

BIRMINGHAM CITY COUNCIL

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

14 MARCH 2018
ALL WARDS

**HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS/APPLICANTS:
REFERENCES FROM MEMBERS OF PARLIAMENT**

1. Summary

- 1.1 In September 2016 a report was presented to the Licensing and Public Protection Committee introducing a Code of Conduct for Members of the Licensing and Public Protection Committee.
- 1.2 The same Report proposed an amendment to the City Council's Constitution in respect of the then Code of Conduct for Members & General Guidance concerning i) references for Hackney Carriage and Private Hire Licence holders or candidates, and, ii) a prohibition on seeking to influence or overturn a decision on these matters by the Licensing Authority.
- 1.3 At the meeting of your Committee in November 2017 it was suggested that officers consider the introduction of a policy regarding the acceptance of references from Members of Parliament at Licensing Sub-Committees meetings in respect of Hackney Carriage and Private Hire applications.
- 1.4 This report seeks to respond to this suggestion.

2. Recommendations

- 2.1 That the Committee considers the revision to the current policy on applications for Hackney Carriage and Private Hire licence applications as set out at Paragraph 4.8 of this Report and:
 - 2.1.1 If the Recommendation at 2.1 is agreed by Committee, that officers undertake a public consultation for a period not exceeding 4 weeks on any appropriate revisions to the Council's Policy for Hackney Carriage and Private Hire applications incorporating the changes at Paragraph 4.8 of this Report. and
 - 2.1.2 That officers revert to Committee with the outcome of the public consultation and provide Committee with their final recommendations

on the proposed changes to Committee policy as set out at Paragraph 4.8 of this Report;

2.1.3 If Members are minded not to proceed with a revised Policy, that Officers are instructed to ensure dealing with references is suitably addressed in the mandatory Member training.

2.2 That outstanding minute 942(iii) is discharged.

Contact Officer: Emma Rohomon, Licensing Operations Manager
Telephone: 0121 303 9780
e-mail: emma.rohomon@birmingham.gov.uk

3. Background

3.1 In February 2015 the Government published the report of Louise Casey CB into child sexual exploitation (CSE) in Rotherham. The 154 page report considered whether Rotherham was fit for purpose as a Local Authority. Part of her report considered the role played by the Rotherham's Licensing Service in relation to the link between CSE and taxi and private hire licensing.

3.2 In September 2016, as part of the City Council's response to the Casey Report, a Code of Conduct for Members of the Licensing and Public Protection Committee was agreed, as well as a proposal for an amendment to the Constitution for the City Council to insert the following paragraphs:

"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."

3.3 The 2016 report stated that there were *"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."*

3.4 The report also stated: *"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.”

- 3.4 There was, and remains, no evidence to suggest Members are not considering each case/application on its own merits in accordance with the principles of natural justice, but both behaviours identified in 3.3 and 3.4 could give an impression of bias or influence which could damage confidence in the decision making process.

4. References from Members of Parliament

- 4.1 The question to be addressed is whether there is a comparable risk to the perception of the integrity of the Committee decision if a reference in support of an applicant or driver were to be provided by a Member of Parliament.
- 4.2 It could be argued that, the circumstances referred to above at Paragraph 3.3 and 3.4 may well also be applied to Members of Parliament.
- 4.3 The fundamental difference between the two is that elected Members discharge certain legal functions on behalf of the City Council, on whose behalf the Licensing Sub Committees make decisions. They are a part of the same unitary authority, whereas Members of Parliament do not have that statutory function or role.
- 4.4 Neither the Licensing and Public Protection Committee nor Birmingham City Council has any authority to prevent Members of Parliament from providing character references for whomever they wish.
- 4.5 An applicant or existing licence holder before a Sub-committee has a right to expect that the hearing will accord with the principles of natural justice, and they could potentially argue that any reference which has been provided to them should be able to be presented to a Sub Committee.
- 4.6 Character references might be provided by various individuals such as accountants, volunteer leaders, churches or other such organisations. To prohibit those provided by Members of Parliament may appear inconsistent.
- 4.7 The overarching consideration to be remembered is that it is a matter for each Sub-Committee to consider the matters placed before them, and to give any documentation or verbal testimony presented to them whatever weight they believe it deserves. Each case must be considered on its individual merits.
- 4.8 Should Committee be minded to agree that a restriction on references from MP's is necessary, the following policy wording is proposed subject to any appropriate public consultation:

“Members of the Licensing and Public Protection Committee and its Sub-Committees will not accept character references provided by

Members of Parliament in relation to Hackney Carriage and Private Hire matters.

5. Consultation

- 5.1 No consultation has been carried out in respect of this report but officers suggest that public consultation takes place prior to any decision on implementation of the aforementioned policy.

6. Implications for Resources

- 6.1 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. Implications for Policy Priorities

- 7.1 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.

8. Public Sector Equality Duty

- 8.1 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: nil