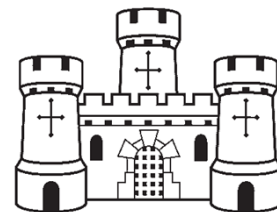


Public Document Pack

Date of meeting Monday, 22nd January, 2018
Time 7.00 pm
Venue Council Chamber, Civic Offices, Merrial Street, Newcastle-under-Lyme, Staffordshire, ST5 2AG
Contact Geoff Durham



**NEWCASTLE
UNDER LYME**

BOROUGH COUNCIL

Civic Offices
Merrial Street
Newcastle-under-Lyme
Staffordshire
ST5 2AG

Public Protection Committee

AGENDA

PART 1 – CLOSED AGENDA

- 1 GUIDANCE NOTES (FOR INFORMATION)** (Pages 5 - 22)
 - Procedure to be followed by Public Protection Committee.
 - Natural Justice and Fairness.
 - Human Rights Act.
 - Guidelines Relating to the Relevance of Convictions.
- 2 DECLARATIONS OF INTEREST**

To receive declarations of interest from Members on items included in this agenda.
- 3 Apologies**
- 4 MINUTES OF PREVIOUS MEETING** (Pages 23 - 26)

To consider the minutes of the previous meeting(s).
- 5 DISCLOSURE OF EXEMPT INFORMATION**

To resolve that the public be excluded from the meeting during consideration of the attached report, because it is likely that there will be disclosure of exempt information as defined in paragraphs 1, 2 and 7 in Part 1 of Schedule 12A of the Local Government Act 1972.
- 6 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976** (Pages 27 - 38)

- Driver – Mr PW
- 7 **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 39 - 46)
1976**
- Driver – Mr AHB
- 8 **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 47 - 54)
1976**
- Driver – Mr TK
- 9 **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 55 - 64)
1976**
- Driver – Mr MA
- 10 **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 65 - 70)
1976**
- Driver – Mr PT
- 11 **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 71 - 84)
1976**
- Driver – Mr WA
- 12 **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 85 - 90)
1976**
- Driver – Mr YHG
- 13 **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 91 - 108)
1976**
- Driver – Mr ZI

PART 2 – OPEN AGENDA

- | | | |
|----|--|--------------------------|
| 14 | TAXI SCHEME OF DELEGATION | (Pages 109 - 112) |
| 15 | TAXI LICENSING FEES AND CHARGES 2018-19 | (Pages 113 - 118) |
| 16 | APPEAL OUTCOME | (Pages 119 - 120) |
| 17 | PROSECUTION OUTCOME | (Pages 121 - 124) |
| 18 | URGENT BUSINESS | |

To consider any business which is urgent within the meaning of Section 100(B)4 of the Local Government Act.

Members: Councillors G White (Vice-Chair)

<p>PLEASE NOTE: The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all</p>
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other rooms. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

FIELD_TITLE

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

NOTE: THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY FOLLOWING THE FIRE EXIT SIGNS. PLEASE **DO NOT** USE THE LIFTS.

COUNCIL CHAMBER: FIRE EXITS ARE AT THE REAR OF THE CHAMBER AT BOTH SIDES AND THIS IS THE SAME FOR OCCUPANTS OF THE PUBLIC GALLERY.

COMMITTEE ROOMS: EXIT VIA THE WAY YOU ARRIVED AT THE MEETING OR AT THE FAR END OF THE COUNCIL CHAMBER.

ON EXITING THE BUILDING, PLEASE ASSEMBLE AT THE REAR OF THE ASPIRE HOUSING OFFICE OPPOSITE THE CIVIC OFFICES. DO NOT RE-ENTER THE BUILDING UNTIL ADVISED TO DO SO.

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PROCEDURE TO BE FOLLOWED BY PUBLIC PROTECTION COMMITTEE IN DETERMINING HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES

