



TAXI AND GENERAL COMMITTEE – 13TH JULY 2017

SUBJECT: PROPOSED PROCEDURE FOR EMERGENCY REVOCATION OF TAXI DRIVER LICENCES

REPORT BY: CORPORATE DIRECTOR SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 To recommend to Members a procedure for the urgent suspension or revocation of hackney carriage / private hire drivers licences where information is received of a serious nature that may affect public health and safety.

2. SUMMARY

- 2.1 This Authority must satisfy itself that applicants and holders of existing licensed Hackney Carriage / Private Hire Vehicle Driver's licence are a fit and proper person. Under the current policy licensed drivers whose suitability is called into question are referred to a Taxi and General Sub Committee hearing where Members determine suitability and can apply additional conditions, suspend or revoke licences.
- 2.2 This system works well in general but there are occasions where urgent action may be required which in the interest of public safety cannot be delayed whilst due process is followed to arrange a sub Committee hearing. This report therefore recommends an emergency procedure where swift action can be taken in limited and very serious circumstances.

3. LINKS TO STRATEGY

- 3.1 The Licensing function is a statutory duty of the authority and contributes to the Prosperous, Healthier, and Safer Caerphilly Priorities single integrated plan, Caerphilly Delivers.
- 3.2 The Licensing Service also contributes to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:
- A prosperous Wales
 - A resilient Wales
 - A healthier Wales
 - A more equal Wales
 - A Wales of cohesive communities.

4. THE REPORT

- 4.1 The Local Government (Miscellaneous Provisions) Act 1976 ["the Act"] sets out the licensing regime in respect of hackney carriage and private hire vehicle drivers. Within Caerphilly County Borough Council drivers are issued with dual badges, entitling them to drive either category of vehicle.

- 4.2 The Council may come into possession of information that raises concerns as to whether a person holding a taxi driver's licence remains a fit and proper person. For example, information may be received that a driver has been charged with a criminal offence.
- 4.3 Section 61 of the Act sets out that a council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle on any of the following grounds:
- (a) That he has since the grant of the licence –
 - (i) Been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of this act: or
 - (b) Any other reasonable cause.
- 4.4 Historically authorities were able to suspend the driver's licence under s.61 in order to allow a full investigation into the matter to be conducted and to consider at a later date what action, including revocation, should be taken. However, following the judgement in a High Court case (R(Singh) v Cardiff Council) this practise has been considered unlawful. A suspension may be considered suitable if action short of revocation would be appropriate in the circumstances and is a sufficient sanction in the interests of the public.
- 4.5 The Judge in the case said that the aim of suspension is to protect the public not to punish the driver. Suspension should have a positive aim i.e. be a corrective measure directed at the driver. Examples of corrective measures may be such that the driver's licence is suspended until they have attended a training course such as speed awareness, safeguarding, drink driving awareness, etc. Suspension alone may be sufficient to allow the driver to consider their actions and as such will not re-offend.
- 4.6 In the event that a decision is taken to suspend, revoke or refuse to renew a licence a notice must be served on the driver advising them of the decision and the reason why. The driver will have 21 days in which to lodge an appeal against this decision and the suspension, revocation or refusal to renew will not have effect until such time as the appeal has been determined.
- 4.7 The Act was amended by sec 52 of the Road Safety Act 2006 so as to add a provision whereby if it appears that the interest of public safety requires the suspension or revocation of a licence, it shall have immediate effect. A notice must be given to the driver which includes a statement that the suspension or revocation has immediate effect and an explanation of the reason for the decision. The driver has a right of appeal to a Magistrates court within 21 days of receiving the notice but is not entitled to drive a taxi until such time as any appeal is determined.
- 4.8 The Council adopted a Fitness Criteria for Drivers and Operators policy in December 2014 which sets out the Council's anticipated responses to a range of offences including dishonesty, road traffic incidents etc. The policy was amended in 2016 and is also reproduced as an appendix in the overarching Hackney Carriage and Private Hire Drivers Policy and Conditions document approved by Members in December 2016. In addition to the approval officers were authorised to amend the policy for any minor administrative purposes and in order to keep up to date with changes in legislation or statutory guidance, with any significant changes to be brought before the Licensing Committee for consideration. These criteria determine to a great extent those matters that are required to be heard by the Taxi and General Sub Committee.

