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## Report of the Chief Officer, Democratic and Central Services and the City Solicitor

To: Licensing Committee

Date: 14 August 2012

**Subject: Hackney Carriage and Private Hire Driver's Petition for Equal Rights and Alleged unlawful application of Immediate Suspension Powers.**

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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 checked="" type="checkbox"/> Yes	<input 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

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### Summary of Main Issues

- 1 Leeds City Council is in receipt of a petition from Mr Kabear Hussain of the Alpha Hire and Hackney Welfare Society which requests the Council to consider passing an 'Equality Resolution' in respect of certain licensing decisions.
- 2 This report provides information to assist Members to determine how to respond to the petition and in particular information on the provision referred to namely Section 61(2B) which allows suspension or revocation of a licence with immediate effect on public safety grounds.

### Recommendations

- 3 That Members do not accept the proposal set out in the petition submitted by Mr Kabear Hussain of the Alpha Hire and Hackney Welfare Society which requests the Council to consider passing a resolution  
  
'... that in the determination of whether to suspend or revoke the licence of a HACKNEY CARRIAGE driver under its powers in the Local Government (Miscellaneous) Provisions Act 1976, Section 61 (2B), such determination to revoke a licence with immediate effect shall only be undertaken if there has been a conviction, an ongoing police investigation, or prosecution against the driver for an indictable only offence'.

as the proposed resolution does not reflect the legal position and unduly restricts the powers of the council.

- 4 That Members direct officers to prepare draft guidelines on the use of the powers of immediate suspension for consideration by the Licensing Committee at its October meeting prior to trade consultation.

## 1. Purpose of this Report

- 1.1 This report informs Members of a petition received from Mr Kabear Hussain of the Alpha Hire and Hackney Welfare Society. The petition is in the form of an Alpha Radar newsletter and has been signed by 255 individuals. Separate copies of the 255 newsletter/petitions have been sent to Leeds City Council by Mr Hussain. A copy of the covering letter is attached for Members information at appendix 1.

## 2. Background Information

- 2.1 Members will note that the petition requests that

*'This council resolves that in the determination of whether to suspend or revoke the licence of a HACKNEY CARRIAGE driver under its powers in the Local Government (Miscellaneous) Provisions Act 1976, Section 61 (2B), such determination to revoke a licence with immediate effect shall only be undertaken if there has been a conviction, an ongoing police investigation, or prosecution against the driver for an indictable only offence.'*

- 2.2 The statutory provision giving rise to the concern of the signatories is Section 61(2B) of the Local Government (Miscellaneous) Provisions Act 1976. This provision was inserted into the legislation by the Road Traffic Act 2006 effective from 17 March 2007. That section provides that

*' if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.'*

The general powers of revocation and suspension are set out in section 61 of the Act summarised below and the reference to subsection (2)(a) is to the notice that must always be given to the driver setting out the reasons for suspension.

- 2.3 Prior to this section coming into force the position was that a suspension or revocation decision did not take effect for 21 days. It could be appealed to the Magistrates Court. The effect of the appeal was to stay the decision which would not then come into effect until the appeal had been heard. Concern was expressed nationally that outside London drivers were allowed to continue working through that period even though they may pose a risk of danger to the public. Under the new provisions, where it is in the interest of public safety to do so, the suspension can take immediate effect and will remain in place until the appeal is heard. This brought the rest of the country into line with the legislation applicable in London.
- 2.4 The concern expressed in the petition is that the provision is being used incorrectly by Leeds City Council officers and that it should only be used where there has been a conviction, an ongoing police investigation or prosecution against the driver for an indictable only offence. The letter suggests that such use of powers is an abuse of

process and that drivers are suspended or have their licences revoked for petty and sometimes allegedly bogus reasons.

### 3. Main Issues

#### 3.1 The legal issues

Under the Local Government (Miscellaneous Provisions) Act 1976 the suspension and revocation of drivers' licences is covered by Section 61. A council may suspend or revoke a driver's licence on the following grounds:-

- that the driver has since the grant of the licence been convicted of an offence involving dishonesty, indecency or violence or
- been convicted of an offence under or failed to comply with the provisions of the Act of 1847 or of the 1976 Act or
- for any other reasonable cause. Case Law has held that any other reasonable cause covers matters short of a conviction.

