

Licensing Committee

27 January 2022

Delegated powers for urgent revocations or suspensions to taxi licences

For Decision

Portfolio Holder: Cllr L Miller, Customer and Community Services

Local Councillor(s): N/A

Executive Director: J Sellgren, Executive Director of Place

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Report Status: Public

Recommendation:

1. That the Licensing Committee delegate authority to the Executive Director of Place in consultation with the Chair (or vice chair) of the Licensing Committee to **immediately** suspend or revoke a Hackney Carriage / Private Hire vehicle drivers licence where it is considered necessary in the interest of public safety and:
2. That a 'fast track' procedure be adopted to re-lodge 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.

1. Executive Summary

- 1.1 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.
- 1.2 Dorset Council's Constitution delegates all powers relating to taxi licensing to the Licensing Committee (and/or Sub-Committee) and the majority of decisions that relate to whether a taxi driver should keep their licence will be referred to a Sub-Committee for a decision.

- 1.3 Occasionally however, there are situations when it is necessary for immediate action to be taken, when even delaying a decision for the time it takes to prepare a report and organise a committee meeting would potentially give rise to an unacceptable risk to the public.
- 1.4 The recommendation is that where officers are of the view that an incident or allegation is so serious that any delay in the decision making process presents an unacceptable risk to passengers, the Executive Director of Place be given delegated authority to suspend or revoke licences with immediate effect, in consultation with the Chair (or vice chair) of the Licensing Committee.

2. Financial Implications

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

3. Well-being and Health Implications

- 3.1 Decisions to suspend or revoke a licence should consider the safety and wellbeing of the travelling public.

4. Climate implications

- 4.1 None

5. Other Implications

- 5.1 This is a critical tool for the Safeguarding of Children and Adults however there are also implications relating to the ability to carry out licensable activities for those licence holders affected.

6. Risk Assessment

- 6.1 Having considered the risks associated with this decision, the level of risk has been identified as:
Current Risk: Medium
Residual Risk: Medium

7. Equalities Impact Assessment

- 7.1 Not Applicable

8. Appendices

Appendix A – Dorset Council's Constitution Part 3 – Scheme of Delegation - Functions of the Council (Pages 194-197)

Appendix B – Suspension/Revocation Decision Process outline

9. Background Papers

Dorset Council Taxi Licensing Policy 2022

Local Government (Miscellaneous Provisions) Act 1976 (as amended)
Town Police Clauses Act 1847 (as amended)

10. Background

- 10.1. 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.
- 10.2. 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.
- 10.3. Dorset Council's Constitution delegates all powers relating to the licensing of taxis to the Licensing Committee, which may be further delegated to a Licensing Sub-Committee or an officer (except for matters relating to determining proposed policy or fees). A copy of the relevant section of the constitution is attached at Appendix A (Part 3 – Scheme of Delegation - Functions of the Council Pages 194-197).
- 10.4. 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.

- 10.5. 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.
- 10.6. 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.

- 10.7. 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.
- 10.8. To assist the Licensing Committee 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.
- 10.9. The amendment to the Scheme of Delegation is designed to enable the Council to make urgent decisions to suspend or revoke (likely to be revocation) 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*. Whilst it would be possible to convene a Licensing Sub-Committee at short notice to consider revoking a driver licence with immediate effect this could take a number of weeks in practice, from receipt of the allegation through to investigation (reports need to be a written and the agenda must be published five clear working days in advance). There is also the issue of availability of Chair and Vice-Chair which might cause additional delay. 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.
- 10.10. 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 Executive Director of Place 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.
- 10.11. it is expected that the Executive Director of Place will nominate the Service Manager for Licensing and Community Safety to exercise the delegation on his behalf.

11. Relevant Case Law & Guidance

- 11.1. 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.
- 11.2. 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 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.

- 11.3. 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”

- 11.4. 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.

- 11.5. The Committee may therefore wish to 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.
- 11.6. Should Members decide to establish such provision, the Licensing Team would seek to implement as soon as reasonably practicable.

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.