- 4.9 In practice however there may be a period of two weeks or more between receipt of information and consideration by the Sub Committee due to administrative arrangements in organising the hearing and notification to the persons concerned. These timescales can cause difficulties where there are serious urgent public safety concerns. Best practice suggests the issues should be considered within 24 to 48 hours and any decision to suspend or revoke should take immediate effect. The driver would not then be permitted to drive a licensed vehicle unless the decision is overturned on appeal to the Magistrates Court. A potential risk to public safety from driving a licensed vehicle and transporting the fare paying public is removed.
- 4.10 The Local Government Association Taxi and PHV, Licensing Councillor's handbook (revised in December 2016) advises that if allegations of a serious nature (a list of which is included in the procedure at Appendix 1 but is not exhaustive) are received the Council should have in place procedures which allow for a rapid response. In serious cases it is not appropriate to wait for a Subcommittee to be convened.
- 4.11 It is therefore proposed that the Committee adopt a Rapid Response Procedure and a draft procedure is set out in Appendix 1 for Members' consideration. The Procedure requires determination by the Head of Public Protection or Trading Standards, Licensing and Registrars Manager supported by officers from the Licensing Section and Legal Services (where appropriate). All details relating to the allegation, the identity of the driver and the determination shall be excluded from the public domain as the matter may be the subject of formal proceedings at a later stage.
- 4.12 The Terms of Reference for the Taxi and General Committee includes the authority to discharge on behalf of the Council all matters relating to the grant, refusal, issue, revocation, cancellation and suspension of licences or permits including Hackney Carriage and Private Hire Drivers. All matters arising from the exercise of the Committee's Terms of Reference are delegated to Directors, Heads of Service and other relevant officers and as such there is no requirement to amend the Terms of Reference in respect of the Rapid Response Procedure.
- 4.13 In considering the proposed process in Appendix 1, the Committee should be satisfied that any decision adopted in this authority is based on the following factors:
- is in line with best practice,
 - is in the interest of public safety,
 - the licence holder is treated fairly and given an opportunity to discuss the matter
 - decision making process is clear and transparent.
- 4.14 If the recommended Rapid Response Procedure is adopted, the existing policy documents detailed in paragraph 4.8 will be updated and amended as required to incorporate the new policy.

5. WELL-BEING OF FUTURE GENERATIONS

- 5.1 This report and associated proposals contributes to the Well-being Goals as set out in Links to Strategy above. It is consistent with the five ways of working as defined within the sustainable development principle in the Act in that there is an emphasis on prevention as the process ensures that a number of checks and safeguards are in place before a licence is granted and the recommendation enables swift action to be taken for serious issues. The proposed policy is integrated in that it contributes to a number of the Well-being goals and supports the objectives of other stakeholders.
- 5.2 The Council has a mandatory obligation to licence those persons who seek to drive hackney carriages or private hire vehicles and to ensure that those drivers are fit and proper persons to do so, that they comply with all regulations, conditions and byelaws which may have an effect on them or the public. The prime focus for the Council is to ensure public safety and to provide an efficient and effective licensing service.

6. EQUALITIES IMPLICATIONS

- 6.1 The Council ensures that it treats all individuals and organisations, those currently licensed, those who are renewing or making new applications for licenses, with equal respect both when corresponding with those individuals and organisations, and during the licensing approval process. Adopting the policy will increase transparency and openness for everyone involved and will improve consistency of approach and fairness.

7. FINANCIAL IMPLICATIONS

- 7.1 There are no financial implications resulting from this proposal.

8. PERSONNEL IMPLICATIONS

- 8.1 Officers from Licensing, and the Head of Service for Public Protection would be required to take part in an emergency meeting together with a representative from Legal Services where appropriate as indicated in Appendix 1. It is however expected that such instances would be few in number and that the majority of issues with existing drivers would continue to be referred to the relevant Sub Committee.

9. CONSULTATIONS

- 9.1 All responses from consultations have been incorporated in the report.

10. RECOMMENDATIONS

- 10.1 That Members approve the proposed Rapid Response Procedure detailed in Appendix 1.

11. REASONS FOR THE RECOMMENDATIONS

- 11.1 To protect public safety by enabling swift action to be taken when serious issues regarding the fitness of licensed drivers of Hackney Carriages and Private Hire Vehicles are notified to the authority.

