

Summary Sheet

Council Report

Licensing Board 20th February 2017

Title

Hackney Carriage and Private Hire Licensing Decision Making – Delegation and Oversight

Is this a Key Decision and has it been included on the Forward Plan?

This is not a key decision.

Director Approving Submission of the Report

Karen Hanson – Assistant Director of Community Safety and Street Scene

Report author(s):

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Ward(s) Affected

All wards

Executive Summary

On 27th February 2015, the UK Government directed that all of the powers conferred upon Rotherham MBC should be removed from the Council and exercised instead by Government appointed Commissioners. Since that time, a number of local authority functions and powers have been returned; powers in relation to licensing matters were restored to the Council on 13th December 2016.

This report provides detail on the statutory responsibility for decision making in relation to taxi and private hire licensing, outlines the decision making process and provides a summary of the processes that are in place to ensure effective oversight of the licensing function post 13th December 2016.

Recommendations

- That Members consider and approve the proposed scheme outlining the decision making and oversight processes related to Hackney Carriage and Private Hire Licensing.

List of Appendices Included

Appendix 1 - Proposed scheme outlining the decision making and oversight processes related to Hackney Carriage and Private Hire Licensing.

Background Papers

- None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Not applicable.

Council Approval Required

No.

Exempt from the Press and Public

Not exempt.

Title (main report)

Proposed amendments to certain fees charged in relation to vehicle licences

1. Recommendations

- 1.1 That Members consider and approve the proposed scheme outlining the decision making and oversight processes related to Hackney Carriage and Private Hire Licensing.

2. Background

- 2.1 Compliance tests in relation to licensed vehicles are currently undertaken on behalf of the council by Essential Fleet Services (EFS). The testing is delivered as part of the Corporate Fleet Management Contract, and the prices charged for the testing of vehicles are specified in that contract.

3. Key Issues

- 3.1 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 allocate responsibility for licensing functions to the Council (i.e. the elected members of the authority) and prohibit the Executive (i.e. the Cabinet or Members of the Cabinet) from exercising them. The Regulations specify that the following functions are allocated to the Council:
 - Power to license hackney carriages and private hire vehicles.
 - Power to license drivers of hackney carriages and private hire vehicles.
 - Power to license operators of hackney carriages and private hire vehicles.
- 3.2 The regulations state that the functions include the imposition of conditions; the determination of terms to which any licence is subject; and decisions whether and how to take enforcement action.
- 3.3 It is clear that casework decisions about licensing matters fall to the Council; however it is appropriate for wider consultation relating to the adoption of general and/or specific policies in relation to licensing to take place to include the Lead Cabinet Member responsible for Waste, Roads and Community Safety (which includes responsibility for licensing enforcement policy).
- 3.4 Although the matters referred to above are the responsibility of the Council, they are in practice delegated to the Licensing Board / Sub Committee – with further delegation to officers as appropriate.
- 3.5 The proposed scheme outlining the decision making and oversight processes related to Hackney Carriage and Private Hire Licensing.

4. Options considered and recommended proposal

4.1 Only one option is put forward for consideration, and it is recommended that this is adopted.

5. Consultation

5.1 Consultation on the scheme of delegation has been undertaken with Commissioner Ney and Councillors Ellis and Hoddinott. Further consultation will take place with all Members through appropriate forums.

6. Timetable and Accountability for Implementing this Decision

6.1 It is expected that the scheme outlining the decision making and oversight processes related to Hackney Carriage and Private Hire Licensing will be agreed at the Annual Council Meeting in May 2017.

7. Financial and Procurement Implications

7.1 None.

8. Legal Implications

8.1 Legal services will provide input during the development of the final proposal, and all legal implications will be identified during this process.

9. Human Resources Implications

9.1 There are no specific implications for children, young people or vulnerable adults introduced by this report.

10. Implications for Children and Young People and Vulnerable Adults

10.1 Both the Jay report into Child Sexual Exploitation (CSE) in Rotherham and the subsequent Corporate Governance Inspection led by Louise Casey CB identified issues, amongst which was the importance of having an effective taxi licensing service.

10.2 In order to ensure the Council's Licensing Service is effective, fit for purpose, and has addressed the concerns raised in Louise Casey's report; the following outcomes must be demonstrated:

- All licence holders are "fit and proper" to hold licences.
- Trained decision makers must make high quality, appropriate and timely decisions that protect the public from risk of harm.

