

26TH JULY 2023

REPORT NO. OS2310

SCHEME OF DELEGATION UPDATE - TAXI LICENSING HEARINGS

1. INTRODUCTION

- 1.1 In July 2021 following publication of the Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards, a decision was taken to update the scheme of delegation in respect of taxi hearings, a full copy of the report is given at Appendix 1.
- 1.2 Having considered the impact of this, to ensure expediency of decision making in accordance with the Council's Taxi Licensing Policy, the best use of resources and that the contentious and most appropriate decisions are referred to the Licensing Sub-Committee, this report proposes an amendment to the scheme of delegation.

2. BACKGROUND

2.1 Taxi Decision Making

- 2.2 The council's scheme of delegation currently states that where the Executive Head of Operations or Delegated Officer, is minded to refuse or revoke a licence for a private hire operator or a hackney carriage and/or private hire driver the case be referred to committee for a decision.
- 2.3 The DfT guidance states:

The Regulatory Structure

5.6 It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board. This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation.

5.7 It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the functions in accordance with the general principles referred to in 5.4. In particular, the Committee/Board model allows for:

- Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them. Oversight and scrutiny can be provided in relation to the licensing service generally, which can provide independent and impartial oversight of the way that the functions are being discharged within the authority.
- Clear separation between investigator and the decision maker – this demonstrates independence, and ensures that senior officers can attempt to resolve disputes in relation to service actions without the perception that this involvement will affect their judgement in relation to decisions made at a later date.

5.8 Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.

5.9 Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.

5.10 Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.

5.11 Whether the structure proposed is introduced or an alternative model is more appropriate in local circumstances, the objective should remain the same - to separate the investigation of licensing concerns and the management of the licence process. Regardless of which approach is adopted, all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

2.4 PROPOSALS

3.1 Taxi Decision Making

3.2 It is proposed that the scheme of delegation is amended; to ensure expediency of decision making in accordance with the Council's Taxi Licensing Policy, the best use of resources and that the contentious and most appropriate decisions are referred to a taxi licensing hearing. For this purpose, it is recommended that the scheme of delegation is amended to read:

"Where the Executive Head of Operations (or delegated officer) proposes to refuse or revoke a licence for a private taxi hire operator or a hackney carriage and/or private hire driver, the matter shall be referred to a taxi licensing hearing for decision in the following circumstances:

- The proposed decision would not be in accordance with the Council's Taxi Licensing Policy and it is not deemed urgent on public safety grounds
- The Executive Head of Operations (or delegated officer) considers it appropriate in a particular case e.g. it is a contentious matter.

Decisions by the Executive Head of Operations (or delegated officer) to suspend, refuse or revoke a licence for a private taxi hire operator or a hackney carriage and/or private hire driver, which are in accordance with the Council's Taxi Licensing Policy and not deemed urgent on public safety grounds, shall be made in consultation with the Chairman of the Corporate Governance, Audit and Standards Committee."

3.3 In urgent cases the current delegated powers to officers should remain in place, in accordance with the DfT guidance, to allow for expedient decisions to be made where appropriate.

4. FINANCIAL, EQUALITIES & LEGAL IMPLICATIONS

4.1 There are no financial implications from the proposals.

4.2 The changes recommended would promote equality and fair decision making.

4.3 The recommendations are made to ensure that our decision-making process is broadly in line with the statutory guidance from the DfT. Officers are mindful of the implication of resourcing for hearings and the importance of objectivity in decision-making. The proposed amendments should assist with this. A decision to depart from the statutory guidance, could have legal implications in any appeal hearings.

4.4 All decisions made in respect of the content of this report are subject to appeal to the Magistrates' Court.

5. RECOMMENDATION

5.1 The Committee is recommended to approve that:

The scheme of delegation set out in Part 3, Section 4, Para 4.5.3 of the constitution (taxi and private hire licensing and associated licensing arrangements) be updated to state: Where the Executive Head of Operations (or delegated officer) proposes to refuse or revoke a licence for a private taxi hire operator or a hackney carriage and/or private hire driver, the matter shall be referred to a taxi licensing hearing for decision in the following circumstances:

- The proposed decision would not be in accordance with the Council's Taxi Licensing Policy and it is not deemed urgent on public safety grounds
- The Executive Head of Operations (or delegated officer) considers it appropriate in a particular case e.g. it is a contentious matter.

A further paragraph 4.5.4 be added as follows:

Decisions by the Executive Head of Operations (or delegated officer) to suspend, refuse or revoke a licence for a private taxi hire operator or a hackney carriage and/or private hire driver, which are in accordance with the Council's Taxi Licensing Policy and not deemed urgent on public safety grounds, shall be made in consultation with the Chairman of the Corporate Governance, Audit and Standards Committee.

