



Classification	Item No.
Open / Closed	

Meeting:	Licensing and Safety Committee
Meeting date:	14 July 2022
Title of report:	Officer Delegation
Report by:	Executive Director (Operations)
Decision Type:	Council
Ward(s) to which report relates	All

Executive Summary:

This report requests that the Committee approve further delegation to officers and to amend Council policy contained within the Council's Conviction Guidelines, the circumstances of which are set out within this report

Recommendation(s)

Introduction

This report relates to the processing of Public/Private Hire Driver Licences.

Options & Recommended Options

1. To delegate to Licensing Officers the power forthwith to deal with applications where licence holders breach their conditions (including failing to declare offences), byelaws and complaints as currently permitted in line with the conviction guidelines.
2. To delegate to Licensing officers the power 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;
3. to delegate to Licensing Officers the power to refuse any similar licence application made within 12 months of a refusal unless there is a substantial and material change in circumstances.
4. To reject any of the delegations outlined above.

Key considerations

This is a Council Function that is delegated to the Licensing and Safety Committee by the Council's Constitution.

This paper is in the Public Domain.

Community impact / Contribution to the Bury 2030 Strategy

Not applicable

Equality Impact and considerations:

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

The public sector equality duty requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

The Licensing Service have considered the Equality Act 2010 and due to each application being dealt with on its own merits there is no positive or negative on any of the protected characteristics

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
Not Applicable	.

Consultation:

Not applicable

Legal Implications:

As set out in the report the Council's Constitution delegates determination of all new applications and all renewals for hackney carriage and private hire driver and vehicles licences where the relevant policy, guidelines criteria or legislative provisions is not complied with, to the Licensing and Safety Committee. It further delegates to the Committee the power to suspend and/or revoke such licences.

This report requests that the Committee approve further delegation of certain of these powers to officers, the circumstances of which are set out within this report. This is within the remit of the Committee and it does not require the approval of full Council.

Financial Implications:

There are no specific issues from the report other than potential costs/risks associated with legal appeals

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Background papers:

Application form

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
None	

1.0 Background

1.1 Members are aware that the consideration of driver misdemeanours and new applications form a large percentage of the business brought before Panel. The Local Government

(Miscellaneous Provisions) Act 1976 at 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.

and 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.

2.0 PROPOSALS

2.1 Alterations to the scheme of delegation between Committee and Officers

At present, the Council Constitution requires that the Licensing and Safety Committee determines driver, vehicle and operator licences applications where the applicants do not comply with the relevant criteria or where there are grounds for refusal. Grounds for refusal are often related to a driver's criminal record. Officers in the Council's Licensing Service have delegated authority to grant applications for private hire driver and operator licences and hackney carriage driver licences where the applicant meets all the criteria of the application process and there are no grounds for refusal on the fit and proper person test. In using those powers officers utilise the convictions policy and guidelines when determining whether or not an applicant meets the criteria with respect to convictions.

2.2 It follows that if there are grounds for refusal the application has to be considered at Committee no matter how unlikely to be granted or how often a repeat application is made. Accepting that each case must be assessed on its own merits this report seeks to identify those applications that could be dealt with other than at Committee, leaving Members to determine those matters which are more finely balanced.

2.3 Members will be aware of the Council's current Conviction Guidelines Policy which were last reviewed in December 2014. The current conviction guidelines state the following in respect of:-

Breach of Conditions, Bye-laws and complaints

Any breach of conditions, breach of bye-laws or complaint relating to a licence holders conduct may be referred to the Panel. A licence holder brought before the Panel will be dealt with by no further action, a formal warning, period of suspension or revocation.

Guidance

Licence holders will be brought before Panel in situations where it is clear that the holder's behaviour is not influenced by verbal or written warnings administered by Licensing Officers. Any licence holder who receives a third warning [verbal or written] in respect of a breach or complaint occurring within a 12 month period [calculated by reference to the date of the breach/complaint] will be brought before the Panel.

All complaints are investigated. Some investigations and breaches will result in prosecution and in those cases the prosecution outcome will be the deciding factor in the decision to refer to Panel as will other prosecutions and cautions administered by other enforcing agencies.

Where this authority administers a caution to a licence holder this does not preclude a referral to panel for the matter for which the licence holder has been cautioned.

In other cases, an investigation may result in a warning, such warnings will be relevant to the rolling 12 month period.

In certain situations, the breach or complaint may be deemed so serious that an immediate referral to Panel is warranted. In those cases, the reasoning for the decision for the immediate referral will be recorded within the formal report to Panel.

- 2.4 Following the request of this Committee to review how we deal with failing to declare offences, the Licensing Service request members to consider the delegation to licensing Officers the power forthwith to deal with applications where licence holders breach their conditions (including failing to declare offences), byelaws and complaints as currently permitted in line with the conviction guidelines as currently permitted in line with the conviction guidelines.
- 2.5 This will enable the Licensing Service to deal with breaches of all conditions as outlined at section 2.3 of this report unless the guidelines state otherwise but will give them flexibility to refer any matter to this Committee if the breach or complaint is so serious.
- 2.6 All other proposed suspension/ revocation of licensed drivers would continue to be referred to Committee; except those dealt with on immediate public safety grounds through the existing delegation contained in the Council's constitution.
- 2.7 If Members are minded to delegate to Licensing Officers options in this report this report. The Licensing Service can report in the Operational Report on how many warnings for breaches of conditions, byelaws and complaints have been issued.
- 2.8 If Members are minded to agree further officer delegations it is proposed that in circumstances where an applicant meets all the criteria, except those relating to convictions, the Head of Public Protection / Licensing Unit Manger (or other duly authorised officer not below the level of 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.
- 2.9 Additionally, the Licensing Service request that the Committee consider delegation of the following matters to officers
 - 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 a substantial and material change in circumstances.
- 2.10 If Members are minded to agree the further officer delegations outlined in 2.9 above, it is proposed in these particular circumstances, the Head of Public Protection / Licensing Unit Manager (or other duly authorised officer not below the level of Deputy Licensing Officer) will determine whether or not the application be refused or Hackney Carriage/Private Hire Drivers Licence will be suspended until a satisfactory medical is received. Where the driver's licence is suspended or the application is refused the Officer will make and retain a written record of the reasoning for the decision to suspend or refuse this will be regarded as the decision of the Council for the purposes of the statutory requirements. Any suspension or refusal of a licence application will be reported to the Licensing and Safety Committee in the Operational Report.