

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 12 November 2013

Subject: Policy in respect of the immediate suspension of Hackney Carriage and Private Hire Driver Licence

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Licensing Committee previously received a petition from a representative organisation of some members of the trade requesting restrictions on which occasions the Council suspended a driver licence with immediate effect.
2. Members resolved to reject that petition and asked that guidelines on the use of immediate powers of suspension were prepared for consideration by the Licensing Committee. The City Solicitor prepared that legal guidance which was considered by the Licensing Committee in October 2012. The guidelines were approved by the Members for release to a public consultation exercise.
3. This report draws together the Council's statutory responsibility, legal guidance of the City Solicitor (**Appendix 1**), the result of consultation and an overview of the operational decision making for immediate suspensions throughout 2012/13.
4. The policy presented to the Licensing Committee reflects the procedures already in place but now sets them into the framework of a formal Council policy.

Recommendations

5. That Members remind themselves of the legal advice prepared by the City Solicitor in the guidance document, consider the process undertaken by Officers as set out in the proposed policy and then make any appropriate observations.

6. That Members note the information in this report and direct officers to prepare a report for the consideration of the Executive.

1 Purpose of this report

- 1.1 This report provides information on the process undertaken by Officers in respect of immediate suspension powers for Members to consider and comment on in line with the legal advice received from the City Solicitor, the statutory licensing obligations of the Council, the Council's Safeguarding policy and public safety.

2 Background information

- 2.1 Decisions in respect of the suspension of Hackney Carriage and Private Hire driver licences are passed to an Officer under the Officer Delegation Scheme (Council (Non-Executive) functions).
- 2.2 The law in respect of the suspension of driver licences falls into two distinct categories, "21 day suspensions" and "immediate suspensions". With a 21 day suspension when a notice is served upon the driver he is allowed to continue to drive but must lodge an appeal within 21 days and if he does so he is still able to drive until that matter is fully heard before a Magistrates Court. The legislation changed in 2006 with the introduction of "immediate suspension" which meant that when an 'immediate suspension notice' was served upon a driver he would not be able to lawfully drive a licensed vehicle until the matter had been fully heard by a Magistrates Court.
- 2.3 The whole purpose of this new legislation was because of concerns that serious offenders, alleged offenders or those who might pose a public safety risk were still able to drive licensed vehicles whilst facing serious criminal allegations or presenting other potential risks to the public.
- 2.4 Officers recognise the variation in the severity of incidents presented to them and consider each case on its own merits. The primary consideration has to be the public safety test and in making such decisions, decision makers are not in law allowed to consider the financial impact of their decisions upon the licence holder but may only take account of the public safety consideration although they are very aware of the impact of such decisions.
- 2.5 Decisions to immediately suspend a licence fall into a limited number of categories and what is apparent from the information accompanying the report at **Appendix 3** is that those matters which have been considered have been received from what might be regarded as reliable and trusted sources in the main.
- 2.6 Members will note that some of the reasons for suspension are public complaint or Police Pre-conviction notification for a serious offence. Again, each of these matters is carefully looked at and considered on their own merits and the evidence is often tested by experienced Enforcement Officers as part of a controlled evaluation of the allegation.

3 Main issues

- 3.1 The Authority and the necessity for undertaking such decisions is set out in the guidance of the City Solicitor and it is that path that Officers have followed in their decision making process.

- 3.2 On being made aware of such serious matters or areas of non-compliance to the legislation it is vital that the appropriate public safety decision is taken at the earliest opportunity to minimise risk to the public and to the Council.
- 3.3 It is also important in undertaking such important decisions that Officers are mindful of the impact upon a licence holder and in doing so follow a structured process which has to balance public safety considerations and all of the other issues around such a decision making process.
- 3.4 The procedure undertaken by Officers is set out in the policy document at **Appendix 4** and it is this process that members wish to overview. The matters highlighted at **Appendix 3** have all followed that process route.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The approved guidance from the City Solicitor and Licensing Committee report has been open to public and trade consultation for a 3 month period and the comments received and Officer responses are at **Appendix 5**.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 No impact upon the public and any individual licensed driver issues are addressed during an investigation process.

4.3 Council policies and City Priorities

- 4.3.1 The Taxi & Private Hire Licensing policies create the principles the Council will use to exercise its functions, mainly under the Local Government (Miscellaneous Provisions) Act 1976, but also under other associated Acts of Parliament. Applicants for licences are expected to read the policy before making their application and the Council will refer to the policy when making its decisions.
- 4.3.2 The Taxi & Private Hire Licensing policies contribute to the following aims:

By 2030, Leeds will be fair, open and welcoming

- Local people will have the power to make decisions that affect them
- There is a culture of responsibility, respect for each other and the environment
- Our services meet the diverse needs of our changing population
- Everyone is proud to live and work

- 4.3.3 The Taxi & Private Hire Licensing policies contribute to the following city priorities:

Best city ... for communities

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.4 Resources and value for money

4.4.1 There are no financial implications for the Section, the policy just formalises the procedures.

4.5 Legal Implications, Access to Information and Call In

4.5.1 Members need to be aware that the responsibility of the Council to maintain a statutory 'fit and proper' person assessment under the Local Government (Miscellaneous Provisions) Act, 1976, has been considerably enhanced in recent years by 'safeguarding' issues.

4.6 Risk Management

4.6.1 There is no financial risk to the Council. Each case is treated on its own merits and the procedure is well practised and supported by the Courts.

5 Conclusions

5.1 The policy proposal is in fact putting into writing the practice and procedure which has been in use for the past 5 years and which accords with the advice of the City Solicitor as agreed by Members.

5.2 The power is exercised in accordance with the Scheme of Delegation to Authorised Officers who are appropriately trained, experienced and of seniority. The procedure has not been criticised by the Courts or legally challenged.

6 Recommendations

6.1 That Members remind themselves of the legal advice prepared by the City Solicitor in the guidance document, consider the process undertaken by Officers as set out in the policy and then make any appropriate observations.

6.2 That Members note the information in this report and direct officers to prepare a report for the consideration of the Executive.

7 Background documents¹

7.1 Road Safety Act 2006

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.