

BIRMINGHAM CITY COUNCIL

REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

10 NOVEMBER 2021
ALL WARDS

HACKNEY CARRIAGE AND PRIVATE HIRE DELEGATIONS UPDATE

1. Summary

- 1.1 In June 2021 a report was brought to your Committee concerning certain measures implemented in direct response to the COVID-19 pandemic.
- 1.2 These measures included a request to continue with the concessions regarding late renewal of licences, and also sought the continuance of the delegation to senior officers, matters usually reserved to licensing sub-committees.
- 1.3 Approval was given for both matters, with a request that a further report (this report) be brought back to a later Committee.

2. Recommendations

- 2.1 That the Committee considers the hackney carriage and private hire delegations and determines whether to
 - a) Confirm the delegation as standard, subject to annual reporting with all other delegations. Or
 - b) Cease the delegation and return the matters to the sub-committee meetings held 'in-person' from February 2022. or
- 2.2 That the Committee considers and agrees the continuation of the measures detailed in Paragraph 6 to this report regarding renewal of hackney carriage and private hire licences.

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3. Background

- 3.1 In April 2021 a report was brought to your Committee concerning certain measures implemented in direct response to the COVID-19 pandemic.
- 3.2 These measures included a request to continue with the concessions regarding late renewal of licences, and also sought the continuance of the delegation to senior officers, matters usually reserved to licensing sub-committees.
- 3.3 Approval was given for both matters, with a request that a further report (this report) be brought back to a later Committee.

4. Licensing and Public Protection Committee

- 4.1 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.
- 4.2 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.

- 4.3 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.
- 4.4 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.

5. Delegated matters

- 5.1 In order to allow matters to be dealt with expediently and in a covid-secure manner, matters which would ordinarily have been referred to a sub-committee were delegated to an officer 'panel' process. The process has been in operation for over 18 months now and has been found to be an effective method to deal with matters for consideration. Reports are still produced, and questions are put to applicants/ subjects who have an opportunity to respond. Legal advice is still sought and provided.
- 5.2 The process being used for these matters has been challenged by way of appeal against decisions to the Magistrates' Court without success. Magistrates have found, on multiple occasions, that the appellant had been given appropriate opportunity to respond to the matters under consideration. There has been no significant increase in the number of appeals against decisions compared to those determined by sub-committees.
- 5.3 This delegated process has proved to be an effective way of dealing with these matters – and has eliminated the inefficiencies suffered by the previous arrangements. In the past, the sub committees were beset with issues of timing – with matters either overrunning, or time lost due to non-attendance.
- 5.4 It is proposed these delegations should continue. It is a matter for Members to decide if you wish this delegation to remain temporary, with a further review report brought to your Committee in future, or if they wish the delegation to become standard, to be reviewed annually as part of the yearly policies Procedures and Delegations report.
- 5.5 Unlike sub committees convened to address Licensing Act 2003 or Gambling Act 2005 matters, those convened to hear 'driver' cases would be required to be held in person not remotely. If members are minded to cease the delegation of sub-committee matters, a 3 month lead in time would be required, in order to make the necessary adjustments, and arrangements.

6. Licence renewals.

- 6.1 The following measures had also been agreed, and are proposed to continue until April 2022:
 - 6.1.1 Where a driver or vehicle licence due for renewal during this period of imposed restrictions ('lockdown') expires, the licence holder will, once the lockdown has ended, be permitted to apply for a 'late renewal'. Once the lockdown is over, and trade begins to recover, licence holders will then be able to submit an application to, to all intents and purposes, resurrect their previous licence without undertaking additional tests. They WILL still be required to fulfil any suitability requirements as to MOT's, medicals and DBS checks where appropriate. such a transaction would be carried out at the standard renewal fee and will not be required to be put before a committee for determination.

- 6.1.2 Where a hackney carriage vehicle licence expires as a result of the circumstances detailed above, the licence holder will be permitted to 'renew' the licence unimpeded by the moratorium. There will be no effective increase in the number of vehicles in operation, and so the moratorium should not be applied in these circumstances.

7. Consultation

- 7.1 This is an update report for Members and as such no consultation has been carried out.
- 7.2 Any new policies or significant amendments to existing policies are subject to a consultation process where appropriate.

8. Implications for Resources

- 8.1 It is the responsibility of the Committee Chairman and the Interim Director of Regulation and Enforcement to ensure the services provided by the Committee are contained within the approved budget.
- 8.2 The measures introduced in response to the Covid-19 pandemic have resulted in different ways of working, particularly in terms of sub-committees. This will have led to more flexibility, greater efficiencies, and reductions in officer travelling time and meeting room requirements.
- 8.3 Changes to the Hackney Carriage and private hire sub-committees have resulted in greater efficiency as the previous arrangements had been beset with delays and scheduling difficulties predominantly caused by non-attendance of applicants.

9. Implications for Policy Priorities

- 9.1 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.

10. Public Sector Equality Duty

- 10.1 This report seeks to update members on an existing arrangement. It does not seek to introduce any changes which would impact upon the protected characteristics.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Birmingham City Council Constitution