- The Chairman will open the proceedings by stating the nature of the matter which is to be considered (first application/renewal/suspension/revocation), whether the proceedings concern a vehicle, drivers' or operators' licence (in the case of Private Hire Cars) or a driver's or vehicle licence (in the case of Hackney Carriages) and the name of the applicant or licence holder.
- The Chairman will introduce him/herself and the members of the committee, the Clerk to the committee and any other officer present.
- The Chairman will ask the officers to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with. In the case of a proposed suspension or revocation of a licence, refusal to renew or a new licence application, the Chairman will ask the Licensing Officer to confirm whether or not the requisite 14 days' prior notice has been served on the licence holder.
- If satisfied as to the formal requirements, the matter under consideration will then be outlined by the Licensing Officer.
- The committee will consider the merits of the application or proposed suspension/revocation and the report of the officers. The committee may ask the officers for clarification of any points in issue.
- The Chairman will then invite the applicant or licence holder to make any representations. The applicant or licence holder may make his/her representations personally or through a representative, who shall first identify him/herself.
- The Chairman and other members of the committee may ask the applicant or license holder questions and points of clarification.
- The applicant or licence holder, his/her representative (if any) and any officer present (with the exception of the Lawyer and the Clerk to the committee) shall withdraw.
- The members of the committee consider their decision. If any further clarification or information is required from the applicant or licence holder or any officer, all parties will be recalled.
- All parties will be recalled for the announcement by the Chairman of the committee's decision.
- The committee's decision will be confirmed in writing by the Proper Officer.
- At any point in this procedure, the committee may pass a resolution excluding the press and public from the meeting on the basis that, if they were to remain, there may be disclosure of exempt information (information relating to the private or business affairs of a particular person).

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GUIDANCE NOTES

NATURAL JUSTICE AND FAIRNESS

These are the principles used in the determination of just or fair processes and stem from the common law legal system.

According to Roman law, certain basic legal principles were so obvious that they should be applied universally without the need to be enacted into the law.

The rules of natural justice are now regularly applied by courts in both common law and civil law jurisdictions.

Natural justice operates on the principles that man is basically good, that a person of good intent should not be harmed and one should treat others as they would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:-

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges);
- A person making a decision should declare any personal interest they may have in the proceedings;
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the Latin maxim, *nemo iudex in causa sua*: “no man is permitted to be judge in his own cause”;
- Proceedings should be conducted so they are fair to all the parties – expressed in the Latin maxim, *audi alteram* : “let the other side be heard”;
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party;
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations;
- Justice should be seen to be done. If the community is satisfied that justice has been done they will continue to place their faith in the courts.

Where a person’s legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law.

THE RULE AGAINST BIAS

It is elementary to the rules of natural justice that the deciding body is to be free from bias.

The rule is that the body must be and be seen to be impartial, independent and disinterested.

There are two broad categories of bias:

- (a) Actual Bias: when the decision-maker has an economic interest in the outcome of the case (also known as a material or pecuniary interest) subject to the De Minimum doctrine;

- (b) Reasonable Apprehension: unbiased appearance is an essential part of procedural fairness. The test is whether, having regard to the circumstances, a well informed person (“reasonably informed bystander”) would consider that the interest might have an influence on the exercise of the decision-maker’s duties.

GUIDANCE NOTES

HUMAN RIGHTS ACT 1998

In addition to the Rules of Natural Justice, you must also have regard to the provisions of the Human Rights Act 1998.

Rights and Freedoms to be considered when determining matters

ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NOTE Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence, the goodwill of a business and liquor licences.



GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR APPLICANTS FOR THE GRANT AND RENEWAL OF LICENCES TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

GENERAL POLICY

1. Each case will be decided on its own merits
2. The Council will, as far as is possible, ensure that all persons holding a licence to drive Hackney Carriages or private hire vehicles are fit and proper persons. In doing so, the Council will take into account previous convictions including, where relevant, 'spent' convictions.
3. The Council will always put the protection of the public first when considering the relevance of convictions recorded against an applicant for a licence.
4. A person with a conviction for serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for an appropriate period, before an application is considered. However, remaining free of conviction for a specified period may not be sufficient to show that a person is fit and proper and additional evidence may be required.
5. There may be occasions where it is appropriate to depart from the guidelines when making a decision on an application. For example, where the offence is a one-off and there are mitigating circumstances or alternately, where there are many or continuous offences which may show a pattern of offending and unfitness.
6. The following examples give a general guide as to the action that might be taken where convictions are recorded against an applicant.

(a) Dishonesty

Members of the public using Hackney Carriages and private hire vehicles expect the driver to be honest and trustworthy. It would be easy for a dishonest driver to take advantage of the public.

For these reasons, a serious view will be taken of any conviction involving dishonesty. In general, if an application is made within the first 3 to 5 years from the date of a conviction or from the date of release from jail where a custodial sentence has been imposed, it is likely that it will be refused.

