

**Name of meeting**    **Licensing and Safety Committee**

**Date**                      **18 January 2016**

**Title of report:**        **Constitution - Taxi and Private Hire Vehicles:  
 Delegation of enforcement powers**

<b>Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>Not Applicable</b>
<b>Is it in the Council's Forward Plan?</b>	<b>Yes</b>
<b>Is it eligible for "call in" by Scrutiny?</b>	<b>Not Applicable</b>
<b>Date signed off by Director &amp; name</b>	<b>Jacqui Gedman - 30.12.15</b> <i>Paul Kemp for and on behalf of</i>
<b>Is it signed off by the Director of Resources?</b>	<b>David Smith - 31.12.15</b>
<b>Is it signed off by the Assistant Director - Legal, Governance &amp; Monitoring</b>	<b>Julie Muscroft - 30.12.15</b>
<b>Cabinet member portfolio</b>	<b>Cllr Steve Hall</b> <b>Planning, Highways &amp; Open Spaces</b>

**Electoral wards affected**                      **ALL**

**Ward councillors consulted:**              **ALL**

**Public or private:**                              **Public**

## **1 PURPOSE OF REPORT**

- 1.1        To request Members to note additions and amendments to the scheme of delegation in relation to enforcement powers under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.
- 1.2        A verbal report of the recommendations and comments of the Corporate Governance & Audit Committee on this proposal will be given at Council. That Committee is meeting to consider the matters in this report shortly before full Council.

## **2 KEY POINTS**

### **BACKGROUND**

- 2.1.1 The primary aims of the licensing regime for vehicles, drivers, and operators are the protection of public safety and the provision of a safe and efficient taxi service. This involves ensuring that hackney carriage and private hire license holders are fit and proper persons.
- 2.1.2 Both the Jay and Casey Reports into Child Sex Exploitation in Rotherham noted that the role of taxi drivers was a “common thread” in many CSE cases. Following the publication of the Casey report, the licensing team in Kirklees have been working with the other licensing departments of the Combined Authority, to establish some common licensing standards and processes. This was at the express request of the Leaders of each Council in January this year and involves scrutinising each aspect of the licensing processes.
- 2.1.3 The Licensing & Safety Committee received a report in November 2015, explaining the effect of the Deregulation Act 2015 and in particular, concerns about the ability from 1 October 2015 for private hire operators to sub-contract to another licensed operator who may be licensed in another district. This report highlights some of the potential consequences of these changes and seeks approval by full Council for delegation of enforcement functions across West Yorkshire Authorities and the City of York to help to minimise concerns across the region.
- 2.1.4 We are also asking Council to agree to other authorities’ enforcement powers to be delegated to this authority. Other Councils are undertaking a similar exercise of delegation of enforcement powers across the West Yorkshire area.

### **2.2 THE ISSUES**

- 2.2.1 The Licensing & Safety Committee has previously discussed the earlier recommendations of the Law Commission and Taxi & Private Hire licensing reform proposals. Objections were made to some of the changes, which it was felt, would dilute the professional standards of licensed drivers working in Kirklees or weaken the regulatory regime, in a way that may prejudice public safety.
- 2.2.3 The Deregulation Act 2015, received royal assent and the relevant provisions came into force on 1 October 2015. From the 1st October 2015, the Deregulation Act 2015, allows sub-contracting a Private Hire journey from within a licensing district to another licensed operator who may be based (and licensed) anywhere in England and Wales.
- 2.2.4 Section 11 (private hire vehicles: sub-contracting) inserts two new sections (55A and 55B) into the Local Government (Miscellaneous Provisions) Act 1976, in relation to the sub-contracting of bookings from one private hire vehicle operator to another.
- 2.2.5 The above is a major amendment to the 1976 Act affecting taxi and private hire drivers and operators and will have far reaching implications for private hire Operators, in relation to the sub-contracting of bookings from one private hire vehicle operator to another.

2.2.6 There is currently no detailed information or operational guidance on these deregulation measures available from the Government, Department for Transport or other organisations.