The council is required to give the driver notice of the grounds on which the licence has been suspended or revoked within 14 days and require the driver to return the badge issued to him/her.

- 3.2 The Road Safety Act 2006 amended this particular section by inserting subsection 2A which provides that the suspension or revocation normally takes effect at the end of the 21 day period in which the driver may appeal or, where an appeal is lodged, at the end of the appeal. However under a new Section 2B the suspension or revocation can take immediate effect if it appears to the council that the interests of public safety require that it does and the correct notice to the driver is given. The effect of an immediate suspension or revocation is that the driver is prevented from working until the appeal has been dealt with.
- 3.3 The petition received by the council states that the power of immediate suspension should only be used where there has been a conviction, an ongoing police investigation or prosecution against the driver for an indictable only offence (one which can only be dealt with in Crown Court). Members will note that those words do not appear in the legislation. The test expressed there is 'if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect'. Such wording provides discretion to the council to form a view on the particular circumstances of the case as to whether the test has been met.
- 3.4 The proposed resolution does not reflect the statutory test laid out in section 61(2B). The wording of the section is that immediate suspension can be invoked if it appears that the interests of public safety require this. The proposed wording restricts the use of immediate suspension to cases following conviction for, police investigation into or prosecution for **an indictable only offence**. An indictable only offence is a very serious offence which can only be tried in the Crown Court. If the council was to adopt the wording proposed in the petition, the effect of this would be to place an additional limitation on the council's use of the power to immediately suspend or revoke a driver's licence which is not included in the Act. Section 61(B) does not restrict the use of immediate suspension to indictable only offences. To do so would exclude from consideration many offences which may raise issues of public safety sufficient to require immediate suspension. Examples of offences which are not indictable only

include drink driving, using a vehicle without a test certificate or in a dangerous condition, sexual assault, engaging in sexual activity with a child/vulnerable person, threats to kill, grievous or actual bodily harm, affray and violent disorder, harassment and other public order offences including those which are racially aggravated, most drug related offences and all taxi and private hire offences. Many of the offences in this list can be tried in the Crown but cannot only be tried there. Some offence can only be tried in the Magistrates Court.

- 3.5 There currently does not appear to be any case law in relation to the application of section 61(B). Any court considering a suspension given on an immediate basis will first look to the actual wording of the Act, but can also have regard to what Parliament intended when the section was passed. Such intention can be indicated by statements given by ministers during parliamentary debates. The most relevant statement appears to be that of the minister Dr. Ladyman in 2006 when the section was being introduced:-

*'Dr. Ladyman: The hon. Gentleman has misunderstood the purpose of the new clause and I accept full responsibility for not having explained it. There will be no new powers to suspend or revoke a licence. One would still have to satisfy the grounds for a suspension or revocation of a driver's licence as under the present legislation. The difference is that at the moment if the individual whose licence is suspended appeals against that suspension, they can continue to drive people around while they await the hearing of the appeal. If someone is accused of a serious offence-as serious as rape or some other sexual offence-it would be horrendous if they were allowed to continue to drive a private hire vehicle while waiting for the appeal against suspension to be heard. Under the new clause, when the licensing authority takes the view that the offence is serious, it will be able to suspend the licence. The argument that was put to us by some taxi drivers was that it might leave them open to false allegations and they might lose their livelihood over a trivial allegation while awaiting the hearing of appeal against suspension. However, in the experience of the use of the power in London, where it has been in place for some time, it has not been abused. Drivers have had their licences suspended pending appeal only in cases in which a serious allegation has been made against them. Given the seriousness of the offences that might be involved, I think that the new clause is a proportionate response to the situation. No driver should lose their livelihood lightly even for a short time, but when someone is accused of an offence of sufficient seriousness to justify the revocation or suspension of their licence, it is appropriate that they should not continue to drive pending an appeal.'* (Hansard October 2006)

- 3.6 The Minister's statement is helpful in providing the context for the introduction of the power of immediate suspension or revocation and an indication as to what Parliament intended. It makes it clear that Parliament intended the discretion to remain with the licensing authority to judge when it is appropriate to use the power having regard to the seriousness of the offence.
- 3.7 To summarise, the legal position is that any decision to suspend or revoke a driver's licence comprises two stages. Firstly, whether the grounds are made out for suspension or revocation (as set out above at para. 3.1), and secondly does it appear to the council as licensing authority that the interests of public safety require that the suspension or revocation should take immediate effect (as set out above at para. 2.2). If the grounds are made out, then the licence can be suspended or revoked, but this

would only take immediate effect if the second stage is also made out. Otherwise, this would be done on notice.

