licensing and safety Panel
- There had been insufficient time that had elapsed since the incident in May 2011.

The Panel therefore determined the Applicant not to be a fit and proper person in accordance with the Local Government (Miscellaneous Provisions) Act 1976 and therefore that the Applicant identified as 29/2014 be **refused** a Private Hire Driver's Licence.

The Applicant was informed of their right to appeal to the Magistrates' Court within 21 days.

2. The Applicant 27/2014 attended the meeting and was unrepresented. The Licensing Manager summarised the report which was accepted by the Applicant, who then addressed the Panel.

The Applicant explained he was very remorseful for the convictions in relation to possession and intent to supply drugs but stated that the first conviction in August 2006 was when he was very young and was with the wrong crowd and the subsequent convictions in April and May 2011 and March 2012 were when he was going through a difficult time after just leaving college. He stated that he was now working in the family taxi business as an operator and provided a written character reference.

Delegated Decision;

The Panel carefully considered the written report and the oral representations made by the Applicant and the evidence presented and taking into account the Council's Conviction Guidelines, the Panel found that;

Licensing and Safety Panel, 9 September 2014

- The Applicant had been convicted of 4 serious offences relating to both the possession of and possession with intent to supply controlled drugs
- Three of the offences had been committed within the last 4 years the most recent being in early 2012, less than 3 years ago
- The Applicant admitted that he had been using cannabis during the time he had been arrested and convicted of the last three offences
- There had been insufficient time that had elapsed since the last conviction.

The Panel therefore determined the Applicant not to be a fit and proper person in accordance with the Local Government (Miscellaneous Provisions) Act 1976 and therefore that the Applicant identified as 27/2014 be **refused** a Private Hire Driver's Licence.

The applicant was informed of their right to appeal to the Magistrates' Court within 21 days.

3. Applicant 28/2014 attended the meeting and was represented by Miss Ahmed, a family friend. The Licensing Manager summarised the report which was accepted by the Applicant and Miss Ahmed addressed the Licensing Panel on behalf of the Applicant.

Miss Ahmed explained that the Applicant was very remorseful for the conviction of common assault in August 2006 and stated that he had a very abusive passenger who refused to pay the fare and he retaliated verbally and held on to the passenger's jacket to try and get the payment.

Regarding the incident and conviction in August 2011, Miss Ahmed explained that a pedestrian (whom he learned subsequently was a drunken man) had run in front of the Applicant's vehicle and he had struck them. However, as the area in which the Applicant stopped was what he believed to be a 'rough' area he was afraid to get out, panicked and therefore did not stop. An hour later he phoned the taxi base to explain what had happened and by that time the Police were involved. The Applicant was therefore charged with failing to stop and failing to report an accident and was subsequently convicted.

Miss Ahmed stated that the Applicant has 3 children and has separated from his wife. She went on to state that the Applicant wanted to be able to support his children financially in an honest profession, accepted he had made these mistakes in the past, was remorseful and now needed the opportunity to make an honest living and be a role model to his children.

Delegated Decision;

The Panel carefully considered the written report, the oral representations made by Miss Ahmed on behalf of the Applicant and the evidence presented and taking into account the Council's Conviction Guidelines, the Panel found that;

- The Applicant had been convicted of 4 serious offences
- All the offences had been committed whilst the Applicant was a private hire driver and driving a private hire vehicle
- His private hire drivers licence had been revoked by Blackburn with Darwen Council due to the most recent offences of failing to stop and failing to report and accident
- The facts outlined by the Applicants representative in relation to the last two offences of failing to stop and failing to report an accident demonstrated that the Applicant did not know whether the pedestrian was injured or not or if they were, how seriously.

The Panel therefore determined the Applicant not to be a fit and proper person in accordance with the Local Government (Miscellaneous Provisions) Act 1976 and therefore that the Applicant identified as 28/2014 be **refused** a Private Hire Driver's Licence.

The applicant was informed of their right to appeal to the Magistrates' Court within 21 days.

COUNCILLOR D JONES – CHAIR

(Note: The meeting started at 7.00 pm and finished at 8.20 pm)

