



Name of meeting: Licensing and Safety Committee

Date: Wednesday 5th October 2022

Title of report: Decision Making - Hackney Carriage and Private Hire Licensing

Purpose of report: For members to consider and resolve a decision-making process relating to the hackney carriage and private hire licensing service.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not Applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	Key Decision - No Private Report/Private Appendix – No
The Decision - Is it eligible for call in by Scrutiny?	Not Applicable
Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance? Is it also signed off by the Service Director for Legal Governance and Commissioning?	Colin Parr – 26.09.22 Eamonn Croston – 22.09.2022 Julie Muscoft – 22.09.2022
Cabinet member portfolio	Councillor Will Simpson

Electoral wards affected: ALL

Ward councillors consulted: None

Public or private: Public

Has GDPR been considered? Yes, there is no personal data contained in this report.

1. Summary

1.1 This report is a result of the consultation for the Department for Transport's Statutory Standards, specifically relating to decision making for the Hackney Carriage and Private Hire Service.

2. Information required to take a decision

2.1 Currently decision making for hackney carriage and private hire licensing is delegated to the Group Leader – Licensing.

2.2 The guidance issued by the Department for Transport recommends that decision making should be the responsibility of a panel of suitably trained elected members.

2.2 The results of the consultation showed that many respondents agreed that decision making should not be the sole responsibility of one person.

2.3 A number of the comments received back from the consultation also suggested that other persons should be a part of the decision-making process, such as:

- Trade Representatives
- Through consultation with the drivers and by calling a meeting
- A group of leaders
- DVLA
- The private hire operator the driver works for

However, to involve any of the above would not be an option due to the sensitive and personal information that disclosed and would be breach of GDPR. Ultimately, it is for the Licensing Authority to make the decision and officers currently take account of information taken from some if not all of these sources.

2.4 At the meeting of the Licensing and Safety Committee on Wednesday 6th July 2022 members instructed officers to investigate possible options relating to decision making and the implications for those options and present a more detailed report.

2.5 A number of options for decision making have been identified from the consultation responses received, these options including pros and cons, can be found at appendix one. The options identified are:

- A Members Panel
- An Officer Panel
- Decisions to remain with the Group Leader for Licensing

2.6 **Appendix 1** provides more detail on how each option would work in practice and the risks and benefits of each option.

3. Implications for the Council

3.1 Working with People

One of the licensing services key priorities is to ensure the standards across the private hire and hackney carriage trade in Kirklees are high to protect the travelling public. We want people to be transported safely, to know they are protected from harm and that they experience a high quality, clean, sustainable and green environment, as well as a good customer experience.

3.2 Working with Partners

In developing its policies and delivering its service the licensing service works with a number of partners including (not exclusively) Kirklees Safeguarding Children's and Adults boards, West Yorkshire Police, Public Health, Environmental Health, Overview and Scrutiny committee, the Community Safety Partnership and the other West Yorkshire Licensing Authorities (Inc. York)

3.3 Place Based Working

There is no specific impact in the context of this report. However, reviewing policies and procedures enables the service to examine the way in which it interacts and engages with licence holders, residents and communities.

3.4 Climate Change and Air Quality

There is no impact in relation to climate change and air quality in this report.

3.5 Improving outcomes for children

The Council has a duty to protect the travelling public and specifically safeguard the vulnerable, which includes the safeguarding of children travelling in licensed vehicles and for the purposes of school transport.

3.6 Financial Implications of people living or working in Kirklees

The decision-making process can result in a licence holder having their licence suspended or revoked. Although some licence holders reside outside the authority, most licence holders live and operate in Kirklees.

In addition, if members are minded to resolve that either a panel of officers or members will make decisions in relation to hackney carriage and private

hire licensing matters will result in a fee review to cover the cost through the fees paid by the licence holders.

3.7 Other (eg Legal/Financial or Human Resources) Consultees and their opinions

Legal

No significant concerns.

Human Resources

A change to the decision making to a panel of officers or members will place an additional administrative and human resource burden on the authority and this will be recovered through a review of the licensing fees.

Financial

It should be noted that any additional administration of either member or officers' panels will have some consequential costs for the authority. Potentially, room bookings, additional officer time etc. However, these costs can be recouped in changes to the Licensing Fees, there may be unforeseen additional administrative costs – these are not considered to be significant.

4. Next steps and timelines

4.1 Members are asked to make a decision about the hackney carriage and private hire decision making responsibility.

4.2 Members are reminded, the standards recommend that decision making should be the responsibility of a panel of suitably trained Councillors.