- The Licensing Service uses all available statutory powers appropriately, proactively and reactively, to disrupt criminal activity (including CSE and related activity).
- The licensing team must consistently provide high quality, timely processing of licensing applications.
- The Council's Private Hire and Hackney Carriage Licensing Policy will be effectively implemented.

10.3 In order to address this, the service has developed a performance management framework and improvement plan to provide assurance that the outcomes identified above are achieved.

10.4 At the heart of the new policy, service improvement plan and the performance framework lies a commitment to the protection of the public, safeguarding children and the vulnerable and the prevention of crime and disorder. The effective implementation of the licensing policy and the standards that it contains plays an important part in the protection of children and vulnerable people in Rotherham.

11. Equalities and Human Rights Implications

11.1 There are no specific equalities or human rights implications introduced by this report.

12. Implications for Partners and Other Directorates

12.1 There are no specific implications for partners and other directorates introduced by this report.

13. Risks and Mitigation

13.1 Failure of the Council to effectively discharge its licensing function may compromise public safety.

13.2 Responsibility for ensuring compliance with the policy rests with team and service management, with appropriate overview and scrutiny by Commissioner Ney and members of the Licensing Board.

14. Accountable Officer(s)

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Proposed scheme outlining the decision making and oversight processes related to Hackney Carriage and Private Hire Licensing.

Delegation of decision making responsibility – hackney carriage and private hire licensing

The Council has appointed a Licensing Board to discharge the licensing functions which are outlined in the Scheme of Delegation for Members and Officers (appendix 9 of the Council's Constitution). The Scheme of Delegation states that the determination of matters relating to the Council's Statutory Licensing functions regarding hackney carriage and private hire licensing are the responsibility of the Licensing Board. Specific reference is made to the review and approval of fees and charges, and the review / approval of any terms and conditions that relate to a licence.

The Scheme of Delegation also provides for the Licensing Board to establish Sub-Committees as required from time to time.

In order to provide for the effective discharge of the Council's functions in relation to hackney carriage and private hire licensing, the Licensing Board will establish a sub-committee to consider individual applications for the review, renewal or grant of hackney carriage and private hire licences. All applications relating to hackney carriage and / or private hire licensing will be determined by a Licensing Board Sub-Committee, with the following exemptions:

Grant or renewal of driver licences:

The Assistant Director of Community Safety and Street Scene (or an officer authorised or appointed by them) is authorised to issue licences in the following circumstances:

- A new application where the applicant's DBS Disclosure Certificate shows no convictions or adverse information.
- A new application where the applicant's DBS Disclosure Certificate shows only convictions / cautions under the following circumstances:
 - 11 years have elapsed since the date of the most recent conviction, and
 - it is the applicant's only offence, and
 - the offence did not result in a custodial sentence, and
 - the offence did not involve a sexual element, violence (or fear of violence) or illegal / controlled drugs, and
 - there is no additional information on the Disclosure Certificate that has been provided at the discretion of the Chief Officer of Police.
- A renewal application where the applicant's DBS Disclosure Certificate shows no additional convictions or adverse information that has not previously been considered by the Commissioner or Licensing Board, and

there has been no break in the licence period since the matter was considered.

Immediate revocation or suspension of driver licences:

The Assistant Director of Community Safety and Street Scene (or in their absence the Strategic Director for Regeneration and Environment or an officer authorised or appointed by them) is authorised to revoke or suspend driver licences in the following circumstances:

- Where an immediate revocation or suspension is considered to be necessary in the interests of public safety. This decision will only be taken following consultation with the Chair of the Licensing Board, where possible.
- Where a suspension is required for administrative reasons, such as failure to provide satisfactory documentation.

Grant or renewal of vehicle licences:

The Assistant Director of Community Safety and Street Scene (or an officer authorised or appointed by them) is authorised to determine all vehicle licence applications.

Suspension of vehicle licences:

The Assistant Director of Community Safety and Street Scene (or an officer authorised or appointed by them) is authorised to suspend vehicle licences in the following circumstances:

- Where a suspension is considered to be necessary in the interests of public safety (such as when the vehicle is in such a state of disrepair that it presents a risk to public safety).
- Where a suspension is required for administrative reasons, such as failure to provide satisfactory documentation.

