

## FULL COUNCIL

19<sup>TH</sup> JULY 2022

### REPORT OF THE ASSISTANT DIRECTOR GROWTH AND REGENERATION

#### Delegated powers for urgent revocations or suspensions to taxi licences

##### Purpose

In accordance with the proposal received from Licensing Committee that Full Council delegates the power for urgent suspensions and revocations of private hire and hackney carriage driver's licences as set out in this report in order to ensure public safety.

##### Recommendation

That full Council delegates to Assistant Director Growth and Regeneration (or Head of Environmental Health) in consultation with the Chair (or vice chair) the delegation to **immediately** suspend or revoke a Hackney Carriage / Private Hire vehicle driver's licence where it is considered necessary in the interest of public safety and:

Full Council agrees that a 'fast track' procedure be adopted to re-licence those drivers who have had their licence revoked but have subsequently been found to be fit and proper.

##### Reason for Recommendations

To ensure the safety of the travelling public and fairness and proportionality for those accused but subsequently found to be fit and proper to hold a licence.

##### Executive Summary

Under Section 61 (1) of the Local Government (Miscellaneous Provisions) Act 1976 the Council, as Licensing Authority has the power to suspend, revoke or refuse to renew a hackney carriage / private hire driver's licence.

Tamworth Borough Council's Constitution does not at present delegate the decision to revoke/suspend a licence with immediate effect.

There can be situations when it is necessary for immediate action to be taken, when any delay in making a decision would potentially give rise to an unacceptable risk to the public.

The recommendation is that where officers are of the view that an incident or allegation is so serious then the Assistant Director of Growth and Regeneration and Head of Environmental Health in the absence of the AD be given delegated authority to suspend or revoke licences with immediate effect, in consultation with the Chair (or vice chair) of the Licensing Committee.

##### Financial Implications

Any decision, whether by Committee or officer can be appealed with the associated risk of costs to both parties

##### Legal/Risk Implications

The existing constitutional arrangements prevent Licensing Committee and officers from taking any enforcement action and officers from immediate enforcement action to secure public safety. This could result in a risk to the public and the council's reputation.

## **Sustainability**

The services for the regulation of Taxi Licensing contribute to the strategic priority of being healthier and safer in Tamworth.

## **REPORT AUTHOR**

*"If Members would like further information or clarification prior to the meeting please contact Wendy Smith, Head of Environmental Health.*

## **Background**

The Council as a Licensing Authority has a duty under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 to licence private hire and hackney vehicle drivers, vehicles and operators.

The powers to grant driver/operator licences are included in Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (The Act) and the Licensing Authority is required to ensure that an individual applying for a driver's/operator's licence, or applying for the renewal of such a licence, is a 'fit and proper' person to hold that licence.

Under Section 61(1) of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend, revoke or refuse to renew a hackney carriage / private hire driver's licence. This may be for the following reasons:

- a) since the grant of the licence they have been convicted of an offence involving dishonesty, indecency or violence; or
- b) any other reasonable cause.

Under this Section the driver has 21 days to appeal against the decision to the Magistrates' Court and, during the appeal period, the licence holder can continue to drive hackney carriage / private hire vehicles.

Section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976 enables a decision to suspend or revoke a hackney carriage / private hire driver's licence with immediate effect, should the Council believe it to be necessary in the interests of public safety. This means the driver cannot continue to drive hackney carriage / private hire vehicles during the appeal period.

An immediate revocation under Section 61(2B) may take place when licensing officers have been made aware of information concerning a driver which indicates they are no longer fit and proper. In this situation the decision to suspend or revoke must be made relatively quickly and a full investigation may not be possible until after the suspension or revocation. In this situation further evidence may come to light which either substantiates the initial decision to suspend or revoke the licence or alternatively, exonerates the driver and indicates they are fit and proper to hold a licence. A licence holder will always be given an opportunity to respond to any allegations prior to a decision being made.