Where an application is made within the first three years since the conviction or the date of release from jail, where a custodial sentence has been

imposed, for any of the following offences, the application will normally be refused:-

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss11A and 112 of the Social Security Administration Act 1992)
- Blackmail
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Or similar offences to those above which may replace any of the above offences

When a period of three years from conviction or the date of release from jail, where a custodial sentence has been imposed has passed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

(b) Violence

As Hackney Carriage and private hire vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violence. Where the commission of an offence involves loss of life, a licence will normally be refused. In other cases, a period of three to ten years free of conviction from the date of conviction or the date of release from jail, where a custodial sentence has been imposed will generally be required before an application is likely to be considered favourably. The nature and seriousness of the offence(s) will be taken into consideration.

In particular:-

- (i) An application will normally be refused where the applicant has a conviction for an offence of:-
 - Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Or similar offence or offences which replace the above offences

- (ii) An application will normally be refused for a period of five years from the date of the conviction or the date of release from jail, where a custodial sentence has been imposed if the applicant has a conviction for:-
 - Arson
 - Malicious wounding or grievous bodily harm which is racially aggravated
 - Assault occasioning actual bodily harm which is racially aggravated

- Assault with intent to cause grievous bodily harm
- Assaulting a police officer in the execution of his duties
- Malicious wounding
- Robbery
- Racially aggravated criminal damage
- Racially aggravated fear or provocation of violence
- Racially aggravated intentional harassment, alarm or distress
- Racially aggravated harassment
- Racially aggravated putting people in fear of violence
- Riot
- Possession of an offensive weapon
- Possession of a firearm
- Violent disorder
- Or any arrestable offence involving violence (an arrestable offence is defined as an offence committed by a person of age 21 years or over and on conviction for the first offence may be sentenced to a term of imprisonment of five years or where the penalty is fixed by law)

(iii) An application will normally be refused for a period of three years from the date of conviction or the date of release from jail, where a custodial sentence has been imposed, where the applicant has a conviction for:-

- Common assault
- Racially aggravated common assault
- Assault occasioning actual bodily harm
- Affray
- Racially aggravated harassment, alarm or distress
- Resisting arrest
- Obstructing a police officer in the execution of his duty
- Criminal damage
- Any similar offence or offences which replace the above offences

(c) Drugs

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five to ten years before the date of the application. However, after five years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, the circumstances of the offence and any evidence which shows that a person is now a fit and proper person to hold a licence will be taken into consideration.

An application will normally be refused where the application is made within three to five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed for an offence relating to the possession of drugs. However, after a period of three years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances

of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five years before the date of the application.

Where evidence is available that an applicant who has convictions for drug related offences has been addicted to drugs, they will have to produce evidence that shows that they have been free of drug taking for at least five years after successfully completing a drug treatment programme.

(d) Sexual and Indecency Offences

As the driver of Hackney Carriages and private hire vehicles often carry passengers who are alone, or may be vulnerable, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a licence.

Where an applicant has a conviction for a sexual offence such as indecent exposure, they will normally be refused a licence until they can show a substantial period usually between five and ten years free of any such convictions from the date of conviction or the date of release from jail where a custodial sentence has been imposed before an application is made.

After a period of five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

When considering applications, the Council may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

(e) Motoring Convictions

(i) Disqualification

Where an applicant had been disqualified from driving by the Courts for a serious traffic offence under Category 'A' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence.

Where an applicant has been disqualified from driving by the Courts for a serious traffic offence under Category 'B' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence unless the offence was an isolated one, in which case, a period of not less than 2 years shall have passed.

Where a disqualification is imposed by a court in a 'totting-up' case, i.e. where an applicant has been disqualified because of several

driving offences, an application will generally be refused unless a period of one year free of conviction has elapsed since the return of the DVLA driver licence.

In 'totting-up' cases where a court does not impose a disqualification because of exceptional circumstances, then because the Council apply different criteria to the courts, an application will generally be refused unless an applicant can show a period of 1 year free of conviction from the date of the last court appearance.

(ii) Serious Traffic Offences

Where an applicant has a conviction for a serious traffic offence in Category 'A' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction.

Where an applicant has a conviction for a serious traffic offence in Category 'B' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction unless the offence was an isolated one.

Where an applicant has had more than one conviction for a serious traffic offence in either Category 'A' or 'B' of Annex (i) and the courts have not imposed a period of disqualification, an application will normally be refused where an application is made in five years following the date of the last conviction.