Grant or renewal of Private Hire Operator Licences:

The Assistant Director of Community Safety and Street Scene (or an officer authorised or appointed by them) is authorised to issue licences in the following circumstances:

- A new application where the applicant's DBS Disclosure Certificate shows no convictions or adverse information.
- A new application where the applicant's DBS Disclosure Certificate shows only convictions / cautions under the following circumstances:
 - 11 years have elapsed since the date of the most recent conviction, and

- it is the applicant's only offence, and
 - it did not result in a custodial sentence, and
 - the offence did not involve a sexual element, violence (or fear of violence) or illegal / controlled drugs, and
 - there is no additional information on the Disclosure Certificate that has been provided at the discretion of the Chief Officer of Police.
- A renewal application where the applicant's DBS Disclosure Certificate shows no additional convictions or adverse information that has not previously been considered by the Commissioner or the Licensing Board, and there has been no break in the licence period since the matter was considered.

Suspension of Private Hire Operator licences:

The Assistant Director of Community Safety and Street Scene (or an officer authorised or appointed by them) is authorised to suspend operator licences in the following circumstances:

- Where a suspension is considered to be necessary in the interests of public safety. This decision will only be taken following consultation with the Chair of the Licensing Board, where possible.
- Where a suspension is required for administrative reasons, such as failure to provide satisfactory documentation.

Revocation of licences:

The Assistant Director of Community Safety and Street Scene (or an officer authorised or appointed by them) is authorised to revoke operator licences and / or driver licences in the following circumstances:

- Where a revocation is considered to be necessary in the interests of public safety. This decision will only be taken following consultation with the Chair of the Licensing Board, where possible.

The Licensing Board (or sub-committee) retains the right to review any licence / licence application and take further action should the Chair of the Licensing Board consider it necessary to do so.

The Assistant Director of Community Safety and Street Scene reserves the right to refer any application to the Licensing Board (or sub-committee) should the Assistant Director consider it necessary to do so.

In addition to the determination of licence applications, the following functions are delegated to the Licensing Board (or sub-committee in appropriate cases):

- The power to make amendments to the Council's Hackney Carriage and Private Hire Licensing Policy is delegated to the Licensing Board.

- The power to authorise officers to deviate from the requirements of the Hackney Carriage and Private Hire Licensing Policy is delegated to the Licensing Board. In urgent cases, the Licensing Board has authorised the Chair and / or Vice Chair of the Licensing Board to act on behalf of the Licensing Board on a case by case basis. In cases where the Chair and / or Vice Chair have acted in accordance with this delegation, the matter will be reported to the next available Licensing Board (or sub-committee) for review and ratification.
- In cases where an appeal against a council decision has been upheld by a court, the decision to instruct the council's legal service to lodge an appeal to a higher court is delegated to the Chair and / or Vice Chair of the Licensing Board. This decision will be made in consultation with appropriate officers from the council's Licensing and Legal Services. In cases where the Chair and / or Vice Chair have acted in accordance with this delegation, the matter will be reported to the next available Licensing Board (or sub-committee) for review and ratification.

The Licensing Board will also provide an oversight role in relation to the delivery of the licensing service – further detail on this is provided later in this briefing note.

Oversight by Service and Senior Management

The responsibility for the effective delivery of the Council's licensing service is that of the Assistant Director for Community Safety and Street Scene.

In order to ensure the Council's Licensing Service is effective, fit for purpose, and has addressed the concerns raised in Louise Casey's report; it is considered that the following outcomes must be demonstrated:

Outcome 1 All licence holders are "fit and proper" to hold licences.

Outcome 2 Trained decision makers must make high quality, appropriate and timely decisions that protect the public from risk of harm.

Outcome 3 The Licensing Service uses all available statutory powers appropriately, proactively and reactively, to disrupt criminal activity (including CSE and related activity).

Outcome 4 The licensing team must consistently provide high quality, timely processing of licensing applications.

Outcome 5 The Council's Private Hire and Hackney Carriage Licensing Policy will be effectively implemented.

A series of performance measures have been developed to provide confidence and reassurance in the effectiveness of the Licensing Service. This performance framework addresses each of the outcomes referred to above, and gives detail on a number of measures that will indicate whether the desired outcomes are being met. The Licensing Performance Framework has been agreed by the Senior

Leadership Team. A report is presented to the Senior Leadership team each quarter that details performance against the framework, and provides reassurance to the senior team that the service is being delivered effectively.

In addition, the Licensing function features heavily on the Council's Internal Audit Programme and service management have taken ownership of any action / improvement plans that are developed as a result of the findings of an Internal Audit review.