In this scenario, and when a driver is once again adjudged to be fit and proper, a procedure must be in place that allows them to regain the licence as quickly as possible and with minimal fuss. It would be unfair for the driver to have to re-apply for a new licence in line with the current policy as this would imply they have to pay an application fee and supply a new DBS form, medical etc.

To assist Full Council examples of situations where immediate suspension or revocation might be warranted are listed below. It should be noted that this list is not exhaustive but as relevant examples as to the likely use of the delegated authority: -

- (a) Allegations of violence against a passenger or person wishing to travel;
- (b) Allegations of indecency, including sexual assault and rape, against a passenger or person wishing to travel;
- (c) Allegations that the driver is unfit to drive as a result of being under the influence of drugs or alcohol;
- (d) Admitted sexual contact with a passenger in the vehicle;
- (e) An immediate suspension may take place when a driver no longer meets Group 2 medical standards. In these circumstances the suspension could have effect until the driver could provide evidence to show they were 'fit' to the required standard.

The delegation requested is designed to enable urgent decisions to suspend or revoke (likely to be revocation) to be made with immediate effect, in order to protect the public, which are complaint with relevant case law e.g. *Singh and Reigate and Banstead v Pawlowski*. The public might be put at risk if the driver was continuing to exercise use of his/her taxi driver licences. Revocation is a significant step and it is expected that this power will be used sparingly. The decision must still be taken in consultation with the Chair or Vice-Chair of Licensing which means that member scrutiny of the exercising of this power is preserved.

In order to maintain the opportunity for the licence holder to have a fair hearing they will be offered the opportunity of making representations before the Assistant Director of Growth and Regeneration prior to a decision being taken. In some instances the driver may be in police custody however a representative of his/her may make representations in person or in writing.

It is expected that the Assistant Director of Growth and Regeneration will nominate the Head of Environmental Health to exercise the delegation on their behalf if absent.

### **Relevant Case Law & Guidance**

On 21 July 2020, the Department of Transport issued new standards to improve safety for taxi and private hire vehicle passengers. Paragraph 5.11 states "...**all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence**. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service." This reinforces that the Council's proposed scheme of delegation is in line with government guidance and best practice.

The case of *R. (on the application of Singh) v Cardiff City Council [2012]* suggested that the practice of using suspension of a 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 the Judge not a protective or holding power but a power of final suspension as an alternative to a power of final revocation. There is an ongoing debate about whether *Singh* was generally applicable or peculiar to its own facts but many Licensing Authorities follow the principle of a single decision at the point in time of the allegation being made known.

Typically the "once and for all" decision is revocation with immediate effect (i.e. so the driver could not drive a taxi even having lodged an appeal). The revocation would be authorised by a senior officer under delegated powers as the risk to the public would mean that an immediate decision is required. The driver would still enjoy rights of appeal to the Magistrates' Court against the revocation.

In a more recent case (13 July 2017) Reigate and Banstead Borough Council sought the definitive view of the High Court on this issue. The Judge in *Reigate and Banstead Borough*

*Council v Pawlowski* [2017] made it 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 for members' attention is included below

“...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”

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 as 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 unsubstantiated it would be unfair if that driver whose licence was revoked was to suffer an undue delay in being relicensed, especially if he had recently renewed his licence prior to it being revoked with immediate effect.

It is therefore recommended that Council approve a fast track process for the 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 recently been carried out. The renewal fee will not be charged in such circumstances, however if a renewal is due in any event then it will proceed as normal with the full fee payable.

Should Council decide to establish such provision, the Licensing Team would seek to implement as soon as reasonably practicable.

## **Background Papers**

Tamworth Borough Council's Constitution Scheme of Delegation

[Document Constitution - 19th Edition :: Tamworth Borough Council](#)

Tamworth Borough Council Taxi Licensing Policy

[Taxi and private hire forms | Tamworth Borough Council](#)