(iii) Other Traffic Offences

Normally, isolated convictions for other traffic offences should not prevent someone obtaining a licence. However, the number, type and the frequency of these types of offence will be taken into account. If there are several convictions for these types of offence, an applicant will normally be expected not to have been convicted of an offence in the six months before an application is made.

A list of relevant offences is shown at Annex (ii). However, this is not an exhaustive list and there may be other offences which may be relevant.

(f) **Offences Under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and any Hackney Carriage Byelaws (The Acts)**

One of the main purposes of the licensing regime set out in 'The Acts' is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire, when deciding if a person is a fit and proper person to hold a licence.

In particular, an application will normally be refused where an applicant has more than one conviction for an offence under 'The Acts' in the two years preceding the date of the application.

(g) Drunkenness

(i) In a Motor Vehicle

The manner in which drunkenness in a motor vehicle will be dealt with is outlined in Motoring Offences at paragraph 'e' of these guidelines.

(ii) Not in a Motor Vehicle

Where an applicant has an isolated conviction for drunkenness, this need not stop an applicant from getting a licence. In some cases, a warning may be appropriate. However, where an applicant has a number of convictions for drunkenness, it could indicate a medical problem, which would require further investigation including a medical examination and the possible refusal of a licence.

(h) Spent Convictions

The Council will only take 'Spent Convictions' into consideration if it is considered they are relevant to the application.

(i) Formal Cautions and Fixed Penalty Notices

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

SERIOUS TRAFFIC OFFENCES

CATEGORY 'A'	
Offence Code	Offence
Careless Driving	
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for analysis
Reckless/Dangerous Driving	
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
Miscellaneous Offences	
MS50	Motor racing on a highway
Theft and Unauthorised Taking	
UT50	Aggravated taking of a vehicle

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

CATEGORY 'B'	
Offence Code	Offence
Accident Offences	
AC10	Failing to stop after an accident
AC20	Failing to give particulars or report an accident within 24 hours
BA10	Driving whilst disqualified by order of the court
BA30	Attempting to drive whilst disqualified by order of the court
Careless Driving	
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
Construction and Use Offences	
CU10	Using a vehicle with defective brakes
CU20	Causing or likely to cause danger by use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
Drink or Drugs	
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving or attempting to drive when unfit through drugs
DR70	Failing to provide a specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle while unfit through drugs
Insurance Offences	
IN10	Using a vehicle uninsured against third party risks
Licence Offences	
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle after having failed to notify a disability
Miscellaneous Offences	
MS70	Driving with uncorrected defective eyesight

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'A'** offence.

OTHER TRAFFIC OFFENCES

Offence Code	Offence
LC20	Driving otherwise than in accordance with a licence
LC50	Driving after a licence has been revoked or refused on medical grounds
MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS60	Offences not covered by other codes
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver etc
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with a moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with a stationery vehicle
SP10	Exceeding goods vehicle speed limits
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with 'stop' sign
TS40	Failing to comply with direction of a constable/warden
TS50	Failing to comply with traffic sign (excluding stop signs, traffic lights or double white lines)
TS60	Failing to comply with a school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'B'** offence under Annex (ii).

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PUBLIC PROTECTION COMMITTEE

Wednesday, 8th November, 2017

Time of Commencement: 7.00 pm

Present:- Councillor Sandra Hambleton – in the Chair

Councillors Dymond, Johnson, Jones, Robinson, Spence,
J Tagg and G White

Officers NESTA Barker - Head of Environmental Health
Services, Geoff Durham and Paul Washington -
Principal Solicitor

1. APOLOGIES

Apologies were received from Councillors' Matthews and Olszewski.

2. DECLARATIONS OF INTEREST

There were no declarations of interest stated.

3. DISCLOSURE OF EXEMPT INFORMATION

Resolved:- That the public be excluded from the meeting during consideration if the following matter because it is likely that there will be disclosure of exempt information as defined in paragraphs 1,2, and 7 in Part 1 of Schedule 12A of the Local Government Act, 1972

4. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976

The Committee considered a report regarding a renewal driver application for a Dual Driver's Licence by Mr AR.

Mr AR was represented by a female relative who addressed the Committee.

Resolved: That the application submitted by Mr AR be approved for a period of twelve months.

5. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES

A report was submitted to advise the Committee of action taken in respect of littering offences within the borough and to seek authorisation to institute legal proceedings against the Fixed Penalty Notice holders listed in the Appendix.

