

REPORT FOR DECISION

DECISION OF:	LICENSING & SAFETY PANEL
DATE:	10th JANUARY 2019
SUBJECT:	Changes to officer delegation in respect to Hackney Carriage and Private Hire Licensing
REPORT FROM:	ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)
CONTACT OFFICER:	MR M BRIDGE
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain.
SUMMARY:	This report seeks Members views on proposals to make amendments to the order of business at Panel and alterations to the scheme of delegation between Panel and Officers.
OPTIONS & RECOMMENDED OPTION	<ol style="list-style-type: none"> 1. To accept the proposals, in part or whole and seek Council approval with regard to altering the scheme of delegation 2. To amend the proposals in part or whole 3. To reject the proposals in part or whole
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
Statement by Executive Director of Resources:	If the changes are accepted any applicant aggrieved by a decision of the Panel or Officers may appeal to the courts. This may incur legal costs for both parties.
Equality/Diversity implications:	No

	(see paragraph below)
Considered by Monitoring Officer:	Under the legislation the Council is required to determine applications within the terms of the Constitution and it is prudent to review the delegations to the Panel from time to time when there are changes in the law or for general efficiency.
Wards Affected:	All
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 Members are aware that the consideration of licensed Hackney Carriage and Private Hire drivers and new applicant's misdemeanours form a large percentage of the business brought before the Panel. The Local Government (Miscellaneous Provisions) Act 1976, section 51 (1) provides that in respect of private hire drivers:-

A district council shall not grant a licence to drive a private hire vehicle:

- a) unless they are satisfied that the applicant is fit and proper to hold a driver licence.

similarly Section 59 (1) provides that in respect of Hackney Carriage drivers:

A district council shall not grant a licence to drive a hackney carriage:

- a) unless they are satisfied that the applicant is fit and proper to hold a driver licence.

1.2 Members will recall that following a series of Panel meetings this financial year proceeding past 10.00pm, officers were asked to consider options for refining procedures and reducing the amount of business placed before the Panel.

1.3 The report is in response to that request. Some of the options are linked to the Council Statement of Policy and Guidelines relating to the relevance of convictions [convictions guidelines] approved by Members in December 2014.

- 1.4 Changes to the agenda format for Licensing and Safety Panel meetings have included:-
- i) The Operational Report being dealt with on a questions only basis;
 - ii) Drivers and applicants being invited collectively at for the start of the meeting rather than appointments spread throughout the evening;
 - iii) Suspensions /revocations being dealt with before new applications; and
 - iv) The option to deal with business reports after reports concerning drivers and new applicants.
- 1.5 It has long been established that in the interests of practicality, uncontroversial decisions can lawfully be delegated by elected Members to officers. The Council constitution already sets out existing delegations made by the elected Members to officers to enable the business of licensing to be carried on effectively, fairly and within the budget allocation.
- 1.6 Drivers whose livelihoods are at risk but who have committed serious offences are usually given the opportunity to make representations. The exception to this is in circumstances where an offence has been committed that is so serious that the licence is suspended or revoked by officers in the interest of public safety following consultation with the Chairman of the Licensing And Safety Panel
- 1.7 Applicants who it is alleged have committed criminal offences who feel that they have the necessary attributes to be a fit and proper person can appear before Panel to try to satisfy the Panel of this. The panel is already aware that it is important when making these decisions to balance the rights of an individual against the rights of the public of Bury to remain safe, whilst travelling in licensed vehicles.
- 1.8 These delegations do not remove the powers of the elected members to make the more complex decisions that the officers are not able to make. It is proposed in this report that the delegations be extended to allow officers to enable them to make further uncontroversial decisions in additional circumstances detailed below

2.0 INTRODUCTION

- 2.1 There reason for the report is to request alterations to the scheme of delegation between the Licensing and Safety Panel.

3.0 PROPOSALS

3.1 Alterations to the scheme of delegation between Panel and officers

- 3.2 At present, the Council Constitution requires that the Licensing and Safety Panel determines driver, vehicle and operator licence applications where applicants do not comply with the relevant criteria or where there are grounds for refusal of an application. Grounds for refusal are often related to a driver's criminal record/intelligence.
- 3.3 Officers in the Council's licensing service have delegated authority to grant applications for driver, vehicle and operator licences where the applicant meets all the criteria of the application process; subject to there being no grounds for refusal and the applicant is deemed to be considered fit and proper. In using such authority, officers consider the statement of policy and guidelines relating to relevant convictions and determine whether or not an applicant meets the

criteria with respect to criminal convictions.

