

West Northamptonshire Council
Taxi and General Licensing Committee

24 January 2023

<p>Delegation of additional Hackney Carriage and Private Hire Vehicle licensing decision making powers from Committee to Officers</p>
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Report of Assistant Director of Regulatory Services

This report is public

1. Purpose of report

- 1.1. To request that the Taxi and General Licensing Committee delegate additional decision making powers concerning Hackney Carriage and Private Hire Vehicle licensing matters from the Committee to Licensing Officers.

2. Recommendations

- 2.1. It is recommended that the Committee pass a resolution delegating the power to make decisions concerning Hackney Carriage and Private Hire Vehicle licensing matters, which would otherwise have to be brought before a Taxi and General Licensing Sub-Committee due to the effect of paragraph 9 of part F of West Northamptonshire Council's Constitutional Scheme of Delegation Legal Exemptions table (at page 187), to Licensing Officers.

3. Introduction

- 3.1. The current Council Constitution delegates all decision making powers with regard to the licensing of Hackney Carriages and Private Hire Vehicles from full Council to the Committee, at paragraph 4.3.1 (page 44). The Committee then delegates all matters relating to the grant, renewal or review of Hackney Carriage and Private Hire Vehicle licenses to Sub-Committees comprised of three Members of the Committee, unless there is a specific delegation from the Committee or a Sub-Committee to Officers to make a decision in any particular case, at paragraph 4.3.2 (pages 44 and 45).
- 3.2. The Constitution also contains a Scheme of Delegation which sets out which decisions making powers may be exercised by Council Officers. Decision making powers in respect of Hackney Carriage and Private Hire Vehicle licensing are delegated on a general basis to the Executive Director of Place and Economy from the Committee, by paragraph 9 of part F of the Scheme of Delegation's Legal Exceptions table (page 187). In practice, these powers are delegated in turn to the

Assistant Director for Regulatory Services, in accordance with the Executive Director's scheme of sub-delegation, and then to individual Licensing Officers.

- 3.3. However, there are a number of exceptions to this general delegation, the first of which is where;
 - An applicant for a new or renewed driver or operator license or a current license holder has relevant convictions/cautions and
 - An applicant for a new or renewed driver or operator license or current license holder has 9 or more points on their driving licence.
- 3.4. If the above applies, then Licensing Officers must refer that matter to a Sub-Committee for consideration as to whether to grant the application or whether any action ought to be taken in respect of an existing license.
- 3.5. A knock-on effect of this is that where the circumstances set out in paragraph 3.3 above apply in cases where there is a perceived risk to public safety, the Assistant Director cannot lawfully make a decision to immediately revoke a Hackney Carriage or Private Hire driver's license on public safety grounds, in accordance with section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976, and the matter must be referred to a Sub-Committee for determination, despite the potential urgency of the situation. If paragraph 3.3 does not apply, then an Officer delegated decision can be made urgently.
- 3.6. The second exception is that paragraph 4.3.2 of the Constitution (at page 45) also states that any application for a new Hackney Carriage or Private Hire Vehicle driver's license by a person whose previous license was immediately revoked on public safety grounds by the Assistant Director acting under delegated powers, must also be referred to a Sub-Committee for determination.
- 3.7. Members are asked to make a resolution delegating the power to make decisions where paragraphs 3.3 to 3.6 above apply to the Assistant Director for Regulatory Services, in order for Licensing Officers to be able to make all decisions with regard to all Hackney Carriage and Private Hire Vehicle matters, unless the Assistant Director determines that it would be appropriate to refer any specific case to a Sub-Committee for determination.

4. Report details

- 4.1. Prior to April 1st 2021, Licensing Officers with the old sovereign districts/Licensing Areas of Northampton Borough, South Northants and Daventry had the delegated authority to make decisions in all Hackney Carriage and Private Hire Vehicle licensing matters.
- 4.2. The West Northamptonshire Council Constitution effectively changed that from 1st April 2021. Decisions making powers regarding individual licenses remain delegated to Licensing Officers on a general basis, except where the circumstances set out above at paragraphs 3.3 to 3.6 apply.
- 4.3. This creates two issues for Licensing Officers. The first is that where a Licensing Officer becomes aware that a current Hackney Carriage and Private Hire Vehicle

driver's licence holder has been convicted, cautioned or has had their DVLA driving licence endorsed by 9 or more points and they deem that person to be a risk to public safety, they are currently unable to consider whether to revoke that licence with immediate effect under section 61 (2B) of the 1976 Act and would have to refer the matter to a Sub-Committee for determination.