2.2.7 There is the additional problem of licensed hackney carriage drivers and vehicles from other authorities being able to move and work in a different authority, from which it is licensed through a Private Hire base.

## **2.3 The individual changes mean that:**

### **2.3.1 Sub-contracting**

This presents significant difficulties for the Council, in conducting its enforcement activities and potentially to the public, in terms of service standards and safety as:-

- Currently officers in this authority have no powers to conduct any enforcement activity on Taxis or Private Hire drivers or vehicles not licensed by this authority.
- There may be significant difficulties in verifying whether a pre booking was in place, when investigating plying for hire concerns.
- Potential confusion for the public, who may not recognise the vehicle which turns up and cannot readily verify the credentials of the driver.
- Investigations may become protracted and on a national basis involving different licensing authorities.
- Timescales for summary prosecutions (6 months) would be extremely tight.
- Operators may choose to be licensed by authorities with less rigorous licensing standards and simply transfer bookings from the Kirklees district to that operating base.
- Licensed vehicles from other licensed authorities may have minimal exterior identification making it easier for unlicensed vehicles and drivers to pass themselves off as licensed. This creates a risk to public safety.
- Kirklees Council is reliant on other authorities having an enforcement capacity dedicated to Taxi & Private Hire Licensing.
- In effect this part of the Act could virtually put enforcement capability out of reach of the licensing authority.

2.3.2 These concerns are shared across many authorities. As stated Kirklees licensing is working through the West Yorkshire Combined Authority to try and establish some common licensing standards and enforcement compatibility across the West Yorkshire area. Some of the key issues being considered by the Combined Authority are the following:-

- Safeguarding- child sexual exploitation - human trafficking - a common minimum training standard for the trade.
- Driver application process - improved common minimum standards English comprehension - common minimum standards for new applicants, it would only apply to existing licence holders where there was an identified need, with the focus being on training and development within an agreeable timeframe.

- Convictions Policy and Convictions Criteria - standard criteria be adopted.
- Decision making-scheme of delegation - all local authorities introduce a scheme of delegation to Officers for decision making.
- Private Hire Operator Conditions - a common standard across the Combined Authority.
- Private Hire Vehicle Conditions - all West Yorkshire licensed vehicles have similar recognisable door livery which deforms when removed.
- Common Byelaws - Hackney Carriages - a common standard across the Combined Authority.
- West Yorkshire Centralised Licensing Database - maintaining a centralised record of licence applications, suspensions, revocations to enable greater checking at the point of revocation.
- Authorised Officer status - Licensing and Enforcement Officers able to carry out inspection and suspension powers on a vehicle licensed by any Combined Authority, through the scheme of delegation of powers being coordinated across all the authorities to enable more efficient enforcement action.

2.3.4 Key licensing officers in all West Yorkshire and City of York Authorities met on 15th October 2015, to agree an approach to tackle these concerns. It was agreed that all officers would consider whether there should be cross authority delegation of taxi and private hire licensing enforcement functions. The intention would be to work towards all authorities having this in place as soon as possible but no later than by 1<sup>st</sup> April 2016

2.3.5 The current functions which are delegated to licensing officers in this authority are set out in the sub-delegation scheme and include the functions set out in the paragraph below: The intention would be that Kirklees Licensing officers would retain the sub-delegation of these functions but the same functions would also be delegated to the other West Yorkshire authorities.

#### Local Government (Miscellaneous Provisions) Act 1976

- Section 53(3) (a) Driver to produce his licence for inspection
- Section 58 Return of identification plate or disc on revocation etc
- Section 60 to suspend and revoke vehicle licenses
- Section 61 to suspend and revoke driver licences
- Section 68 Fitness of private hire vehicles
- Section 73 Obstruction of Authorised Officers.

#### Town and Police Clauses Act 1847

- Section 45 prosecution for plying for hire
- Road traffic Act 1988
- Section 143 (no insurance)
- All criminal matters.

