

# Licensing Committee

## Taxi License Applications and Appeals Process

15 December 2009

### Report of Head of Urban and Rural Services

#### PURPOSE OF REPORT

1. To secure approval for an amendment to the Council's Constitution and to the Scheme of Delegation relating to licensing activities within the Council.
2. To secure approval for revised Licensing Committee processes specifically in relation to dealing with Licence appeals by Hackney Carriage Vehicle (HCV) and Private Hire Vehicle (PHV) licence holders.
3. To secure approval for changes to the HCV and PHV license application process, specifically the Knowledge Test and disability awareness training.
4. To secure approval for inclusion of additional Conditions on HCV and PHV drivers licences.

This report is public

#### Recommendations

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The Committee is recommended to :

1. Approve amendment to the Scheme of Delegation to clarify delegation to Head of Urban and Rural Services of enforcement powers and associated actions relating to both the Licensing Act 2003 and Gambling Act 2005.
2. Approve the amendments to the Taxi Licensing Appeals process as set out in this report by removing from Licensing Committee responsibility the function of receiving and hearing appeals.
3. Recommend to Council that the Council's Constitution is amended to reflect the recommendations in 1 and 2 above.
4. Approve the changes proposed for the Knowledge Test and Disability Awareness training for HCV and PHV licence applicants/holders as set out in this report.
5. Approve the inclusion of additional Conditions on HCV and PHV driver licences as set out in this report.

## **Executive Summary**

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The Council's Constitution sets out the functions of the various Council committees including of the Licensing Committee.

Following introduction of the revised Council Constitution and Scheme of Delegation, the experience over recent months; new information on licensing legislation; and the proactive inspection and enforcement activity, have led to the need for amendments to the Constitution and proposals for a streamlined HCV/PHV licence appeals process.

Experience on managing licence applications following the establishment of the new Licensing Team have identified the need for clarity on the number and frequency of Knowledge test re-sits by licence applicants and for the need to secure cost savings from delivering Disability Awareness training to licence holders.

Work with Thames Valley Police has identified that additional Licence Conditions for HCV and PHV vehicles will be beneficial in helping to tackle serious sexual crime.

## **Scheme of Delegation and Council Constitution**

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- 1.1 The Council's revised Constitution has now been in place for a number of months and we have benefit of working with the updated Scheme of Delegation during this time. As a consequence of this experience, it has become apparent that matters related to enforcement and administration of the Licensing Act 2003, the Gambling Act 2005 and other licensable activities should be further clarified and to delegate functions to the Head of Urban and Rural Services to enable him to discharge effectively the enforcement and associated activities relating to this work.
- 1.2 Appendix 1 sets out the proposed revisions to the Council's Constitution.
- 1.3 The delimitation of HCV licences in 2008 and the establishment of a restructured Licensing Team now undertaking more proactive monitoring of licensed premises/holders, has seen a significant increase in enforcement activity and the consequent proceedings that are attached to managing and discharging this regulatory work.
- 1.4 Opening up the taxi market, which was achieved with delimiting HCV licensing, has had the desired effect of increasing the number of applications for HCV and PHV licences. There is a rigorous process that has to be successfully completed for an applicant to be issued a HCV/PHV licence. This is to ensure that licences are issued only to individuals considered to be 'fit and proper persons' (the best practice test that is applied in judging suitability of applicants) and that, as the Licensing Authority, we are ensuring the public are provided with the safeguards they would expect when using any licensed service.
- 1.5 The requirements to become a licensed taxi driver are set out in the Council's HCV and PHV Policy. This includes, amongst other things, satisfactory Criminal Records Bureau Disclosures and DVLA checks for all applicants (and 3 yearly Licence renewals).

- 1.6 Where Disclosures identify that an individual has a record of activity that has come to the attention of and been recorded by the police, an application for a licence has necessarily to be subject to more rigorous assessment by the Licensing Team, occasionally leading to a recommendation not to issue/renew a licence.
- 1.7 All such recommendations are referred to the Head of Urban and Rural Services with a detailed report from the officer handling the application/renewal. The Head of Service then has delegated powers to determine such applications/renewals.
- 1.8 Licence refusals, suspensions and revocation decisions are not taken lightly and part of the officer process is to consult fully with the Council's Legal Services Team and, where appropriate, Thames Valley Police. The process will always involve full investigation at officer level and detailed file notes being prepared. It can often include interviews with the individual concerned and, occasionally, PACE interviews.
- 1.9 In cases where the Head of Urban and Rural Services determines that, in view of the evidence presented, an application/ renewal should not be granted, the individual currently has a right of appeal to the Licensing Committee.
- 1.10 The Council's Constitution sets out the functions of the of the Licensing Committee, including:

"To provide a forum for applicants who may wish to appeal against decisions of the Head of Urban and Rural Services in respect of licensing of hackney carriages, private hire vehicles, hackney carriage/private hire vehicle drivers and private hire vehicle operators, without prejudice to the right of applicants to appeal to the Magistrates' Court"
- 1.11 The Head of Legal and Democratic Services has advised that there is no legislative requirement for the Council to undertake this appeals function. The Local Government Miscellaneous Provisions Act 1976 provides a route of appeal to the Magistrates Court.
- 1.12 The Council has held sub-committees for appeals only because the Council's Constitution provides for it. The experience of all license refusals handled by the Licensing Team this year is that they have all progressed to the Magistrates Court. To streamline what has become a lengthy, costly and duplicitous process of administering appeals, it is proposed that the function of hearing appeals is deleted from the Licensing Committee's responsibilities. All appeals by HCV/PHV licence applicants/holders of decisions made by the Head of Urban and Rural Services would then be directly to the Magistrates Court.
- 1.13 This would reduce the current three stage appeal process to two stages with consequent efficiencies in administration by the Council and a speedier resolution for appellants.
- 1.14 In all cases where appeals are made by applicants to the Magistrates Court there are court costs that the appellant has to pay. Subject to the outcome of the Court Hearing, costs may fall to the Council. But this is the case currently if appellants go through all three stages and then successfully appeal at Magistrates Court.

## **Knowledge Test**

- 1.15 Part of the Licence application process is a local 'Knowledge Test'. Applicants have to pass this (along with satisfactory completion of the other checks) before a licence can be issued.
- 1.16 Trade associations have in the past been critical of the Knowledge Test, indicating that it is too easy; this has led to a completely revamped test being rolled out earlier in the year.
- 1.17 However, there is no current limit to the number of times applicants can take the test. License fees cover the cost of two tests after which there is a £25 fee for each test. To further strengthen and add rigour to the application process it is now proposed that an application is restricted to 5 attempts at passing the Knowledge Test. If a pass is not achieved after 5 attempts it is proposed the application be rejected. This helps to manage the time applications are held 'live' and the situations encountered of multiple attempts. One example on file is an applicant undertaking 17 attempts.
- 1.18 This amendment to the HCV/PHV application process does not bar prospective licence holders from re submitting a Licence application but helps to manage the process.

## **Disability Awareness Training**

- 1.19 Disability Awareness training forms part of the post licence issue process to ensure the highest standards within the taxi trade.
- 1.20 There was a time when the training was mandatory prior to a Licence being issued, but this required timetabling of training on a monthly basis which became too costly as the Council has to use external trainers. Training was then timetabled on 4 occasions in the year and a Licence condition added that newly granted Licence holders were required to attend training within the first 6 months of their Licence being granted.
- 1.21 In the interests of efficiency, and in view of a slowing up of the number of new Licence applications, it is now proposed that frequency of training be dropped to 3 times per year and the time new licence holders have in which to attend this training be extended to 9 months.

## **Additional Licence Conditions to help reduce serious sexual crime**

- 1.22 Thames Valley Police have approached the Council to explore additional HCV/PHV Licence Conditions as part of its strategy to reduce serious sexual crime in the forces region.
- 1.23 A licensed vehicle may not be used in the same way as a private vehicle. Once licensed it remains licensed at all times of use and the Conditions attached to the Licence remain in force.
- 1.24 Thames Valley Police have requested the Council consider adding a Condition that prohibits use of a licensed vehicle for any form of sexual activity, consensual or otherwise. They have evidence that indicates that sexual favours have been exchanged as payment of taxi fares and consider that an absolute position that prohibits sexual activity in a licensed vehicle will have significant impact in helping to reduce the incidents of rape and

assault.

- 1.25 Officers are therefore proposing that the following condition be applied to all HCV/PCV drivers licences:

“Licensed drivers must not engage in any sexual activity in a licensed vehicle, whether consensual or otherwise, with a fare.”

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

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The following options are open to the Sub-Committee

**Option One** To amend the licensing approach/process as set out in the report

**Option Two** To maintain the existing approach/process.

### **Consultations**

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There are no consultations

### **Implications**

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**Financial:** Streamlining the appeals process as recommended will provide service efficiencies and a quicker resolution for appellants.

Comments checked by Joanne Kaye, Service Accountant for Environment & Community 01295 221545

**Legal:** The recommendations in this report require amendment of the Council’s Constitution and agreement of the Council. The recommendations comply with relevant legislation. There is no legal requirement to offer a committee appeal to licence applicants/holders. The addition of a condition on licences prohibiting use of licensed vehicles for sexual activity will help reduce crime and disorder.

Comments checked by Nigel Bell, Solicitor 01295 221687

**Risk Management:** There is a risk to Public Safety should the Council licence an individual who is deemed not to be a “fit and proper” person.

In addition there is a risk to the reputation of the Council, should such an individual be licensed.

There is a risk that if policy and legislation has not been correctly followed, any resulting appeal could be successful.

Comments checked by Rosemary Watts, Risk Management & Insurance Officer 01295 221566

## Wards Affected

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All Wards

## Document Information

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Appendix No	Title
Appendix 1	Scheme of Delegation amendments
Appendix 2	Committee Terms of Reference amendments
<b>Background Papers</b>	
HCV and PHV Policy Council Constitution Scheme of Delegation.	
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