

Report of	Meeting	Date
Director (Policy and Governance)	Council	25 July 2017

AMENDMENT TO SCHEME OF DELEGATION FOR TAXI LICENSING

PURPOSE OF REPORT

- For the members of the Council to approve the amendment to the scheme of delegation for taxi licensing functions following unanimous resolution by the Licensing and Public Safety Committee on 19 July 2017, subject to a minor amendment inserted by officers.

RECOMMENDATION(S)

- That the Head of Legal, Democratic and HR Services is authorised to amend the current Responsibility for Functions section in the Constitution i.e. the scheme of delegation to allow the following decisions to be made by Officers:

Delegated power to the Director of Early Intervention and Support (or another senior officer in the event that the Director is not available) in consultation with Chair or Vice Chair of Licensing & Public Safety Committee to revoke a hackney carriage driver licence or private hire driver licence with or without immediate effect under Section 61[2B] of the Local Government (Miscellaneous Provisions) Act 1976.

Confidential report Please bold as appropriate	Yes	No
--	-----	----

SCHEME OF DELEGATION

- On receipt of an allegation of serious, usually criminal misconduct by a taxi driver (for example an assault on a passenger) licensing officers have for some years exercised the power delegated to the Director of Early Intervention and Support to suspend the driver licence with immediate effect under Section 61[2B] of the Local Government Miscellaneous Provisions Act 1976. The driver may not drive a taxi as soon as he receives notice of the suspension. However he enjoys a statutory right of appeal to the magistrates' court against the suspension. It has also been the practice to convene at short notice a meeting of the General Licensing Sub-Committee to hear more of the allegation. Typically the driver has refused to be drawn about the incident often on legal advice as there are pending criminal proceedings. This is his right and should not be criticised. However because members having nothing before them to persuade them that the allegation is not true and the driver not therefore fit and proper the driver licences have remained suspended with immediate affect and the driver cannot drive a taxi. The usual decision has been that the licences will be reviewed once the criminal proceedings are completed or withdrawn. In the light of a conviction this would lead to revocation or if the driver were exonerated it could lead to the suspension being lifted. If a driver were acquitted or the prosecution discontinued because witnesses did not wish to testify this would not of course automatically mean he was fit and proper for the purposes of the taxi legislation and members might still decide to revoke the licence. The practice of suspending with immediate effect under officer delegated powers with a subsequent review by General Licensing Sub-Committee was also used when it had

come to light that taxi drivers licensed by Council were suffering from a medical complaint (e.g. diabetes) which might mean they did not meet the enhanced medical fitness required of taxi drivers (similar to that of drivers of heavy goods vehicles). If on receipt of further information from the Council's Medical Adviser that the condition could be managed with medication then sub-committee would lift the suspension but with additional requirements that the driver undergo monitoring of his health recommended by the council's medical adviser e.g. blood tests at six monthly intervals.

4. This process was fair to the driver because it preserved the licence when a serious but unproven allegation had been made. The driver might either be in custody and unable to taxi in any case or if bailed might be subject to a bail condition not to drive a taxi. So the taxi driver licence would of no use to him anyway whilst this bail condition applied.
5. The case of *R. (on the application of Singh) v Cardiff City Council [2012]* suggested that the practice of using suspension of the taxi driver licence on an interim basis and then revoking at a later date should not be followed. Instead a "once and for all" decision should be made. The driver licence should either be suspended or revoked but not suspended with a view to a possible later revocation in the light of further developments. This was because suspension was according to Judge not a protective or holding power but a power of final suspension as an alternative to a power of final revocation. There was a debate about whether *Singh* was generally applicable or peculiar to its own facts but more and more (though not all, Leeds City Council being a prominent exception) authorities followed the principle of a single decision at the point in time of the allegation being made known to the Council. Typically the "once and for all" decision was revocation with immediate effect (i.e. so the driver could not taxi even having lodged an appeal). The revocation would be authorised by senior officers at Director level under delegated powers as the risk to the public would mean that the time delay in arranging a committee of elected members even at short notice might put public safety at risk. The driver would still enjoy rights of appeal to the magistrates' court against the revocation. The Director decision might be made in consultation with Chair or Vice-Chair (as at Bolton MBC) or without any need for consultation with Chair or Vice-Chair (as provided for in the Constitution of Fylde Borough Council).
6. In a very recent case (13 July 2017) Reigate and Banstead Borough Council sought the definitive view of the High Court on this very issue. The Judge in *Reigate and Banstead Borough Council v Pawlowski [2017]* made clear that suspension is a sanction which is an alternative to revocation and not an interim step pending a further decision. A synopsis of the case is attached for members' attention as Appendix A. Most of the synopsis is not in fact relevant to this issue apart from the comments which begin "Observations on the power to suspend". Members' attention is drawn the following observations in the synopsis:

""...a local authority could not lawfully suspend by reason of criminal charge on a "wait and see" basis.....Once it was seen that suspension was not a holding operation but a substantive decision, it became apparent that suspension would rarely be the appropriate course where a driver was charged with a matter for which, if convicted, he would be subject to revocation of his licence. If such a charge merited action, and if the action was not by way of an interim measure pending determination of the facts at criminal trial, revocation would generally be the appropriate course. To suspend a licence because an allegation was made and then revoke it because the allegation was proved was contrary to the decision in *Singh*...Further, if it should later transpire, for example by reason of acquittal at trial, that the former licence holder was indeed a fit and proper person to hold a licence, provision could be made for expeditious relicensing, *Singh* considered"
7. The amendment to the Scheme of Delegation is designed to enable to Council to make urgent decisions to suspend or revoke with immediate effect (likely to be revocation) to protect the public which are complaint with *Singh* and *Reigate and Banstead v Pawlowski*. Whilst it would be possible to convene a General Licensing Sub-Committee at short notice to consider revoking a driver licence with immediate effect even this would take a couple of weeks from receipt of the allegation (reports need to be a written and the agenda must be

published five clear working days in advance). There is the issue of availability of Chair and Vice-Chair which might cause delay. The public might be put at risk if the driver was continuing to exercise his taxi driver licences. Revocation is a very drastic step and it is expected that this power will be used only rarely. The decision must still be taken in consultation with Chair or Vice-Chair of Licensing & Public Safety Committee so member scrutiny of the exercise of this drastic power is preserved.

8. Licensing and Public Safety Committee approved the proposed amendment to the Scheme of Delegation. The author of this report has inserted the words “(or another senior officer in the event that the Director is not available)” into the delegation to deal with situations where the Director is not available either due to leave or prior commitments or previous contact with the driver makes it desirable to substitute another senior officer to make the decision.
9. In order to preserve the opportunity for the driver to have a fair hearing Licensing and Public Safety Committee approved a new process when the Director of Early Intervention and Support is considering exercising the power to suspend or revoke. The licence holder will be offered the opportunity of making representations before the Director or another officer authorised by the Director. In some instances the driver may be in custody but a representative of his may make representations in person or in writing. Licensing and Public Safety Committee is competent to authorise this new process so this amendment to the taxi policy is reported to full Council for noting only.
10. The Judge in *Reigate and Banstead v Pawlowski* referred to the scenario where a Council revokes the licence of a taxi driver accused of something serious who is subsequently exonerated. He said in that case there should be “expeditious re-licensing”. As the licence will have been revoked it cannot in the normal course of events be quickly restored. There is the application fee for the grant of the licence, and other processes if applicable e.g. medical fitness and/or Disclosure and Barring Service Checks. These take time especially as the involvement of third parties may be involved. Clearly if a driver is exonerated in the criminal process or the complaint is found to be fictitious it would be unfair if that driver whose licence was revoked must suffer an undue delay in being relicensed especially if he had renewed his licence not long before it was revoked with immediate effect. Licensing and Public Safety Committee on 19 July approved a fast track relicensing of such drivers which will amount to the “expeditious relicensing” referred to by the Judge, in those cases where licensing officers consider that fresh checks are unnecessary in the circumstances because they have in fact recently been carried out. The renewal fee will not be charged in such circumstances as it would be unfair for the driver to have to pay renewal fees at more frequent intervals than his fellow taxi drivers. Of course if a renewal is due in any event then it will proceed as normal with the full fee payable. Licensing and Public Safety Committee is competent to authorise these changes so this amendment to the taxi policy is reported to full Council for noting only.

CORPORATE PRIORITIES

11. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	X

IMPLICATIONS OF REPORT

12. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	X	Customer Services	X
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE MONITORING OFFICER

13. Decisions of the Council must be intra vires. Decisions which are taken outside the scheme of delegation are open to challenge. The scheme of delegation sets out what decisions may be taken by officers (with or without consultation with the Chair or Vice Chair) with the remainder taken by elected members. Only full Council can approve amendments to the Constitution but Licensing and Public Safety Committee may itself approve the amendments to the consolidated taxi licensing policy in relation to summary hearings before a Director and fast track relicensing of drivers found to be fit and proper referred to in the body of the report.
14. There are a limited number of decisions which under legislation may not be delegated e.g. approval of both the gambling policy under the Gambling Act 2005 and the statement of licensing policy under the Licensing Act 2003 must be made by full Council. There are no statutory restrictions on the extent to which decisions in relation to taxi licensing may be delegated.
15. Licence holders have a right of appeal to the local magistrates' court against suspension or revocation of a driver or vehicle licence within 21 days of receiving notice of the decision. If a licence is suspended or revoked the driver may continue to lawfully drive a taxi until the appeal is disposed of or withdrawn. However If the driver licence is suspended or revoked with immediate effect then the same appeal rights apply but the driver may not lawfully drive a taxi unless he wins his appeal or the Council decides not to resist the appeal.

COMMENTS OF THE FINANCE OFFICER

16. Staff resources are incurred in taxi licensing enforcement and processing of applications for grants and renewals. However these are recovered through the fees payable by the trade for the various types of taxi licences. There are also staff costs including those of legal officers involved in defending any appeals to the magistrates' court. This may also extend to disbursements payable to barristers especially if there is a further appeal to the Crown Court.

CHRIS SINNOTT
DIRECTOR (POLICY AND GOVERNANCE)

BACKGROUND PAPERS

Minutes of the Licensing and Public Safety Committee 17 July 2017
Full case Transcript of *Reigate and Banstead Borough Council v Pawlowski* [2017]

Report Author	Ext	Date	Doc ID
Alex Jackson	5166	20 July 2017	***