BACKGROUND DOCUMENTS:

None

CONTACT DETAILS:

Report Author – Shelley Bowman - Licensing Manager

Executive Head of Service – James Duggin – Executive Head of Operations

APPENDIX A – Previous Committee Report

**CORPORATE GOVERNANCE, AUDIT
AND STANDARDS COMMITTEE**

HEAD OF OPERATIONS

27TH JULY, 2021

REPORT NO. OSP2109

TAXI LICENSING HEARINGS & WHEELCHAIR ACCESSIBLE VEHICLES

3. INTRODUCTION

- 1.1 In July 2020 the Department for Transport (DfT) published Statutory Taxi and Private Hire Vehicle Standards, a full copy of these is given at Appendix 1. These state “The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.” In addition, the DfT have previously published Statutory Guidance on Access for Wheelchair Users to Taxis and Private Hire Vehicles, to coincide with the commencement of sections 165 & 167 of The Equality Act 2010. A full copy of these is given at Appendix 2.
- 1.2 Whilst a number of other changes will be required to ensure that the Council’s Taxi Licensing processes are in accordance with all of these standards, others will be considered as part of the review of the overarching Taxi Licensing Policy as they deal with application requirements, this report deals with some of the measures that could be implemented sooner.

4. BACKGROUND

2.1 Taxi Decision Making

- 2.2 The council’s scheme of delegation allows for all decisions on taxi licence applications, and any interferences with licences once issued to be made by the Head of Operations or delegated officers. Historically, these decisions have been made by officers with the option to refer them to a sub-committee, which has been determined by the Manager / Head of Service on an exception basis with no specific criteria and has resulted in very few taxi hearings.

- 2.3 The DfT guidance states:

The Regulatory Structure

5.6 It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board. This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation.

5.7 It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the functions in accordance with the general principles referred to in 5.4. In particular, the Committee/Board model allows for:

- Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them. Oversight and scrutiny can be provided in relation to the licensing service generally, which can provide independent and impartial oversight of the way that the functions are being discharged within the authority.
- Clear separation between investigator and the decision maker – this demonstrates independence, and ensures that senior officers can attempt to resolve disputes in relation to service actions without the perception that this involvement will affect their judgement in relation to decisions made at a later date.

5.8 Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.

5.9 Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.

5.10 Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.

5.11 Whether the structure proposed is introduced or an alternative model is more appropriate in local circumstances, the objective should remain the same - to separate the investigation of licensing concerns and the management of the licence process. Regardless of which approach is adopted, all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

2.4 **Wheelchair Accessible Vehicles**

2.5 The Council has a policy whereby all Hackney Carriage vehicles are required to be wheelchair accessible, purpose-built taxi vehicles and conditions requiring drivers of these vehicles to provide reasonable assistance to passengers. However, to date has not used the power contained within The Equality Act 2010 to designate vehicles as wheelchair accessible vehicles, thereby meaning that the duties on drivers in The Equality Act do not apply, and there is no criminal offence for failing to comply with them. The duties in the act are:

- to carry the passenger while in the wheelchair;
- not to make any additional charge for doing so;
- if the passenger chooses to sit in a passenger seat to carry the wheelchair;
- to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- to give the passenger such mobility assistance as is reasonably required.

The act goes on to define mobility assistance as:

- To enable the passenger to get into or out of the vehicle;
- If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
- To load the passenger's luggage into or out of the vehicle;
- If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

2.6 The Council already has a mechanism in place for drivers of wheelchair accessible vehicles to apply for an exemption from the carriage of passengers in a wheelchair on medical grounds in accordance with S166 of the act which was commenced earlier.

2.7 Recently, the Council have received some complaints regarding the refusal of passengers in wheelchairs, whilst these are still under investigation, the additional regulatory options that designating vehicles in accordance with the DfT guidance would provide, is likely to result in a more appropriate response in circumstances where drivers fail to provide an acceptable service.

5. **PROPOSALS**

3.1 **Taxi Decision Making**

3.2 It is proposed that the criteria for referral to committee for taxi decisions is formalised, to ensure that the most contentious decisions are determined by a panel of trained, elected members in accordance with the DfT guidance. For this purpose, it is recommended that where the Manager, or Head of Service in

the case of an escalated case, is minded to refuse or revoke a licence for a private hire operator or a hackney carriage and/or private hire driver the case be referred to committee for a decision.

3.3 For less complex cases the current delegated powers to officers should remain in place, in accordance with the DfT guidance, to allow for expedient decisions to be made where appropriate.

