

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**17 FEBRUARY 2016**  
**ALL WARDS**

**LICENSING AUTHORITY DELEGATIONS –  
HACKNEY CARRIAGE AND PRIVATE HIRE**

1. Summary

- 1.1 A report relating to Child Sexual Exploitation, presented to Licensing and Public Protection Committee in January 2016 contained a multi-point action plan.
- 1.2 The purpose of this report is to address one of the points of the action plan concerning the delegation of decision making powers and to update the Committee on the findings of the working party.

2. Recommendations

- 2.1 That the Committee approves the proposal to delegate, with immediate effect, the matters at 5.7(a) and (b) to officers, with these delegations to be included within the annual Policies Procedures and Delegations report to the Licensing and Public Protection Committee.
- 2.2 That Officers be instructed to draft a Code of Conduct for Members of the Licensing and Public Protection Committee, to be brought to a future Licensing and Public Protection Committee for agreement with a view to it being presented to the Council Business Management Committee for inclusion in the constitution.
- 2.3 That the proposed revision to the Constitution as detailed in paragraph 5.19 be presented to the Council Business Management Committee to be considered for inclusion in the Constitution.
- 2.4 That an information pack be produced and circulated to all Elected Members detailing the Roles and Responsibilities of the Licensing Authority (the Licensing and Public Protection Committee).

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3. Background – Licensing and Public Protection Committee

- 3.1 The City Council has a number of licensing, regulatory and registration powers and duties and the exercise of these powers and duties are delegated to the Licensing and Public Protection Committee. The granting and issuing of specific licences, permits and registrations is delegated to the Director of Regulation and Enforcement on the understanding that any applications giving rise to concern or difficulty may be referred to the Licensing and Public Protection Committee or its sub-committees for determination where appropriate.
- 3.2 The licensing function of the City Council is disposed of through the processes and procedures of the Licensing and Public Protection Committee, sub-committees and officers by virtue of the Local Government Acts and other relevant statutory provisions.
- 3.3 The Licensing Service is responsible for the administration of grants, renewals and transfers as appropriate of hackney carriage and private hire vehicles, drivers and operators licences and for issuing licences under the Licensing Act 2003 and Gambling Act 2005, sex establishment and animal welfare legislation, and issuing permits for charitable collections and massage and special treatments etc. as well as the associated variations, amendments and transfers, which are carried out under policies delegated by your Committee.
- 3.4 The Court of Appeal stated in the “Hope and Glory” case (2011) that the licensing function of the Licensing Authority is an administrative function, by contrast with the function of the magistrates, which is a judicial function. The Court of Appeal said this:

*“The Licensing Authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of power delegated by the people as a whole to decide what the public interest requires.”*

This means that it must act in accordance with the two rules of natural justice. These are firstly that everyone has a right to be heard and secondly the rule against bias.

- 3.5 The right to be heard requires that a person directly affected by the matter under consideration must be given a fair opportunity both to state his/her case and to know of and to respond to any objections.

3.6 The rule against bias prohibits members participating in any decision if they have a financial or other interest in the outcome. Members will be familiar with this requirement from their general duties as Councillors.

3.7 Further guidance on the determination of matters concerning licensing appears at Appendix 1.

#### 4. The Casey Report – CSE and Licensing in Rotherham

4.1 The Casey Report looked into Rotherham MBC having particular regard to the licensing function. The key findings, as set out in the Casey Report's Executive Summary, are summarised below:

- A council in denial about serious and on-going safeguarding failures.
- An archaic culture of sexism, bullying and discomfort around race.
- Failure to address past weaknesses, in particular in Children's Social Care.
- Weak and ineffective arrangements for taxi licensing which leave the public at risk.
- Ineffective leadership and management, including political leadership.
- No shared vision, a partial management team and ineffective liaisons with partners.
- A culture of covering up uncomfortable truths, silencing whistle-blowers and paying off staff rather than dealing with difficult issues.