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REPORT FOR DECISION

**Agenda
Item**

MEETING:	LICENSING & SAFETY PANEL	
DATE:	6 th OCTOBER 2014	
SUBJECT:	DELEGATION TO LICENSING AND SAFETY PANEL WITH REGARD TO COUNCIL SCHOOL & COLLEGE TRANSPORT CONTRACTS	
REPORT FROM:	ASSISTANT DIRECTOR (LOCALITIES)	
CONTACT OFFICER:	MR W A JOHNSON	
TYPE OF DECISION:	COUNCIL	
FREEDOM OF INFORMATION/STATUS:	This report is within the public domain	
SUMMARY:	The report considers the options for review of drivers providing school & college transport contracts on behalf of the Council	
OPTIONS & RECOMMENDED OPTION	<ol style="list-style-type: none"> 1. Make a recommendation to Council for a delegation to Licensing & Safety Panel to undertake reviews of drivers working on Council school and college contracts. This is the preferred option. 2. Leave the process with the Officers currently undertaking the reviews. 3. Make a recommendation on an alternative process 	
IMPLICATIONS:		
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes	
Statement by the S151 Officer: Financial Implications and Risk Considerations:	There are no specific issues from the report other than potential costs/risks associated with legal appeals	
Health & Safety implications:	The fundamental principal is one of public protection. Drivers should not be undertaking work on Council contracts unless the Council is satisfied that the driver is a "fit and proper person" at all times.	
Statement by Executive Director of Resources:	The cost of the licensing function are funded through the fees and charges levied by the Council. There may be additional costs if drivers appear before Panel or appeals on decisions are lodged with the Courts.	
Equality/Diversity implications:	None - The proposals will affect all drivers	

	equally and do not affect any of the protected equality characteristics.
Considered by Monitoring Officer:	This report provides for an amendment to the process and ensures it is correctly delegated within the terms of the Council's constitution. This will ensure the risk of decisions being challenged is minimised and that there is consistency in decision making.
Wards Affected:	N/A - the recommendation is not area based
Scrutiny Interest:	Overview and Scrutiny Panel

TRACKING/PROCESS**DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

- 1.1 Through Children's, Young People & Culture the Council arranges School & College transport for a number of young people.
- 1.2 Contracts, which are awarded through a formal procurement process, are provided via local taxi companies or companies operating public service vehicles (PSV).
- 1.3 In undertaking the work drivers are assessed as to their "fit and proper" status through enhanced DBS and restricted occupation checks.
- 1.4 Occasionally, those checks or a complaint may give rise to a concern with regard to a particular driver which needs to be reviewed. This report makes recommendations in how those reviews are undertaken

2.0 ISSUES

- 2.1 At present any reviews relating to contract drivers are conducted by the School & College Transport Manager and the Transport Contract Supervisor.
- 2.2 Where the concern relates to a Council licensed public/ private hire driver there may also be a need for a review before the Licensing & Safety Panel.
- 2.3 The Council Constitution makes a number of specific delegations to the Licensing & Safety Panel including the review of public/ private hire licensed drivers and licence applicants where there are grounds for refusal; but makes no mention of PSV drivers.

- 2.4 Whilst both reviewing bodies make use of AGMA developed conviction guidelines to ensure consistency it is considered there would be advantages in a single review body.
- 2.5 The following delegation is suggested as an addition to the existing delegations to Licensing & Safety Panel within in the Council Constitution.

To determine the "fit & proper" status of drivers undertaking school & college transport contracts on behalf of the Council where there are grounds for concern arising from DBS and restricted occupation checks and/ or intelligence received and/ or complaints.

- 2.6 In determining the "fit & proper" status regard will be had to the Council's Convictions Guidelines. Where drivers are considered not to be "fit & proper" a recommendation will be made to the School & College Transport Manager for action through the contract rules and requirements. This is the only option available to the Council in relation to PSV drivers. However, where those drivers are public and/ or private hire licensed drivers the Panel will, if appropriate, also take direct action through the existing protocols.

3.0 CONCLUSION

- 3.1 This report proposes that Licensing & Safety Panel becomes the single review body.
- 3.2 The report recommendation is supported by colleagues in School & College Transport Service and the Strategic Procurement Section.
- 3.3 In reviewing the process addition benefits have been identified. The Licensing Service is able to assist the School & College Transport Service in the processing of DBS checks and the production of identity badges for contract drivers. This will provide a holistic approach to all drivers operating within Bury.

List of Background Papers:-

Council Constitution- Pt 3.2 (B) Delegations to Regulatory & non- Executive Committees (pg 89)

Contact Details:-

Mr W A Johnson
Head of Trading Standards & Licensing
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REPORT FOR DECISION

**Agenda
Item**

MEETING:	LICENSING & SAFETY PANEL	
DATE:	6 th OCTOBER 2014	
SUBJECT:	AMENDMENT TO THE SCHEME OF DELEGATION TO LICENSING AND SAFETY PANEL	
REPORT FROM:	ASSISTANT DIRECTOR (LOCALITIES)	
CONTACT OFFICER:	MR W A JOHNSON	
TYPE OF DECISION:	COUNCIL	
FREEDOM OF INFORMATION/STATUS:	This report is within the public domain	
SUMMARY:	The report proposes simplification and minor amendment to the delegations to Licensing & Safety Panel within the Council Constitution	
OPTIONS & RECOMMENDED OPTION	<ol style="list-style-type: none"> 1. Make a recommendation to Council for the changes proposed at Paragraphs 2.4, 2.7 & 2.9 This is the preferred option. 2. Make a recommendation on an alternative proposal 3. Make no changes 	
IMPLICATIONS:		
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework?	Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	There are no specific issues from the report other than potential costs/risks associated with legal appeals	
Health & Safety implications:	The fundamental principal is one of public protection. It is desirable that driver, vehicle and operator licences are dealt with in a timely and consistent manner.	
Statement by Executive Director of Resources:	The cost of the licensing function is funded through the fees and charges levied by the Council. There may be additional costs if licence holders/ applicants appear before Panel or appeals on decisions are lodged with the Courts.	
Equality/Diversity implications:	None - The proposals will affect all drivers equally and do not affect any of the protected equality characteristics.	
Considered by Monitoring Officer:	This report provides for an amendment to the process and ensures it is correctly delegated	