### 3.8 The service perspective

Members may recall that in March 2012 they received a report on decision making indicating the numbers of suspensions and revocation decisions and the reasons for them. By way of summary in 2010 there were 69 revocations and 35 suspensions and in 2011 there were 86 revocations and 129 suspensions. Member will be aware that a person can be suspended in the latter months of one year with the revocation decision being made in the following year therefore the figures for suspensions and revocations do not necessarily correlate between years. The largest single category of suspensions was for drivers suspected of plying for hire under the Plying for Hire Policy. There were 36 such suspensions in 2010 and 63 such suspensions in 2011. For the reasons explained in paragraphs 3.10 to 3.13 below such suspensions almost always take immediate effect.

3.9 In 2012 (to the date of preparing this report) 23 suspensions have been issued. The information on reason for suspension and whether it took immediate effect is given below.

Date of Suspension	Immediate effect?	Reason for Suspension
05/01/2012	Y	Plying for Hire & No Insurance
09/01/2012	Y	Plying for Hire & No Insurance
26/01/2012	Y	Pre Conviction Notification - Assault
21/02/2012	N	Criminal Offences
31/01/2012	Y	Pre Conviction Notification - Assault
02/02/2012	Y	Potential Fatal RTC
17/02/2012	Y	Convictions received Disqualified Driver
01/03/2012	Y	Disqualified 6 Months
02/03/2012	N	Disqualified 6 Months
16/03/2012	Y	Disqualified 56 days speeding
19/03/2012	N	Disqualified 6 months, totting up
18/03/2012	Y	Plying for Hire & No Insurance
30/03/2012	Y	Pre Conviction Notification - Dangerous Driving
17/04/2012	Y	Allegation of sexual assault
18/04/2012	Y	Allegation of Class A Sup
04/05/2012	N	Short driving Disqualification
26/04/2012	Y	Pre Conviction Notification - Rape
11/05/2012	Y	Complaint, Threatening, Aggressive, Behaviour Repeated
21/06/2012	N	False Dec on renewal
14/06/2012	Y	Medical condition
15/06/2012	N	Convictions received Disqualified Driver
27/06/2012	Y	Convictions received Disqualified Driver
16/08/2012	N	Convictions received Disqualified Driver

Members will note the reasons given and where immediate suspension has been invoked and will be able to consider those in the context of the statutory test of the

interests of public safety. Each case is judged on its own merits and there is no approved policy or guidelines for officers to consider when making those decisions.