4.2 The private hire trade in Rotherham was described as 'vocal and demanding'. Officers expressed the view that the Licensing Service seemed to be more geared towards facilitating the trade than protecting the public. Members added to this pressure to support the trade. Some members on the Board had previously held taxi driver licences. At one point the Board had been reluctant to hear any cases without there being an accompanying conviction. Officers were put under pressure from members to expedite licence applications.

4.3 There were instances of members making representations on behalf of the trade or individual drivers. One Councillor wrote to the Crown Court offering a reference for a driver who had his licence revoked. The former Deputy Leader of the Council had made representations on behalf of taxi drivers to speed up the issue of licences in advance of CRB checks. He applied pressure to officers to stop proposals for unannounced safety checks on taxis after receiving representations from the trade. Instead, officers were required to give ten days' notice of checks, which resulted in VOSA (Vehicle and Operator Services Agency) withdrawing from the plans.

#### 4.4 The Birmingham Perspective

Having regard to the points made in paragraphs 4.1-4.3 it is clear that a fundamental review of licensing processes was needed in Rotherham. Following on from that, officers completed a review of our own licensing

system in Birmingham. The results of this review were presented to your Committee in January 2016.

- 4.5 One of the findings in the January Report to your Committee was:  
*“There have been occasions when elected members have attempted to influence licensing decisions at officer level (both taxi and non-taxi decisions). Normally they are councillors who do not sit on the Licensing and Public Protection Committee. Similar pressure is sometimes applied by councillors to other councillors sitting on Licensing sub-committees.”*
- 4.6 The action proposed to try and remedy the situation was:  
*“A separate report to the Licensing and Public Protection Committee proposes that greater decision making powers be delegated to officers with a view to replacing taxi/Private Hire licensing sub-committees with an officer panel for all cases apart from policy decisions.”*
- 4.7 A working group of Members of the Licensing and Public Protection Committee and officers was established to look in to the feasibility of delegating more decisions in relation to Hackney Carriage and Private Hire matters to Officers or to a newly established officer panel.
- 4.8 Following the initial working group, officers sought to identify evidence to support the proposal that delegating more of the decision making responsibility to officers/an officer panel would resolve the identified problem.
- 4.9 Whilst there were examples of Licensing Authorities who had adopted a similar delegations strategy, there were equally examples of those who had considered the approach and dismissed it as unsuitable.

## 5. Findings

- 5.1 In order to maintain the integrity of the decision making process – complex decisions could not be delegated to an individual. The alternative would be to establish an ‘Officer Panel’ who would consider the matters instead of a Licensing Sub Committee.
- 5.2 There are currently approximately 23 Licensing Sub Committee meetings each year for Hackney Carriage and Private Hire matters, each one lasting approximately 4.5 hours. These meetings are attended by:
- 3 Elected Members (decision makers from the Licensing and Public Protection Committee).
  - Committee Lawyer (legal advice).
  - Committee Clerk (minutes/written decisions).
  - Licensing Officer (presenting reports).
- 5.3 The requirements for legal advice and reliable minutes would remain, as would the need for someone to present the report to any decision maker. Even if the panel were to comprise only two officers, this would effectively

treble the amount of licensing officer time taken up with the meetings. (increasing from 103.5hrs to 310.5hrs)

