

Allerdale Borough Council

Licensing Committee – 20 March 2019

Delegated Powers and Expedited Process to Reinstate Driver's Licence following Revocation

The Reason for the Decision	To consider the Local Authority's approach to the revocation of Hackney Carriage/Private Hire Drivers' Licences and update delegations.
Summary of options considered	<ul style="list-style-type: none">a) Delegate to the Senior Licensing and Compliance Officer/Licensing and Compliance Officer in conjunction with the Legal and Licensing Manager the revocation of licences under s61 Local Government (Miscellaneous Provisions) Act 1976 and where appropriate as amended by s52 Road Safety Act 2006;b) Delegate to the Senior Licensing and Compliance Officer/Licensing and Compliance Officer in conjunction with the Legal and Licensing Manager, the power to reinstate a drivers licence following revocation;c) To adopt the policy appended to this report entitled "Policy to reinstate Hackney Carriage/Private Hire Drivers licence following revocation".
Recommendation	To approve options a), b) and c) contained in the summary of options above.
Financial / Resource Implications	None
Legal / Governance Implications	<ul style="list-style-type: none">a) The policy addresses issues arising from case law and provides an appropriate balance between public protection and fairness to applicants;b) Updates delegations in line with structural changes within the Council; andc) Enables urgent matters to be dealt with swiftly
Community Safety Implications	<u>To continue to assess the fitness, capability,</u>

safety and knowledge of applicants and licence holders.

Health and Safety and Risk Management Implications

Adhering to case law and updating relevant delegations

Equality Duty considered / Impact Assessment completed

No

Wards Affected

All

The contribution this decision would make to the Council's priorities

Enhancing our towns – enhancing our taxi licensing requirements would encourage a high quality of taxi service and result in thriving and vibrant towns;

Creating a sustainable business –providing improved services to people and communities .

Is this a Key Decision

No

Portfolio Holder

Councillor Joan Ellis

Lead Officer

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Report Implications

Community Safety	Y	Employment (external to the Council)	Y
Financial	Y	Employment (internal)	N
Legal	Y	Partnership	N
Social Inclusion	N	Asset Management	N
Equality Duty	N	Health and Safety	N

Background papers: Appendix 1 – Policy to Reinstate Hackney Carriage/Private Hire Driver's Licence Following Revocation

1.0 Introduction

- 1.1 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 sets out reasons why a licence may be revoked on grounds of the driver not being deemed a "fit and proper" person (based on information available at the time). Delegation is currently in place for an authorised member of the Licensing Department following consultation with the Legal, Licensing and Elections

Manager to revoke a licence. The Legal, Licensing and Elections Manager may choose to defer the decision to the Licensing Panel.

- 1.2 In considering whether to suspend or revoke a Hackney Carriage/Private Hire Driver, if it appears that the interests of public safety require the suspension or revocation to have immediate effect, the decision will be made in accordance with section 61 of the Local Government (Miscellaneous Provisions) Act 1976 as amended by S52 of the Road Safety Act 2006. These provisions enable the Authority to act swiftly if information comes to light.
- 1.3 The High Court ruling of **R (application of Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)** has established that it is unlawful to suspend and then revoke a driver for a single offence. Therefore it is necessary to revoke a driver immediately if the Council becomes aware of information which gives serious concerns about them.
- 1.4 If a licence is revoked and the reason for the revocation is subsequently diminished, the law requires that the driver would have to re-apply for their driver's licence by conducting the full application process. This would include undertaking a medical, DBS check, driving and knowledge tests and paying a fee. This process could take up to six weeks and could be deemed unreasonable if the revocation is subsequently found to be unjustified following the receipt of further information. It is recommended that authorities have an expedited process in place for such occasions. This report proposes a policy be adopted to address these issues including dispensing with the fees and the full application process in appropriate circumstances. This policy is to assist in the timely replacement of a driver's licence when it has been revoked but following investigation it is established that the Council does not have any remaining concerns with regards to the fit and proper nature of the person.
- 1.5 A relevant officer of the Council will decide if an applicant falls in to this part of the policy and the applicant will be advised if this is the case.
- 1.6 The investigation of the Council with regards to establishing whether an individual is fit and proper will take into account any available information. It is not reliant on other authorities' investigations into any connected allegations, although information will always be requested from other agencies when they are known to be involved.
- 1.7 As the Council is required to consider each case on the balance of probabilities, a police investigation which results in an individual not being convicted may not in itself be considered to be sufficient for the Council to issue a new licence to the individual. This is because Police investigations are determined at a higher level of proof, i.e. beyond reasonable doubt. In addition to this, a police investigation may uncover breaches of this policy committed by a driver and the Council would need to take these into account.

2.0 Background

- 2.1 The Local Government (Miscellaneous Provisions) Act 1976 (“the Act”) enables local authorities to administer licences for hackney carriage and private hire drivers. The Act provides that a local authority shall not grant a licence unless they are satisfied that the applicant is a “fit and proper” person to hold such a licence. There is no definition of the term “fit and proper” and the Council can apply any tests and checks it deems appropriate to establish this.
- 2.2 Section 57 of the Act grants local authorities the power to require applicants to submit information, stating,
- “A district council may require any applicant for a licence under the Act of 1847 or under this Part of this Act to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”
- 2.3 It is important that taxi and private hire drivers provide a safe and professional level of service to the public.

3.0 Process

- 3.1 If the Council makes a decision to issue a new licence to a driver whose licence was previously revoked, it is proposed that the following process is adopted:
- a) a new application will be required from the individual;
 - b) existing documents which are “in date” (i.e. are still valid) will be accepted and transferred to the new application with the discretion of officers;
 - c) Depending on the reasons for the revocation, some updated documents may be required. For example if a driver’s health leads to their licence being revoked and their health subsequently improves so they may be considered fit to be a licensed driver, a new medical or other appropriate specialist information from a medical practitioner would be required. The same would be the case for an individual who is subject to a police investigation. Their criminal history would need to be rechecked by submitting a new DBS certificate or checked as part of the DBS update service if the applicant subscribes to that service;
 - d) A knowledge test and practical driving test would be required at officers’ discretion depending upon the reason for revocation;
 - e) The applicant’s DVLA driving licence needs to be rechecked in all cases.

3.2 When a decision is made to issue a new licence, this will usually be processed within five working days of all required documentation being received.

3.3 Fees

The new licence will usually be issued for the period that the revoked licence had left to run and no further charge will be levied, with the exception of any connected costs such as for new documentation which will remain the applicant's responsibility.

4.0 Conclusion

4.1 The purpose behind the report is to ensure that there is an application process in place which can swiftly reinstate a driver's licence if appropriate, following revocation of that licence, once investigations are complete which balances both the rights of a revoked driver and the safety and protection of the public.

5.0 Recommendations

5.1 Delegate to the Senior Licensing and Compliance Officer/Licensing and Compliance Officer in conjunction with the Legal and Licensing Manager the revocation of licences under S61 Local Government (Miscellaneous Provisions) Act 1976 and where appropriate as amended by S52 Road Safety Act 2006;

5.2 Delegate to the Senior Licensing and Compliance Officer/Licensing and Compliance Officer in conjunction with Legal and Licensing Manager, the power to reinstate a driver's licence following revocation; and

5.3 To adopt the policy appended to this report entitled "Policy to reinstate Hackney Carriage/Private Hire Driver's licence following revocation."

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