- 3.10 Members will recall discussing in March 2012 the fact that drivers have been suspended on an immediate basis under the plying for hire policy. The plying for hire policy was approved by the Licensing and Regulatory Panel on 6 March 2007. The report considered by Members at that time highlighted an increase in the activity of plying for hire which had resulted in complaints from ward members and the public. Enforcement activity undertaken did not deter the drivers from this illegal activity. The report indicated that there were key dangers to the public from the activity of plying for hire which included the likely invalidation of the vehicle insurance, the lack of pre-booking significantly reducing the chance of detecting offenders or the ability of the operators to respond to complaints.
- 3.11 The report proposed that the Council adopt a policy which would enable officers to progress the decision making more quickly and without waiting for a conviction. Where a licensed driver was found to be plying for hire with evidence which would support a criminal prosecution the policy approved is that the driver will normally be suspended with immediate consideration given to the revocation of the licence. The policy goes on to say that where a licence has been revoked as a result of the process the driver would not normally be granted a further licence for one year. Where the driver is involved in a second such incident the driver would not normally have a licence granted by the Council for 3 years.
- 3.12 In approving that policy the attention of Members was drawn to the requirement for a driver to be a fit and proper person to hold a licence and that those drivers who illegally ply for hire and who were prepared to transport the public without insurance may not be fit and proper persons. The proposal was supported by the Hackney Carriage Associations, elected ward members, private hire operators and residents. The report also indicated that there was a division of opinion on the merits of the policy amongst licensed drivers. Members were also informed that the affected driver had a right of appeal direct to the Magistrates Court as well as an opportunity to challenge any policy adopted by way of judicial review.
- 3.13 The minutes of the meeting indicate that Members discussed the effects of drivers plying for hire on the city including the implication for the health and safety of passengers, the creation of illegal ranks and the problem of drivers plying for hire who illegally parked in hackney carriage ranks. They resolved that adopting the policy would be operationally and significantly beneficial to the safety of the general public.
- 3.14 The immediate suspension powers were introduced shortly thereafter. Considerations of public safety underpinned the approved policy and so when the test for immediate suspension (where it appears that the interests of public safety require this) was applied the same allegations usually resulted in the immediate suspension of the licence with the driver consequently unable to work pending his/her appeal. Specific arrangements were made by the courts to facilitate swift appeal hearings in such cases but these proved ineffective as in most cases neither the driver nor the council were able to be ready for the hearing in such short time-scales.
- 3.15 Members may also wish to note that a review of the previously approved plying for hire policy is ongoing and has been subject to public consultation. A report on the outcomes will be brought back to committee later in the year in line with previous

reports on the review of a range of taxi and private hire policies.

#### **4. Corporate Considerations**

##### **4.1 Consultation and Engagement**

4.1.1 Members will be aware that any policy change proposed in response to the petition will require stakeholder and trade consultation prior to being approved.

##### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 The petition raises equality issues. Any guidelines or policy change proposed in response to the petition should undergo equality screening.

##### **4.3 Council policies and City Priorities**

4.3.1 There is no council policy or guidelines on immediate suspension however Members may wish to propose that guidelines be drafted or the plying for hire policy changed in considering the issues raised by the petition. The impact of any proposed change on city priorities relating to transport and crime and disorder must also be taken into account.

##### **4.4 Resources and value for money**

4.4.1 There are no resource implications arising from this report.

##### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 No implications

##### **4.6 Risk Management**

4.6.1 No implications

#### **5. Conclusions**

5.1 That Members should consider the proposed resolution contained within the petition, noting that its wording does not accord with the legislation or with the statement by the Minister. If adopted without amendment it would restrict use of s61 (2B) to cases where there has been a conviction, an ongoing police investigation or prosecution against the driver for an indictable only offence rather than where it appears to the council that the interests of public safety require immediate suspension or revocation.

5.2 If Members conclude not to accept the proposed resolution, Members may wish to consider whether, as a matter of best practice, they wish to require officers to produce publically available guidelines on how or when the power should be used, having regard to the seriousness of the allegations and the risk to public safety. This would provide further transparency and confidence in the process and would assist the process in respect of appeals to the courts.

## 6 Recommendations

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That Members do not accept the proposal set out in the petition submitted by Mr Kabear Hussain of the Alpha Hire and Hackney Welfare Society which requests the Council to consider passing a resolution

‘... that in the determination of whether to suspend or revoke the licence of a HACKNEY CARRIAGE driver under its powers in the Local Government (Miscellaneous) Provisions Act 1976, Section 61 (2B), such determination to revoke a licence with immediate effect shall only be undertaken if there has been a conviction, an ongoing police investigation, or prosecution against the driver for an indictable only offence’.

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6.2

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That Members direct officers to prepare draft guidelines on the use of the powers of immediate suspension for consideration by the Licensing Committee at its October meeting prior to trade consultation.

## 7 Background documents<sup>1</sup>

7.1 The Plying for Hire Policy

7.2 The Report to Licensing and Regulatory Panel dated 6 March 2007 proposing the policy and the minutes of the decision thereon

7.3 The Report to Licensing Committee on Decision Making dated 13 March 2012 and the minutes of that discussion

7.4 The Local Government (Miscellaneous Provisions) Act 1976 Section 61 as amended by the Road Safety Act 2006

7.5 Records of Parliamentary Debate – Hansard 9 October 2006 Column 55 and 56 – Speech of the Minister Dr Ladyman.

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<sup>1</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.