

# Licensing Committee

## Exception to Hackney Carriage and/Private Hire Driver Policy – Head of Service Guidelines

3 April 2013

### Report of Head of Public Protection and Development Management

#### PURPOSE OF REPORT

To advise the Licensing Committee of the consideration given by the Head of Public Protection and Development Management when exercising his delegated powers in determining applications for exceptions to Hackney Carriage and/Private Hire Driver Licences.

This report is public

#### Recommendations

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The Licensing Committee is recommended:

- (1) Note and endorse the consideration given by the Head of Public Protection and Development Management when determining applications for exception to Policy as detailed in the contents of this report.

#### Executive Summary

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##### Introduction

- 1.1 When applying for Hackney Carriage (HC) and/or Private Hire (PH) driver's licence, applicants must ensure that they meet the requirements of Cherwell District Council 'Guidance to applicants for Hackney Carriages and/or Private Hire Vehicle driver licences'. A full copy of the guidance is attached at Appendix 1.
- 1.2 The Head of Public Protection and Development Management have delegated authority in the Council's Constitution to make decisions on any Hackney Carriage (HC) or Private Hire (PH) Vehicle and Driver Licence application.
- 1.3 The Council's specification normally covers the majority of applications received by the Council for HC and PH driver licences. However, recent case law has come to light which affects the way enforcement action is taken against licence holders and the future of their licences.

- 1.4 If a complaint is received against a licensed driver that results in that person not meeting the Council's requirements to be a 'fit and proper' person, legislation dictates that there are two routes available for action to be taken. This is to either suspend the licence or to revoke the licence.
- 1.5 In the majority of instances, a suspension is used. This can be imposed with immediate effect should the matter concerned require it. This would permit an investigation to be carried out into the matter or for the matter to be rectified if possible, for example, on medical grounds.
- 1.6 New case law, Singh Vs Cardiff City Council has ruled that licensed drivers should not be suspended as a form of punishment for an unlimited time period. In these instances, revocation should be used. The relevant paragraphs of the document are as follows:

1.7 Revocation and suspension in the case of Mr Morrissey

*100. The claimant submitted that in any event, quite apart from his other arguments what happened in this case was that on 5th July 2011 the defendant decided to suspend his licence rather than to revoke it. It was submitted, as it were, that the defendant authority was therefore "functus officio". It was submitted there is no power of interim suspension in section 61 of the 1976 Act.*

*101. I would accept those argument on behalf of the claimant Mr Morrissey, in this case.*

*102. Returning to the language of section 61, I remind myself that this was not a case in which any attempt was made to activate the suspension of the licence to have immediate effect pursuant to the interest of public safety basis in subsection (2B). The notice sent to Mr Morrissey did not purport to invoke that provision or to make the suspension immediately effective.*

*103. In my judgment, the way in which the concept of suspension is used by Parliament is section 61 of the 1976 Act is not, as it were, to create a power of interim suspension, it is rather after a considered determination in other words a final decision on whether a ground for either revocation, or suspension of a licence is made out, for there to be either revocation or, as a lesser sanction, a sanction of suspension.*

*104. By way of analogy, one can envisage for example in a professional context a solicitor or a barrister can be disciplined on grounds of his conduct. The relevant disciplinary body may conclude that even if the misconduct has been established, that the appropriate sanction should be something less than complete revocation of the practising certificate for the relevant lawyer. It may be, for example, a suspension for a period of 1 year, will constitute sufficient sanction in the interests of the public.*

*105. It is in that sense, in my judgment, that Parliament uses the concept of suspension in section 61 of the 1976 Act. It does not use, as it were, to create an interim power, before a reasoned determination has been made, that the grounds in subsection (1A) or (1B) have been made out. It is not, as it were, a protective or holding power. It is a power of final suspension, as an alternative to a power of final revocation. For those reasons I accept that aspect of Mr Morrissey's claim for judicial review also.*

- 1.8 The full judgement is attached to this document as Appendix 2.

- 1.9 The ruling has an impact on the operations of the Licensing Team and the manner in which they deal with drivers and pending investigations.
- 1.10 If a driver has his licence suspended, on grounds that are later diminished, for example on medical reasons that are rectified or criminal charges that they are exonerated from, the licence can easily be reinstated if it has not expired during the suspension period.
- 1.11 If a driver has his licence revoked and then the reason for the revocation is diminished as outlined above, the driver would have to reapply for their HC/PH Driver licence following the full application process including passing a knowledge test and undertaking medical, Criminal Records and DVLA checks accompanied by paying an application fee.
- 1.12 This process could take several months and such a process could be deemed as unreasonably preventing the driver from working.
- 1.13 Therefore, the Licensing Committee are asked to consider the guidance set out below at paragraphs 1.14 to assist the Head of Public Protection and Development Management when considering exceptions to policy of grant applications for Hackney Carriage and/Private Hire Drivers licences following revocation.
- 1.14 Whilst it is acknowledged that Policy can not cover every possible scenario and that each case should be considered upon its individual merits, the Head of Public Protection and Development Management will take into account the following guidance when determining if an applicant is suitable to be considered as an exception to policy:

- **Nature of the grounds for revocation**

There are numerous reasons that a licence may be revoked upon, but all of these would result in the driver not being deemed as a 'fit and proper person' at that the time of revocation in accordance with Section 61 of the LG (MP) Act 1976. Consideration of a new application following revocation would only be considered if the applicant fulfils the criteria as a 'fit and proper person' and the original reasons for revocation have been diminished. The full guidance upon the Council's interpretation of a 'fit and proper person' is detailed in the Council's 'Guidance to applicants for Hackney Carriages and/or Private Hire Vehicle driver licences'. The applicant must ensure they fulfil these criteria in addition to the reason for revocation being diminished prior to any consideration being given by the Head of Service. The responsibility to meet these criteria will be that of the applicant and may require in some circumstances the applicant to submit new checks to the Disclosure & Barring Service (previously Criminal Records Bureau) and the DVLA depending on the nature of the revocation. This will be at the discretion of the Head of Service.

- **Time period that has elapsed since the revocation was imposed**

Consideration will not be given to any applicants whose licence has been revoked for a period of six months or longer. In these circumstances, the applicant will be required to undertake the full application process.

- **Revocation on Medical Grounds**

If the revocation was instigated for medical reasons, the applicant must provide proof that the matter is no longer a concern to the satisfaction of the Council's Medical Advisor prior to any consideration by the Head of Service.

- **Revocation on criminal grounds**

The applicant must provide proof that they have been exonerated from all charges to a level that goes beyond reasonable doubt prior to any consideration by the Head of Service. The applicant may be requested to provide records to prove such exoneration and may be required to undertake further checks at the request of the Head of Service.

- **Right to discretion**

Any consideration for an exception to policy will be at the discretion of the Head of Service. It is considered that this discretion will only be applied in exceptional circumstances and that for the majority of cases, a revocation of a licence is a permanent status.

- 1.15 If the Head of Public Protection and Development Management are minded to grant an exception to the Policy he may apply specific conditions related to that particular applicant. It is also possible for the Head of Public Protection and Development Management to issue short term licences (any period less than the standard 3 year licence) if appropriate.

## **Conclusion**

The contents of this report are to advise the Committee of the guidance considered by the Head of Public Protection and Development Management in conjunction with existing policy when considering whether or not to make an exception to policy.

## **Background Information**

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- 2.1 Cherwell District Council Licensing Team issues all licences in relation to Hackney Carriage and Private Hire Driver, Vehicle and Operator licences in accordance with the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976
- 2.2 Applicants have a right of appeal to the Magistrates Court when any decision to suspend or revoke a licence is made.
- 2.3 As a result, the Licensing Team undertake enforcement as well as administration of the different licence types.
- 2.4 The main focus of the Licensing Team is to ensure that all licence holders within the district operate within the legislation and in a manner that promotes public safety.

## **Key Issues for Consideration/Reasons for Decision and Options**

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- 3.1 The Head of Public Protection and Development Management has a duty of care to the public and so any determination will always be made in the interest of public safety.
- 3.2 Each application must be considered on its own merits but by applying the factors above and by securing Licensing Committee endorsement, the Head of Public Protection and Development Management can ensure that a consistent approach is taken.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One** To note the contents of this report and approve the guidance set out above for the Head of Public Protection and Development Management to take into consideration when determining an application for exception to be made to current policy.
- Option Two** To note the contents of the report and to suggest amendments to the guidance set out above.

## **Consultations**

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- Not Applicable** The contents of this report are to advise the Committee of the guidance to be considered by the Head of Public Protection and Development Management when making exceptions to policy in the circumstances outlined above.

## **Implications**

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- Financial:** There are no financial implications arising from this report.  
Comments checked by Kate Drinkwater, Service Accountant, 01327 322188
- Legal:** Where an application for a Hackney Carriage and/Private hire Drivers Licence is refused, the applicant has a right of appeal to the Magistrates Court. The existing specification and use of the suggested guidance for exception to Policy requests will help to prevent such challenges. In addition all applications of this type are taken through Legal for opinion prior to the Head of Public Protection and Development Management making a determination  
Comments checked by Nigel Bell, Team Leader – Planning & Litigation, 01295 221687

**Risk Management:** As detailed in the legal implications, applicants may challenge the decision of the Head of Public Protection and Development Management, the use of existing policy as well as guidance for exception to Policy requests and seeking legal input prior to determination mean the risk is low.

Comments checked by Nigel Bell, Team Leader – Planning & Litigation, 01295 221687

### **Wards Affected**

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All

### **Document Information**

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<b>Appendix No</b>	<b>Title</b>
Appendix 1	'Guidance to applicants for Hackney Carriages and/or Private Hire Vehicle driver licences'
Appendix 2	Singh Vs Cardiff City Council
<b>Background Papers</b>	
Copies of the relevant sections of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 are available for the Licensing Team upon request.	
Copies of the Council's current policy in relation to the licensing of Hackney Carriage and/Private Hire Drivers Licences have been issued to all members. Further copies can be obtained from the Licensing Team.	
Copies of the Councils Scheme of Delegation, as issued in October 2012, can be obtained from Legal & Democratic Services	
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