- 3.4 It follows that if there are grounds for refusal of an application it will be considered at Panel no matter how unlikely it is to be granted or how often a repeat application is made.
- 3.5 Accepting that each case must be assessed on its own merits this report seeks to allow for the identification of applications that could be dealt with otherwise than at Panel, leaving Members to determine those matters which are complex and require a more finely balanced approach.
- 3.6 This proposed delegation would only be used in respect of new applicants. Any consideration in relation to the proposed suspension/ revocation of licensed drivers would continue to be referred to Panel.
- 3.7 Any matter to be determined immediately on the grounds of it being in the interest of public safety would continue to be determined through existing delegations.
- 3.8 If Members are minded to agree further Officer delegations, it is suggested that in circumstances where an applicant meets all the relevant criteria, except those relating to convictions, the Licensing Unit Manger or in his absence, Deputy Licensing Officer will determine whether or not the application will be granted, refused or referred to the Licensing & Safety Panel subject to the restrictions below.
- 3.9 Members may wish to recommend delegation to Officers in the following situation:-
 - i) After consideration of the facts presented at application, if the applicant is not deemed to be fit and proper, Officers to be authorised to refuse an application:
 - where the applicant has a conviction for murder or manslaughter or culpable homicide while driving;
 - where the applicant is on the sex offenders register or has a conviction for a sexual offence;
 - where a further application has been made within 12 months of a previous refusal at Panel or via Officer delegation, unless there is a substantial and material change to the applicant's circumstances;
 - where due to the period of time which has lapsed since the date of conviction the Statement of Policy and Guidelines relating to the Relevance of Convictions clearly states that the application should generally be refused.
- 3.10 Additionally, if the Panel is minded to recommend to Council the Officer delegations detailed above, it may be appropriate to give further Officer delegations as follows:
 - to suspend indefinitely any existing driver unable to produce a satisfactory medical report within 4 weeks of it becoming due for renewal until such time that a satisfactory medical report is produced;
 - to refuse any similar licence application made within 12 months of a refusal unless there is evidence of a substantial and material

change in circumstances.

- 3.11 When using delegated authority, Officers must have regard to the Statement of Policy and guidelines relating to the relevance of convictions when determining an application. Where, because of the individual merits or particular circumstances of an application, the Officer or the Panel depart from the policy and convictions guidelines there should be good reasons for such departure and these should be recorded.
- 3.12 Where the Officer considers that the circumstances in a particular application are not adequately covered by the "Statement of policy and guidelines", or where the arguments in favour and against granting a licence are finely balanced, the application may be referred to the Licensing & Safety Panel.
- 3.13 Where the application is granted, refused or referred to Panel the Officer will make and retain a written record of the reasoning for the decision to grant or refuse the application form and this will be regarded as the decision of the Council for the purposes of the statutory requirements. Where the application is refused, the statutes give the applicant a right of appeal against the decision of the Council, to the Magistrates' Court. If Members wish any Officer recorded decisions can be included within the Operation Report to Panel.
- 3.14 The duty of the Officer or the Panel charged with the determination of an application is solely to ensure that the applicant is a fit and proper person and only evidence which relates to this aspect of the application will be considered, save where the applicant's human rights are affected and it is necessary to apply principles of necessity and proportionality.
- 3.15 There is a delegation contained within the existing Council Scheme of Delegation to permit the Head of Commercial and Licensing after consultation with the Chair of the Panel to revoke or suspend a licence with immediate effect on the grounds of public safety. The Council Solicitor suggests that it be amended to take into account restructuring of departments and officers amongst other matters to read as follows:
- To authorise any revocation or suspension of a drivers licence in circumstances where it may appear to the Assistant Director Legal & Democratic Services or Head of Trading Standards and Licensing after consultation with the Chair of the Panel that the interests of public safety require that any particular suspension or revocation be made with immediate effect under s61 (2B) Local Government Miscellaneous Provisions Act 1976 as inserted by s52 of the Road Safety Act 2006. This is provided that the decision is reported in the operational report as soon as reasonably practicable by the Licensing Unit Manager or his representative.
- In normal circumstances once a suspension is made under these provisions the driver would not be invited to attend Panel unless revocation was being considered.
- 3.16 As the Officer delegation scheme is contained within the Council Constitution any agreed changes will need to be ratified by Council.

List of Background Papers:-

Application Forms

Contact Details:-

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