- 5.4 Notwithstanding the increased cost of the additional officer time, the current staffing structure could not accommodate these requirements. There would be a detrimental impact on service delivery.
- 5.5 The existing scheme of delegations allows for a degree of separation between the decision makers and those delivering the service. In many cases, before a sub-committee, applicants or licence holders will need to discuss the matter at hand with officers in order to ensure the correct process is being followed. This could lead to a potential conflict or accusation of bias.
- 5.6 As detailed at 4.5 above, it has already been identified that *“There have been occasions when elected members have attempted to influence licensing decisions at officer level”*. This will be examined in more detail later in this report, but it is difficult to see how the situation would be improved by devolving more complex decisions to officers.
- 5.7 Having considered the scheme of delegations, there are two matters which would appear to be appropriate to delegate to Senior Licensing Officers (or above), namely:
  - (a) Renewal of a drivers licence after the late renewal period where the circumstances for the lateness are on medical grounds only.
  - and
  - (b) Consideration of suitability of evidence as to good character where the applicant is from a failed state and cannot comply with requirement to provide a DBS.(Criminal Record Check)
- 5.8 The matter at 5.7(a) is a relatively straightforward matter which would require Senior Officers, if so delegated, to consider whether the applicant should be allowed to renew their licence after the late renewal period has expired, where the grounds for non-renewal were that the applicant was unable to do so owing to medical reasons.
- 5.9 Should the circumstances be more complex, or should there be any other aggravating factors, the Officers still reserve the right to refer decisions to the Licensing Sub Committee for consideration.
- 5.10 The matter at 5.7(b) is also a straightforward matter, but officers have identified that, with almost 50 cases heard in 2015, it takes up over 7% of the Sub Committee time. Delegating this matter to officers, would thereby release that time which can be spent considering the more complex matters.
- 5.11 The question still remains; If the problem identified at paragraph 4.5, cannot be resolved by delegating decisions, then how can it be resolved?
- 5.12 Whilst there are frequent instances where officers have been contacted by Elected Members and asked to reconsider decisions which have been made in relation to Hackney Carriage and Private Hire matters, the response from

officers is always to explain that a decision has been made in accordance with the proper procedures and legal principles, and to advise of the appropriate mechanism of appeal. It should be emphasised that such interventions are not effective. However, it can put officers in a difficult position.

5.13 Similarly, where a licence holder or applicant is before the Committee for consideration of a matter which calls into question whether they are a fit and proper person, there are many occasions where the Committee will be presented with a 'character reference' from another elected member. This could put Members in a difficult position as they may well make a decision which is contrary to that of one of their colleagues.

5.14 Again, there is nothing to suggest that Members are not considering each case on its own merits separately to any external factors, but both behaviours identified in 5.12 and 5.13 could give an impression of bias or influence which could damage confidence in the decision making process.

5.15 Alternative Proposals

In order to ensure that the reputation of the Licensing and Public Protection Committee, and Birmingham City Council remains unimpeachable two measures are proposed:

- A Member Code of Conduct for Licensing and Public Protection Committee Members, and
- An amendment to the Code of Conduct for all Elected Members.

5.16 LPPC Member Code of Conduct

Members may already be familiar with the Code of Conduct in place for the Planning Committee. It is proposed to introduce a comparable Code for Members of the Licensing and Public Protection Committee.

5.17 Should Members be amenable to this proposal in principal, a draft Code can be drafted by Legal Services in collaboration with Officers, to be presented to a future Licensing and Public Protection Committee for consideration.

5.18 The Code of Conduct for Members & General Guidance

The Code of Conduct for Members & General Guidance within the Constitution already states:

*"No Councillor shall provide or offer to provide a formal reference for any candidate for employment or promotion with Birmingham City Council as to do so may be perceived as bringing an unacceptable pressure to bear on the appointing officer and any officer appointed as a result of such reference".*  
*Birmingham City Council – Supporting Documents to the Constitution (B7, Para.9)*

5.19 It is proposed that two additional paragraphs be inserted stating:

*"No Councillor shall provide or offer to provide a formal reference for any candidate for or holder of a Hackney Carriage or Private Hire Licence of any kind with Birmingham City Council as to do so may be perceived as bringing an unacceptable pressure to bear on the decision maker(s)."*  
and

*"No Councillor shall seek to influence or overturn any decision of the Licensing Authority in relation to a Hackney Carriage or Private Hire Licence of any kind."*

- 5.20 Should the Committee agree to proposals, at 5.17 and 5.19, a report will be presented to the Council Business Management Committee.
- 5.21 A further recommendation of the working group was that guidance should be produced and circulated to all elected members concerning the role and function of the Licensing Authority including but not limited to hackney carriage and private hire matters.