2.3.6 Each authority would retain the ability to grant and renew licenses; those functions will not be delegated. Only the enforcement functions would be delegated. The ability to prosecute will rest as at present with the district within which the alleged offence occurred. Officers in each authority will agree to

provide evidence where necessary to support prosecutions by the other authorities where they have been involved in investigating the alleged offence. How this will work in practice for each authority will be set out in an agreement between all of the authorities.

### **3. THE AMENDMENTS**

- 3.1 The proposed change to the delegation is that Council amend the Council's constitution under the headings -

"Responsibility for Functions". Section C Delegations. Paragraph 5 (ii) Delegation to other local authorities. To be:-

Discharge by Leeds City Council, Wakefield Council, Bradford Metropolitan Council Calderdale Council and City of York Council of the Council's functions relating to the enforcement of Hackney and Private Hire matters under The Local Government (Miscellaneous Provisions Act) 1976 and the Town and Police Clauses Act 1847.

There may be additional minor drafting amendments required to the Constitution which the Assistant Director Legal, Governance and Monitoring will undertake.

### **4 RESOURCE IMPLICATIONS**

- 4.1 There are no significant resource issues. There may be financial challenges which cannot be evaluated at the moment but the expenditure is closely monitored and any emerging needs, would have to be met from the licensing fees charged which are set at the level required to fund the regulatory regime. The opportunities to seek costs from defendants or appellants will be strongly pursued by solicitors representing the Council at court.

### **5 LEGAL IMPLICATIONS**

- 5.1 The functions subject of this report are Council functions. Local functions are delegated to the Director of Economy, Skills and the Environment. The Local Government Act 1972 section 101(1) (b) permits delegations of council functions from one authority to another. Section 101(3) of the same Act permits that other authority to arrange for discharge of those functions by a committee, sub-committee or officer of that authority, effectively as though the function had always been theirs. The function would need to be delegated by full Council (rather than by an officer or the Licensing & Safety Committee) and should be captured in the constitution so the delegation across the authority is clear.
- 5.2 Officers in this authority would still have the delegated authority to carry out the same functions. All of this should also be captured in the relevant sub - delegation schemes of officers.
- 5.3 If policies need to be altered to reflect the above, then aside from minor variations changes to policies would be a decision for the Licensing & Safety Committee.

### **6 HUMAN RIGHTS**

- 6.1 Local Authorities powers, can significantly affect an individual's livelihood, for example, the licensing of taxis and private hire vehicles and drivers. Refusal or

revocation of a licence is likely to amount to the 'determination' of 'civil rights and obligations' with the result that Article 6(1) of the European Convention on Human Rights (ECHR) is engaged. The Council therefore has to ensure that anyone facing refusal, revocation or suspension is afforded a fair hearing within a reasonable time.

- 6.2 Any person aggrieved by an adverse decision does also have a statutory right of appeal against that decision to a local Magistrates Court.

## **7. CONSULTEES AND THEIR OPINIONS**

- 7.1 Lead members were consulted on the proposal.

Licensing & Safety Committee

Governance & Audit Committee

- 7.1.1 Consultation with the Hackney Carriage Associations and the Private Hire Trade is not a legal requirement in these circumstances.

## **8. OFFICER RECOMMENDATIONS AND REASONS**

- 8.1 That Licensing and Safety Committee agree that the Taxi and Private Hire enforcement powers as set out in paragraph 3.8 of this report, be delegated by Kirklees Council to the other West Yorkshire authorities and City of York Council, as well as being retained by Kirklees Council as licensing authority as detailed in paragraph 3.1.

To agree to Kirklees Council, receiving similar delegated enforcement powers from the other West Yorkshire and City of York Authorities.

To delegate the authority to the Assistant Director, Legal Governance & Monitoring to make the appropriate amendments and any consequential changes to the Constitution.

## **9. Cabinet portfolio holder recommendation**

The portfolio holder, Councillor Steve Hall has said that this is another step forward in the city region working together as one and recognising and reacting to recent changes in legislation - Councillor Steve Hall, fully supports the proposals.

## **10. Contact officer**

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## **11. Assistant Director responsible**

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