Oversight by Elected Members of the Council

It is essential that there is effective Member oversight in relation to the delivery of the Council's Licensing function. This includes oversight of both the Licensing Board itself, and of those functions that are delegated to officers. Oversight by Elected Members will take place via three separate strands.

1. The Licensing Board will be provided with a report each quarter that details performance against the Licensing Performance Framework. This report will be similar to the quarterly report presented to the Senior Leadership Team, but will also include the outcome of any comments made by the Senior Team regarding the report, and give details of any actions that were requested in order to address any areas of concern / note.

In addition, the quarterly report will include detail on the following matters:

- Policy implementation or revision to the policy content
- An overview of decisions made in relation to applications
- A summary of appeal cases that have been considered by the Courts
- An overview of enforcement activity and the results of pre-planned enforcement operations
- Any general issues affecting the licensing service (staffing issues for example).

The quarterly report will be presented by a Senior Manager from the service, with a recommendation that the Licensing Board formally note the report and provide comments in relation to it.

2. The formal minutes of each Licensing Board and / or Sub-Committee will be referred to the next Council Meeting for review and acceptance. This will ensure that matters regarding Licensing are brought to the attention of all Council Members, and information is not restricted to those that have been appointed to the Licensing Board.
3. It is within the Terms of Reference of the Overview and Scrutiny Management Board (OSMB) to monitor and hold to account the performance of service delivery within the council. In addition, the OSMB may review and scrutinise the decision making processes or actions taken in connection with the discharge of statutory functions.

It is therefore proposed that the work programme of the OSMB includes an appraisal of decisions made by officers (in line with the Scheme of Delegation) and those of the Licensing Board / Sub-Committee. These appraisals will

include a review of the paperwork that was provided to the Board / Committee prior to the decision being made, and consideration of the decision in light of the information presented at the meeting (and detailed in the decision notice issued following the meeting). Although the OSMB will not have the ability to amend decisions (except in extreme cases where the decision was clearly wrong), it will nonetheless provide an additional level of scrutiny of both officer and Elected Member decision making.

In addition, the OSMB will consider in detail the report (or elements of it) that is reported to the Licensing Board on a quarterly basis. Members of the OSMB will request further information as necessary in order to provide themselves with appropriate assurance that the Licensing service is being delivered in accordance with statutory and policy requirements.

Oversight by Commissioner Ney

Although the powers of the local authority in relation to all licensing matters have been exercised been restored to the Council, there is an ongoing requirement for oversight by Commissioners. This role will be undertaken by Commissioner Mary Ney. The arrangements below will be in place until March 2016 and will then be reviewed with a view to scaling back the oversight as appropriate:

- Monthly Meeting of Business Regulation Manager and Chair of Licensing with Commissioner Ney for the period to March 2016 when the frequency will be reviewed . Meetings to include review of position with regard to implementing the new policy, the position regarding appeals, the position on dealing with remaining cases from the audit of drivers and review of archives, any issues arising regarding National Crime Agency and South Yorkshire Police investigations, a review of the service performance plan and functioning of the team and any other significant issues. A representative of the Council's Legal Services team is to attend as required.
- Licensing Update included on the agenda of any briefing meetings of Commissioner Ney with Cabinet Member.
- Commissioner Ney to be provided by email with agendas for all Licensing Boards, sub-committees and hearings.
- A meeting of Licensing Board is to be held in February 2017 to review progress on implementing the new Policy. Commissioner Ney is to attend this meeting.
- Commissioner Ney is to be copied into final statement of decision following any case hearings.
- Commissioner Ney to be copied into the consultation emails to the Chair of Licensing on the exercise of officer delegation to immediately revoke licenses in the interests of public safety.

- Commissioner Ney to be advised of any taxi trade issues emerging from Police investigations, criminal trials or media comment.
- Commissioner Ney to see final draft of the Council's response to any Government consultation on licensing matters.
- The Chair of the Licensing Board and /or the Business Regulation Manager to identify any case hearings which they would wish to invite Commissioner Ney to attend in an advisory role (e.g. cases previously adjourned or outstanding, cases of specific concern).
- Commissioner Ney to meet with the Strategic Director / Assistant Director as and when required in order to provide notice of concerns or issues which need resolution.

Commissioner Ney will review, and if necessary amend, the extent of her oversight as she considers appropriate from time to time.