## 6. Consultation

- 6.1 A working group was established to consider the proposal that greater decision making powers be delegated to officers with a view to replacing Taxi/Private Hire licensing sub-committees with an officer panel for all cases apart from policy decisions, with the invitation to attend extended to all Members of the Committee.
- 6.2 At the initial working group meeting, a draft proposal was put to the group by way of a discussion document, which resulted in officers being asked to identify evidence to support or counter such proposals.
- 6.3 The subsequent findings of officers are presented at Section 5 to this report.

## 7. Implications for Resources

- 7.1 It is the responsibility of the Committee Chairman and the Director of Regulation and Enforcement to ensure the services provided by the Committee are contained within the approved budget.
- 7.2 Should the proposal to delegate the majority of decisions to officers or an officer panel stand, there would be significant resource implications as well as an impact on service delivery.

## 8. Implications for Policy Priorities

- 8.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services.

## 9. Implications for Equality and Diversity

- 9.1 The matters identified in this report are in accordance with Regulation and Enforcement's enforcement policies which ensure that equality issues have been addressed.

## **ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: Working Party Discussion Documents



**GOOD PRACTICE AND PROCEDURE**

The following are points that your Committee should bear in mind when making decisions concerning individual licences and should be read in conjunction with the Members' Code of Conduct and the Member/Officer Protocol. They are based on the large number of legal cases in which the courts, including the European Courts, have considered different aspects of a local authority's licensing functions. However, your Committee should be aware that in certain cases there are additional requirements resulting from specific legislation.

**1. Political/Party Group Meetings**

Group meetings should be concerned with policy reports, not the discussion of individual licence applications etc. The use of a party political whip is inconsistent with the rules of natural justice and should be avoided by Councillors sitting on the Licensing Committee.

**2. Members**

Members should be mindful of the requirements concerning the disclosure of interests and when it is necessary for a member to vacate a meeting. In cases of doubt the Director of Legal Services, or his representative, should be consulted. Details are set out in the Council Constitution.

**3. Social Media**

**What are social media?**

Social media is the term to describe websites and online tools which allow people to interact with each other by creating their own content. The content could, for example, be blogs, videos or short messages, known as tweets, via twitter.

On social media sites users share information, discuss opinions and may create interest groups or pages. Ultimately people use these sites and tools to build online communities and networks which encourage participation and engagement.

**Types of Social Media:**

- Blogging and microblogging – online journals – Twitter is an example of microblogging, where entries are limited to 140 characters

- Online Forums – people with similar interests sharing information and opinions – AccyWeb is an example
- Social networking sites – these facilitate connections between people who already know each other, often in a social context, but are increasingly used by businesses to promote their products or services- Facebook is an example
- Video and photo publishing – sharing videos and photographs worldwide – Flickr is an example

**Some general legal issues:**

- **Libel** – If you publish an untrue statement about a person which is damaging to their reputation, they may take a libel action against you. The same thing may happen if, for example, someone else publishes something libellous on your website, you know about it and don't take swift action to remove it. A successful libel claim could result in the award of damages against you,
- **Copyright** – Placing images or text on your site from a copyrighted source (for example extracts from publications or photos), without obtaining permission, is likely to breach copyright laws. Therefore don't publish anything you are unsure about, or obtain prior permission. A successful claim for breach of copyright would be likely to lead to an award of damages against you.
- **Data Protection** – Do not publish the personal data of individuals unless you have their express permission.
- **Bias and Predetermination** – if you are involved in making licensing decisions, do not say anything through social media (or indeed anywhere) that suggests you have completely and irrevocably made your mind up on an issue that is due to be formally decided upon. While your likely view on a particular application may be well known, you need to be able to show that you attended the committee or hearing prepared to take on board and weigh all the evidence and arguments, and were genuinely persuadable to a different view. If you weren't, the decision may be later challenged as invalid. If a person has suffered some sort of detriment as a result of such an invalid decision, they may have a claim against the council for damages.
- **Wednesbury Unreasonableness** – members must also always be seen to acting reasonably in relation to the Committee process and consideration of all applications; if detriment arises a Third Party may commence Judicial Review proceedings.