4.3 If members are minded to deviate from the statutory guidance they are reminded that they are required to provide reasons why are not adopting the guidance.

4.4 Following the decision by members if it is decided that decision making will be the responsibility of a panel of suitably trained Councillors then further work will be required as there will need to be a formal change made to the Council's constitution.

4.5 If members make the decision that the responsibility of decision making were to fall to a panel of officers there will be no requirement for a full change to the constitution.

4.6 It is proposed that if members are minded to agree for decision making to be undertaken by a member or officer panel that this will come into effect on 1st April 2023 as new processes, procedures and resources will be required to facilitate the changes.

4.6 If members decide that the responsibility of decision making is to remain with the Group Leader for licensing a full review will be carried out of the

current process to ensure that the applicant is provided with an opportunity to address the decision maker before the decision is made which will align with the principles of natural justice.

5. Officer recommendations and reasons

5.1 Members are asked to consider the following three options and take a decision on how decision making in relation to private hire and hackney carriage licensing should be undertaken from 1st April 2023: -

1. A members panel,
2. An Officer panel,
3. Remain with the Group Leader for licensing

5.2 If members are minded to deviate from the statutory guidance issued by the Department for Transport it is recommended that members introduce an officer panel.

6. Cabinet Portfolio Holder's recommendations

Councillor Will Simpson has no additional comments.

7. Contact officer

Fiona Goldsmith
Public Protection Group Leader – Licensing

01484 221000(ext 79921) or Fiona.goldsmith@kirklees.gov.uk

8. Background Papers and History of Decisions

[Agenda for Licensing and Safety Committee on Thursday 17th December 2020, 10.00 am | Kirklees Council](#)

[Agenda for Licensing and Safety Committee on Tuesday 20th July 2021, 10.00 am | Kirklees Council](#)

[Agenda for Licensing and Safety Committee on Wednesday 6th July 2022, 10.00 am | Kirklees Council](#)

9. Service Director responsible

Katherine Armitage
Service Director – Climate Change and Environment
Tel: 01484 221000
Email: Katherine.armitage@kirklees.gov.uk

Decision Making Options

1. Members Panel

Benefits	Risks
Level of Impartiality	Delays in decision making in particular around existing licence holders
Addresses concerns raised as part of the consultation on DfT standards	Increased cost (to be borne by licence holder / applicant)
Complies with DfT Standards	Lobbying of Members by licence holders and applicants
	Increased resources required – Licensing, Legal, Governance, meeting room
	Out of step with other WY authorities

Process

Step	Process	Comments
1	<ul style="list-style-type: none"> • Issue comes to light <ul style="list-style-type: none"> ○ Does issue fall within F&P policy Y / N – if yes then step 2 if no then ○ Does licence holder have history that, along with current issue, calls into question their F&P Y / N – if yes then step 2 . if no then investigate issue in isolation and take appropriate action i.e warning, N.F.A 	Issue comes to light via – <ul style="list-style-type: none"> • DBS, • Complaint, • Self-Declaration, • DVLA check, • Enforcement activity, • Other
2.	<ul style="list-style-type: none"> • Officer investigates the issue <ul style="list-style-type: none"> ○ Gather evidence ○ Speak to third parties i.e complainant, police, other agencies ○ Inform licence holder of the issue at hand ○ Prepare to interview licence holder ○ Invite licence holder for interview ○ Hold interview and inform licence holder of next steps ○ Next steps <ul style="list-style-type: none"> ▪ Prepare report for Group Leader to sign off and agree recommendations. 	<ul style="list-style-type: none"> • Recorded interview – not PACE • Option to have someone attend – can be none legal • Present information on issue and evidence collated • Opportunity for licence holder to respond and offer their side of the events • Question licence holder further • Summarise

	<ul style="list-style-type: none"> ▪ Report follows Governance sign off procedure {TBC} 	<ul style="list-style-type: none"> • Outline next steps
3.	<ul style="list-style-type: none"> • Licence holder invited to attend panel 	<ul style="list-style-type: none"> • Advised to obtain own legal advice, advised can be accompanied by legal representation or friend. Advise if person who accompanies them is a friend panel needs to agree they can speak on their behalf. • Need to send order of proceedings with invite. Order of Proceedings to be confirmed
4.	<ul style="list-style-type: none"> • Member Panel Hearing <ul style="list-style-type: none"> ○ Licence holder attends at allotted time, ○ Chair opens the hearing, ○ Officer outlines reason for attendance as detailed in the report and what recommendations are and reason why. ○ Licence holder offers explanation ○ Questions can be asked by panel, officers or licence holder. ○ Members debate in private and then inform licence holder of decision and right of appeal if appropriate. 	<ul style="list-style-type: none"> • Panel Members and officers can question licence holder / applicant. • Verbal decision given in the hearing, with full reasons and then followed by formal letter.