	within the terms of the Council's constitution. This will ensure the risk of decisions being challenged is minimised and that there is consistency in decision making.
Wards Affected:	N/A - the recommendation is not area based
Scrutiny Interest:	Overview and Scrutiny Panel

TRACKING/PROCESS**DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

- 1.1 The Council Constitution at Pt 3.2 (B) details the delegations from Council to the Licensing & Safety Panel.
- 1.2 In general terms where there are grounds for refusal of a licence the decision is delegated to the Licensing & Safety Panel, with officers granting licences where there are no grounds for refusal.
- 1.3 Following an officer review of the current scheme of delegation minor amendments are proposed to simplify the scheme and ensure conformance with the legislative requirements.
- 1.4 The proposals relate to the determination of public/ private hire licences and policy issues within the Licensing Act 2003 and the Gambling Act 2005.

2.0 ISSUES

- 2.1 Paragraph 1 Pt 3.2 (B) of the constitution gives the following delegation to Licensing & Safety Panel:-

To determine all new applications for hackney carriage and drivers' licences and private hire vehicles', operators' and drivers' licences where the applicants do not comply with the relevant criteria or where there are grounds for refusal of the applications (as to licensing hackney carriages) under the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985; and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976; (as to licensing private hire vehicles) sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976; (as to licensing drivers) sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act

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1976; (as to licensing operators) sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976

- 2.2 Paragraph 2 Pt 3.2 (B) gives the following delegation to Licensing & Safety Panel:-To determine applications for the renewal of private hire vehicles', operators' and drivers' licences where the applicants do not comply with the relevant criteria (under the legislation referred to in (1) above).
- 2.3 As Members will note within the Constitution delegation at Paragraph 2 there is no mention of licence renewals relating to hackney carriages. As Licensing Officers are authorised to take action under the relevant legislation where there are no specific delegations to an alternative place renewal decisions on hackney carriage licences currently fall to officers. However, Paragraph 9 the scheme of delegation provides for officers not wanting to exercise delegated powers to refer matters to the Licensing & Safety Panel for determination. In practice this is the means that renewal applications have been placed before Members for consideration.
- 2.4 The proposed amendment would be:-
- To determine all new applications and all renewals for hackney carriage proprietor (vehicle), hackney carriage driver, private hire vehicle, private hire driver and private hire operator licences where the applicants do not comply with the relevant policy, guidelines, criteria or where there are grounds for refusal of the applications under the relevant legislation.
- 2.5 With the proposed amendment as given above a situation can arise where a vehicle licence cannot be renewed by officers because it is outwith the Council's age policy and without delegation officers cannot refuse the application. Whilst the vehicle licence holder will be given an opportunity to attend Licensing & Safety Panel to ask that they deviate from the policy, as no formal decision is made until the next scheduled meeting, which may be some weeks away, an aggrieved licence holder cannot engage in the appeals process. If during the period between renewal application and determination at Licensing & Safety Panel the licence expires the holder will be unable to work.
- 2.6 In altering the delegation Members are asked to consider a specific delegation to officers to determine renewal applications for vehicle licences where the vehicle does not conform to the age policy set by Licensing & Safety Panel.
- 2.7 The proposed amendment to officers would be:-
- To determine applications to renew hackney carriage proprietor and private hire vehicle licences where the vehicle does not conform to the current vehicle age policy.
- 2.8 Paragraphs 12 & 13 Pt 3.2 (B) are general delegations to deal with matters in respect to the Licensing Act 2003 & the Gambling Act 2005. Amongst other matters they purport the delegation of all policy matters to Licensing & Safety Panel. Through the relevant statutes the setting of policy is specifically reserved to Council and cannot be delegated.
- 2.9 In practice the setting of policy has been undertaken by Council. The proposed amendment would simply be to remove the mention of policy from the delegation.

3.0 CONCLUSION

- 3.1 This report proposes the amendment and simplification of the scheme of delegations to Licensing & Safety Panel.
- 3.2 The proposed amendments clarify the existing working arrangements.

List of Background Papers:-

Council Constitution- Pt 3.2 (B) Delegations to Regulatory & non- Executive Committees (pg 89)

Contact Details:-

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