### **Use of Social Media by Members of Committee**

- Although the use of Social Media can be an invaluable tool for a Member of the Council/Committee Member it is important that such usage is properly managed at all times and that particularly a clear distinction is maintained between Private usage and Member usage. It is important that Social Media is not perceived by any Third Party to interfere with the proper decision making process. Members are advised to exercise extreme caution before commenting on social media, or in the conventional press, on any licensing decisions which they are, or are likely to be involved in making. This is to ensure that their comments may not be interpreted to mean that members have already determined a licence application, which could be used against the local authority.
- The same applies to Council Members who are not members of the Licensing & Public Protection Committee, but whose comments or actions on social media could be misinterpreted. If elected Members make any comments when representing residents who are objecting to licence applications they must not link their comments in any way to members of the Committee.
- During Committee hearings it is particularly important that mobile communication devices, including telephones and tablet computers or Social Media are not used, whether for research or communication purposes. The use of any form of Social Media or mobile telephones at Committee may lead to an inference of bias, pre-determination or Wednesbury Unreasonableness.

### **4. The Applicant**

Ordinarily the applicant should be given the opportunity of being heard by your Committee before the application is determined, even if this is not an express requirement of the relevant statute. The applicant should also be allowed to be accompanied by a legal or other representative if they so desire.

### **5. Third Parties to a Hearing**

Any person or body wishing to make representations or objections in respect of an application or notice should be given the opportunity to do so. Subject to any statutory restriction the nature of the representations or objections should be disclosed to the applicant in advance of the meeting so that they may consider their response. The identity of an objector should not be disclosed to the applicant without their consent, unless any statutory provision state otherwise.

## **6. Disclosure of Information**

The applicant should be given prior knowledge of the nature of the Council's concerns, and of those of any objectors.

The extent of the disclosure should also be sufficient to avoid the applicant having to request an adjournment to allow time for proper consideration of the matters they are obliged to address.

## **7. Evidence**

Each member of your Committee should be supplied with copies of every document that has been supplied both by and to the applicant and any third parties to the hearing. If any new documents are produced at the meeting, each party should have the opportunity to inspect them. In certain cases there may be statutory provisions which require another party's consent, if applicable, to new documentation being introduced at the meeting.

## **8. Adjournments**

Any request for an adjournment should not be refused if to do so would effectively deny the applicant a fair hearing.

## **9. The Hearing**

The procedure is intended as a general framework to ensure the rules of natural justice apply and that a fair hearing is presided over by an "independent and impartial tribunal". The conduct of individual hearings may vary slightly according to circumstances and the discretion of the Chairman. In all cases, however, this general framework will be followed:

- a. Members present should identify themselves so that the applicant may be satisfied that there has been no breach of the rule against bias.
- b. A licensing officer will outline the relevant details of the application or matter under consideration.
- c. Usually the applicant will present his or her case first, at the conclusion of which members may ask questions. A similar opportunity will then be afforded to any third party to a hearing making representations or objections to the application.
- d. The applicant should be given the opportunity to ask questions of those third parties.

- e. Once the licensing officer, the applicant and any third party to the hearing have given evidence and answered any questions, the third party shall first be given an opportunity to make brief closing remarks, and then the applicant to make their final closing remarks on the application under question. All parties should leave the room, so that only the Committee, the Committee Manager and the Director of Legal Services' representative remain.

During the hearing members must not discuss the merits of the case. This should be left until the applicant, any objectors and officers involved in the case have left the room.

The only members who may participate in the decision making are those who have seen and heard all the evidence and have been present for the subsequent discussion.

Once the applicant, any third party and officers have left the meeting they may be recalled to provide further information or clarification but all of them must return, not just the person from whom further information is required.

## **10. The Decision**

Once the Committee has reached its decision the parties must be recalled and informed verbally of the decision with the exception of applicants and drivers for a hackney carriage or private hire licence or personal licence who only receive the decision later in writing. If reasons for the decision are to be given, which will usually be the case, this will be done in writing at a later date. Notice of any right of appeal should also be given to the parties.