2. Officer Panel

Benefits	Risks
Impartiality	Delays in decision making in particular around existing licence holders
Addresses some, but not all of the issues raised as a result of the consultation on DfT standards	Cost (to be borne by licence holder / applicant)
	Does not comply with DfT Standards
	Out of step with other WY authorities
	Licensing, Legal, meeting room

Process

Step	Process	Comments
1	<ul style="list-style-type: none"> Issue comes to light <ul style="list-style-type: none"> Does issue fall within policy Y / N – if yes then step 2 if no then Does licence holder have history that, along with current issue, calls into question their fitness to hold a licence Y / N – if yes then step 2 . if no then investigate issue in isolation and take appropriate action i.e warning, N.F.A 	Issue comes to light via – <ul style="list-style-type: none"> DBS, Complaint, Self-Declaration, DVLA check, Enforcement activity, Other
2.	<ul style="list-style-type: none"> Officer investigates the issue <ul style="list-style-type: none"> Gather evidence Speak to third parties i.e complainant, police, other agencies Inform licence holder of the issue at hand Prepare to interview licence holder Invite licence holder for interview Hold interview and inform licence holder of next steps Next steps <ul style="list-style-type: none"> Prepare report for officer panel. 	<ul style="list-style-type: none"> Recorded interview – not PACE Option to have someone attend – can be none legal Present information on issue and evidence collated Opportunity for licence holder to respond and offer their side of the events Question licence holder further Summarise Outline next steps
3.	<ul style="list-style-type: none"> Licence holder invited to attend officer panel 	<ul style="list-style-type: none"> Advised to obtain own legal advice, advised can bring legal representation with them or a friend. Advise if person who accompanies them is

		a friend panel needs to agree they can speak on their behalf.
4.	<ul style="list-style-type: none"> • Officer Panel Hearing <ul style="list-style-type: none"> ○ Licence holder attends at allotted time, ○ Chair opens the hearing, ○ Officer outlines reason for attendance as detailed in the report and makes clear what recommendations are and reason why. ○ Licence holder offers explanation ○ Questions can be asked by panel, officers, or licence holder. ○ Members debate in private and then inform licence holder of decision and right of appeal if appropriate. 	<ul style="list-style-type: none"> • Panel Members and officers can question licence holder / applicant. • Verbal decision given in the hearing, with full reasons and then followed by formal letter within 5 working days.

3. Decisions stay at Group Leader Level

Benefits	Risks
Impartiality	Perception of impartiality – although there is impartiality in the decision making the perception is that it isn't impartial
Decision made in a timely manner	Does not address the concerns raised as a result of the consultation on DfT standards.
Reduced cost	
In line with other WY authorities	

Step	Process	Comments
1	<ul style="list-style-type: none"> Issue comes to light <ul style="list-style-type: none"> Does issue fall within policy Y / N – if yes then step 2 if no then Does licence holder have history that, along with current issue, calls into question their fitness and suitability Y / N – if yes then step 2 . if no then investigate issue in isolation and take appropriate action i.e warning, N.F.A 	Issue comes to light via – <ul style="list-style-type: none"> DBS, Complaint, Self-Declaration, DVLA check, Enforcement activity, Other
2.	<ul style="list-style-type: none"> Officer investigates the issue <ul style="list-style-type: none"> Gather evidence Speak to third parties i.e complainant, police, other agencies Inform licence holder of the issue at hand Prepare to interview licence holder Invite licence holder for interview Hold interview and inform licence holder of next steps Next steps <ul style="list-style-type: none"> Prepare report for Group leader. 	<ul style="list-style-type: none"> Recorded interview – not PACE Option to have someone attend – can be none legal Present information on issue and evidence collated Opportunity for licence holder to respond and offer their side of the events Question licence holder further if required Summarise Outline next steps
3.	<ul style="list-style-type: none"> Group Leader makes decision <ul style="list-style-type: none"> All relevant facts considered Circumstances considered, including account given by licence holder during interview 	

	<ul style="list-style-type: none">○ Issues, circumstances and facts compared against policy○ Consider any exceptional circumstances.○ Inform licence holder / applicant in writing of decision and reasons.	
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