Resolved: That legal proceedings be instituted in the relation to the cases detailed.

6. ENVIRONMENTAL PROTECTION ACT 1990, SECTION 33, 34 AND 34(2A)

A report was submitted to advise the Committee of action taken in respect of a fly tipping offence within the borough and to seek authorisation to institute legal proceedings.

Resolved: That legal proceedings be instituted against Ms C.

7. ENVIRONMENTAL PROTECTION ACT 1990, SECTION 33, 34 AND 34(2A)

A report was submitted informing Members of the outcome of prosecution proceedings against Mr SH and failure to comply with a Noise Abatement Notice.

Resolved:

- (i) That the report be received.
- (ii) That delegated authority be given to the Head of Environmental Health, in consultation with the Chair to instigate further prosecution proceedings under Part III of the Environmental Protection Act, 1990.
- (iii) That the outcomes of any further enforcement activity be publicised.

8. APPEAL OUTCOME MR AA

The committee considered a report advising Members of the outcome of an appeal to the Magistrates Court against the Public Protection Committee's decision to revoke Mr Abdul Awal's Hackney Carriage Driver's Licence.

Resolved: That the report be received.

9. ENVIRONMENTAL PROTECTION ACT 1990, SECTION 33, 34 AND 34(2A)

The Head of Environmental Health Services submitted a report which advised the Committee of the action taken in respect of a Fly Tipping Offence within the Borough.

Resolved: That the report be noted.

10. ENVIRONMENTAL ACT 1995 - PART IV - LOCAL AIR QUALITY MANAGEMENT - ANNUAL STATUS REPORT 2017

Consideration was given to a report advising Members of the findings of the statutory Annual Statement Report for 2017 in respect of air quality within the Borough.

Resolved: That the report be received.

11. URGENT BUSINESS

The following item was brought to the Committee as an item of Urgent Business as there was a legal timescale of six months which would expire on 20 November, 2017.

The report informed Members of a driver's failure to carry a disabled passenger with their guide dog earlier this year.

Resolved: That subject to legal review, legal proceedings be instituted in relation to the case.

COUNCILLOR SANDRA HAMBLETON
Chair

Meeting concluded at 7.45 pm

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HEADING **Amendments to Scheme of Delegation for Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847**

Submitted by: **Head of Environmental Health Services**

Portfolio: **Finance, IT & Customer**

Ward(s) affected: **All**

Purpose of the Report

To amend and approve the scheme of delegation in respect of taxi and private hire licensing.

Recommendations

That Committee support and recommends to Council the proposed amendments to the scheme of delegation.

Reasons

A reorganisation of services has resulted in the taxi and private hire licensing services being moved from the Chief Executives to Regeneration and Development directorates. A review of the current scheme of delegation has been undertaken and changes proposed to make decisions for private hire and hackney carriages consistent and to reflect the changes to the organisational structure. Committee business particularly in respect of Hackney Carriage and Private Hire licensing is increasing and therefore a review of arrangements has been undertaken to determine whether these matters can be dealt with more timely and effectively with specific delegated responsibilities.

1. Background

- 1.1 Public Protection Committee has many delegated functions including the power to make decisions in respect of hackney carriage and private hire drivers, vehicles and operators which are not in full compliance with the Councils current 'Taxi and Private Hire Policy 2015'
- 1.2 Officers of the Council also have specifically delegated functions for the issuing of licences which are in compliance with the Councils current 'Taxi and Private Hire Policy 2015'. In addition officers have delegated responsibilities to undertake some enforcement activities.
- 1.3 A review of the scheme of delegation has been undertaken to take into account the organisational changes but to also review whether some these matters can be dealt with more effectively and timely with amendments to the scheme of delegation.

2. Issues

- 2.1 Committee business particularly in respect of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 is increasing and therefore a review of arrangements has been undertaken to determine whether these matters can be dealt with more effectively and in a timely manner with specific delegated responsibilities.
- 2.2 In summary the proposed changes include:
 - 2.2.1 Change from Chief Executive to Executive Director (Regeneration and Development)