12. STATUTORY POWER

- 12.1 Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847. Road Traffic Act 2006.

Author: Myra McSherry, Licensing Manager, mcshema@caerphilly.gov.uk
Consultees: Cllr Denver Preece Chair, Licensing Committee
Cllr Julian Simmonds, Vice Chair, Licensing Committee
Cllr Eluned Stenner, Cabinet Member for Environment and Public Protection
Robert Hartshorn, Head of Public Protection
Gail Williams, Interim Head of Legal Services/Monitoring Officer
Jacqui Morgan, Trading Standards, Licensing and Registrars Manager
Mike Eedy, Finance Manager
Lisa Lane, Corporate Solicitor
Sue Ead, Solicitor, Legal Services
Anwen Rees, Senior Policy Officer (Equalities and Welsh Language)
Shaun Watkins, HR Manager

Background Papers:

Local Government Association Taxi Handbook 2016: <https://www.local.gov.uk/taxi-and-phv-licensing-councillors-handbook-england-and-wales>

Fitness Criteria for Drivers and Operators.

Hackney Carriage and Private Hire Drivers Policy and Conditions

Appendices:

Appendix 1 Rapid Response Procedure following Notification of Serious Issues Relating to Licensed Hackney Carriage/Private Hire Vehicle Driver

**Rapid Response Procedure
Following Notification of Serious Issues Relating to Licensed Hackney Carriage /
Private Hire Vehicle Driver.**

Procedure

1. Notification of a serious issue to be considered under this procedure will only be accepted from the Police or a qualified medical officer. The following list is not exhaustive or exclusive, but serious issues could include:

- (i) Charges / investigations of allegations of rape,
- (ii) other sexual related incidents,
- (iii) violent attacks
- (iv) charges of driver causing motoring accidents involving loss of life or serious injury
- (v) charges of dangerous driving including driving under the influence of alcohol or drugs
- (vi) medical related issues which means the driver cannot meet the DVLA Group 2 standard.

2. Reports of a serious issue received from a member of the public will always be referred to the Police and be recorded by the Council. No action will be taken in respect of these reports until such time as they are verified by the Police. Less serious matters may be referred to the Taxi and General Sub Committee for determination.

3. Following receipt of information from Police or Medical Practitioner the following steps are to be followed

4. Driver(s) will be contacted by an officer of the Licensing section, advised of the allegation and requested to attend a meeting details of which are set out in paragraph 9 at the Council offices within a period of 24/48 hours (excludes weekends and bank holidays) from the initial contact in order to put forward their case.

5. If the information relates to more than one driver each shall be dealt with independently of any other. Every effort must be made to contact the driver whether by telephone call, voice mail, text, home visit (always by two officers and if relevant in the presence of a police officer) or a combination of methods. All attempts to communicate with the driver must be documented.

6. Prior to the meeting being held any comments made by the driver in the presence of officers must be documented and will be presented to the meeting.

7. If a driver refuses to attend the meeting the matter will be dealt with in their absence and the decision making process will not be delayed.

8. The meeting must be documented and all reasons and decisions are to be recorded in writing.

9. The meeting will be attended by:

a) The Head of Public Protection or Trading Standards, Licensing and Registrars Manager.

b) Licensing Officer

c) A representative of the legal department, if appropriate.

d) The driver and any representative he/she may wish to accompany him

10. A Licensing officer shall notify the meeting of any pertinent details including details of the information received and any comments made by the driver.

11. The driver shall be given every opportunity to explain any relevant circumstances.

12. Notes will be made regarding the reason for non-attendance of any party.

13. The driver must be served with a notice immediately advising him/her of the decision which will be made by the person present at the meeting as listed in 9 (a) and that in the case of suspension or revocation **that it has immediate effect**. The notice must also advise them of the appeal rights within 21 days of being served with the notice. The driver must also surrender his/her badge

14. Where a driver's licence has been revoked through this procedure, a new application will only be considered where there has been a change of circumstances. Determination of a new application will take account of the period of the licence remaining when it was revoked and dependant on the requirements in respect of medicals, DBS and DVLA checks etc.

15. All details pertaining to the allegation shall be excluded from the public domain as the matter may be subject to formal procedures at a later stage.