- 4.4. Legislation does not permit Licensing Authorities to lawfully suspend driver's licenses on a temporary basis pending a Sub-Committee decision without conferring a right of appeal to a Magistrates' Court. This means that where a decision whether to take action in respect of a driver's license is required because of an urgent issue of potential risk to public safety, but where that driver has a relevant conviction, caution or 9 or more points on their DVLA driving license, Licensing Officers would currently be unable to lawfully prevent the driver continuing to drive in accordance with his license, until either a Sub-Committee has considered the matter or any Magistrates' Court appeal has been determined. If any action is taken in respect of a current driver's license, the general rule is that it is suspended until any appeal is determined, unless the action was taken in accordance with section 61 (2B) on public safety grounds.
- 4.5. The second issue is that decisions made by the three previous Councils in licensing matters were, for legal purposes, in effect retrospectively made by West Northamptonshire Council. When Licensing Officers with those Councils decided to grant applications for new or renewed driver and operator licenses or take no action in respect of persons who had convictions, cautions or 9 or more points on their DVLA driving licence prior to 1st April 2021, the applicants/existing license holders were judged to be fit and proper persons to hold or retain a license.
- 4.6. The effect of the requirement under paragraph 3.3 is that where these license holders has not incurred any further convictions, cautions or driving license points since the previous decision was made, applications for renewal must still be referred to a Sub-Committee for consideration, despite a decision effectively having previously been made by the Council that the holder was a fit and proper person despite those convictions/cautions/points. As a result of being legally bound by licensing decisions of its three predecessor licensing authorities, the Council runs the risk of effectively revisiting its own previous decisions in cases to which this scenario applies, which would potentially constitute a ground for a successful Magistrates' Court appeal.
- 4.7. Due to the rules around the retention of information contained within criminal record checks, a figure cannot be provided for the number of current West Northamptonshire Council licence holders who have convictions and cautions. A taxi driver is an exempted profession for the purposes of the Rehabilitation of Offenders Act 1974, so convictions and cautions are never considered "spent" for the purposes of Hackney Carriage and Private Hire Vehicle license applications
- 4.8. Granting Licensing Officers authority to make decisions where paragraphs 3.3 to 3.6 above apply would resolve the above issues and reduce the potential legal risks to the Council that they pose.
- 4.9. Additionally, the process of organising Sub-Committees, writing reports and holding hearings is currently quite lengthy generally and some cases can occasionally take months before a decision is made. Sub-Committees must currently determine

matters involving convictions for even the most minor of offences, some of which have no real bearing on whether a person is fit and proper to hold a Hackney Carriage or Private Hire Vehicle driver or operator license. If Licensing Officers had delegated powers to make decisions in cases where paragraphs 3.3 to 3.6 apply, then the decision making process generally would be a lot quicker and Sub-Committee hearings reserved only for the most serious or complicated cases. Speeding up the decision making process in such cases would also be in the best interests of the Hackney Carriage and Private Hire Vehicle trades.

5. Choices/options and reasons for recommendations

- 5.1. Members can choose **to resolve** to delegate authority to make decisions, in respect of Hackney Carriage and Private Hire Vehicle licensing matters to which paragraphs 3.3 to 3.6 above are applicable, to the Assistant Director for Regulatory Services.
- 5.2. This option is **recommended** in order to address the issues set out at paragraphs 4.3 to 4.9 above.
- 5.3. Members can choose **not to resolve** to delegate authority to make decisions, in respect of Hackney Carriage and Private Hire Vehicle licensing matters to which paragraphs 3.3 to 3.6 above are applicable, to the Assistant Director for Regulatory Services.
- 5.4. This option is **not recommended** because it will not address the issues set out at paragraphs 4.3 to 4.9 above, in contrast to the majority of cases where the requirements set out in paragraphs 3.3 to 3.6 do not apply.
- 5.5. Members can choose **to resolve to partially delegate** authority to make decisions, in respect of Hackney Carriage and Private Hire Vehicle licensing matters to which paragraphs 3.3 to 3.6 above are applicable, to the Assistant Director for Regulatory Services, as they deem appropriate. This could involve delegating the decision making authority in respect of some of the situations set out in paragraphs 3.3 to 3.6, but not others.
- 5.6. This option is **not recommended** because it will not completely address the issues and potential legal risks set out at paragraphs 4.3 to 4.9 above, in contrast to the majority of cases where the requirements set out in paragraphs 3.3 to 3.6 do not apply.

6. Implications

Financial and resource implications

- 6.1. *There are no financial implications arising directly from this report.*

*Comments checked by Dawn Leader, Strategic Finance Business Partner,
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6.2. Legal implications

- 6.2.1. The legal risk to the Council associated with the first issue identified at paragraphs 4.3 to 4.4 is that of potentially failing to protect public safety, by not taking swift and urgent action in respect of drivers to whom this issue applies, or at the very least being perceived to be failing to do so.
- 6.2.2. The legal risk associated with the issues identified at paragraphs 4.5 to 4.9 is that of potentially increasing the number of decisions which are appealable to the Magistrates' Court, either through the inadvertent revisiting of what are effectively previous licensing decisions of the Council or through delay in the licensing decision making process where the applicant/license holder has convictions, cautions or 9 or more points on his DVLA driving licence.
- 6.2.3. There is no legal requirement to consult about the proposed internal delegation of Council decision making powers in accordance with the Constitution and Scheme of Delegation. Internal Council decision making arrangements would not ordinarily be the subject of any consultation exercise, statutory or otherwise.

Comments added by James Chadwick, Senior Licensing and Litigation Solicitor.

6.3. Comms implications

Checked by Becky Hutson, Head of Communications, 01327 302404, communications@westnorthants.gov.uk

7. Consultation

- 7.1. Not applicable. See legal comments at paragraph 6.2.1 above.

8.0 Decision information

Wards affected

Not applicable

Links to Corporate Plan and Policy Framework

Not applicable

Portfolio holder

Not applicable

Document information

Background papers	
West Northamptonshire Council Constitution (June 2022)	
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