3.3 In para. 5.7 of the DfT guidance detailed above it states that “it is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision-making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them.” It is therefore recommended that for those decisions set out in para 3.2 above, a panel of three Members is drawn from the CGAS Committee by rotation to form a taxi hearing, and that the Head of Democracy and Community be authorised to make the appointments from amongst the trained members of the CGAS Committee. This is in keeping with the arrangements used for the licensing sub-committee (alcohol and entertainments).

3.4 Further details related to the proposed arrangements for taxi hearings are set out in the accompanying protocol and procedures attached at Appendix 3, which are also recommended for approval.

3.5 To support committee members, it is proposed that relevant training is provided which incorporates mock hearings based on previously determined cases, to comply with the DfT guidance and ensure that members are confident in decision making on cases of this nature. The scheme of delegation allows for decisions to be made by Head of Service / Managers in the current way until such time as sufficient members are trained.

3.6 **Wheelchair Accessible Vehicles**

3.7 It is proposed that the Council designates wheelchair accessible vehicles in accordance with the power provided at S167 of The Equality Act 2010, therefore introducing statutory duties on the drivers of these vehicles. The DfT guidance makes a recommendation that the criteria used to determine that a vehicle is designated is if it would be possible for the user of a “reference wheelchair (as defined in Schedule 1 of The Public Service Vehicle Accessibility Regulations 2000, a copy of which is given at Appendix 4) to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.”

3.8 As this is a defined criteria, and in order to ensure expedient processing of licensing applications it is proposed that determination of whether a vehicle is designated in accordance with the above criteria be delegated to officers in accordance with the current scheme of delegation.

3.7 It is proposed that Licensing Officers produce a draft list of vehicles to be designated in accordance with the criteria, and that the proprietors / drivers of these vehicles be informed in writing of the decision to designate the vehicle, the duties that this puts on them and additional information to assist them in

those duties. As there is a right of appeal to the Magistrate's Court within 28 days of the decision, the designated vehicles list and duties be published online and therefore made available to members of the public at the end of the appeal period, for all vehicles where no appeal has been received.

4. FINANCIAL, EQUALITIES & LEGAL IMPLICATIONS

- 4.1 The only financial implication of the proposals is the additional member and officer time required to administer hearings which can be borne from existing budgets. Whilst there is no way of knowing the number of applications and incidents of this nature that will occur in the future, there have been 5 licences revoked and 10 applications refused in the last two years.
- 4.2 The changes recommended would promote equality and fair decision making.
- 4.3 The recommendations are made to ensure that our decision making process is in line with the statutory guidance from the DfT.. A decision to depart from the statutory guidance, could have legal implications in any appeal hearings.
- 4.4 All decisions made in respect of the content of this report are subject to appeal to the Magistrates' Court.

5. CONCLUSIONS AND RECOMMENDATION

- 5.1 The DfT have released statutory guidance in respect of the above matters. The Licensing Authority are required to have regard to this guidance and should only differ from their recommendations where there is a compelling local reason to do so. Whilst there are other elements to be considered, implementation of the following recommendations would bring Rushmoor in line with the guidance in these areas.

The Committee is recommended to approve that:

- 1. The scheme of delegation set out in Part 3, Section 4, Para 4.5.2 of the constitution (taxi and private hire licensing and associated licensing arrangements) be updated to reflect that where the authorised officer is minded to refuse or revoke a licence for a private taxi hire operator or a hackney carriage and/or private hire driver, the matter be referred to a taxi licensing hearing for decision. However, an exception to be specified that delegation to the Head of Operations will remain in place where it is deemed urgent or necessary for an expedient decision.
- 2. A panel of three members drawn from the CGAS Committee by rotation, forming a sub-committee, be authorised to deal with the determination of taxi licensing applications, as set out in Recommendation 1 above, and that the Head of Democracy and Community be authorised to make the appointments to the sub-committee from amongst the trained members of the CGAS committee in accordance with the proposed protocol and

procedure attached at Appendix 3.

3. The Taxi Hearings Protocol & Procedure at Appendix 3 be adopted.
4. Training to support Members to determine matters at taxi licensing hearings be arranged, and that the Head of Operations shall continue to use delegated powers in the absence of trained Members.
5. Wheelchair Accessible Vehicles should be designated in accordance with the power provided at S167 of The Equality Act 2010 using a reference wheelchair as detailed at Appendix 4.
6. The designation of Wheelchair Accessible Vehicles be delegated to officers in accordance with the current scheme of delegation.

JAMES DUGGIN
HEAD OF OPERATIONS

Contact: shelley.bowman@rushmoor.gov.uk Licensing Manager