- 2.2.2 Change from Head of Business Improvement, Central Services & Partnerships to Head of Environmental Health
 - 2.2.3 Inclusion of Executive Director (Operational Services) and Head of Recycling, Waste and Fleet Services for vehicle related enforcement work.
 - 2.2.4 Officer delegations for suspension, refusal and revocation of Hackney Carriage and Private Hire Vehicle licenses.
 - 2.2.5 Officer delegations for refusal, revocation or suspension of hackney Carriage and Private Hire drivers licences, where there is an immediate need. Such occasions will be reported to the next committee.
 - 2.2.6 Separation of the individual licensing functions.
- 2.3 Decisions made by the Chair or vice Chair under delegated powers will be reported to the next Committee.
- 2.4 The scheme of delegation proposed is detailed in the table below:

<u>Local Government (Miscellaneous Provisions) Act 1976 (including Town Police Clauses Act 1847)</u>	Power to approve Council policy with regard to hackney carriage and private hire drivers, vehicles and operators	Public Protection Committee
	Power to grant, renew and transfer Private Hire and Hackney Carriage: Vehicle licenses, Driver licenses and Operators in compliance with policy	Executive Director (Regeneration and Development) or Head of Environmental Health
	Power to grant, renew and transfer Private Hire and Hackney Carriage: Vehicle licenses, Driver licenses and Operators NOT in compliance with policy	Public Protection Committee
	Power to suspend, refuse or revoke Hackney Carriage vehicle licences	Executive Director (Regeneration and Development) or Head of Environmental Health Head of Recycling, Waste & Fleet
	Power to suspend Hackney Carriage driver licences	Executive Director (Regeneration and Development) or Head of Environmental Health or Public Protection

	Power to refuse or revoke Hackney Carriage driver licences	Public Protection or Executive Director (Regeneration and Development) or Head of Environmental Health
	Power to suspend Private Hire, driver licenses and operators licenses	Public Protection or Executive Director (Regeneration and Development) or Head of Environmental Health
	Power to refuse or revoke Private Hire driver licenses and operators licenses	Public Protection or Executive Director (Regeneration and Development) or Head of Environmental Health
	Power to refuse, suspend or revoke Private Hire Vehicle licenses	Public Protection or Executive Director (Regeneration and Development) or Head of Environmental Health and/or Head of Recycling, Waste & Fleet Services
	Hackney Carriage fares and numbers.	Public Protection Committee
	Power to authorise prosecution proceedings for Hackney Carriage and Private Hire vehicles, drivers and Operators	Public Protection Committee
	Provision of information and production of documents Hackney Carriages and Private Hire vehicles	Executive Director (Regeneration and Development) or Head of Environmental Health Services
	Return of identification plate or disc on revocation or expiry of licence etc.	Executive Director (Regeneration and Development) or Executive Director (Operational Services) or Head of Environmental Health Services
	Inspection and Testing of Hackney Carriages and Private Hire vehicles for fitness.	Executive Director (Regeneration and Development) or Executive Director (Operational Services) or Head of Environmental Health Services or Head of Recycling, Waste & Fleet Services
	Action in respect of obstruction of authorised officers	Public Protection Committee

3. **Options Considered**

3.1 There are numerous options available in respect to the scheme of delegation. These would include:

3.1.1 Delegate all functions to Public Protection Committee

3.1.2 Delegate all functions to Officers

3.1.3 Create delegations for Committee and Officer commensurate with roles and responsibilities.

4. **Proposal**

4.1 That Committee support and recommends to Council the proposed amendments to the scheme of delegation

5. **Reasons for Preferred Solution**

5.1 To enable committee to determine applications in the most effective and practical manner.

5.2 To ensure that the council continue to provide safe transport for those wishing to use private hire and Hackney Carriage vehicles.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 In line with the Council's objectives –

- Promoting a cleaner, safer and sustainable Borough
- Promoting a Borough of Opportunity

7. **Legal and Statutory Implications**

7.1 The Local Government Act 1972, section 101 allows the Council to arrange for a Committee, sub-committee or an officer or another local authority to carry out its powers and duties.

8. **Equality Impact Assessment**

8.1 The meetings will be undertaken to accord with the Human Rights Act 1998, Article 6(1) guarantees an applicant a fair hearing and Article 14 guarantees no discrimination.

9. **Financial and Resource Implications**

9.1 There will be no direct financial costs associated with the proposals.

10. **Major Risks**

10.1 There are no major risks associated with this report

11. **Earlier Cabinet/Committee Resolutions**

11.1 Council meeting 4th June 2014

FEES TO BE CHARGED FOR THE LICENSING OF PRIVATE HIRE AND HACKNEY CARRIAGE LICENSING 2018-9

Submitted by: Head of Environmental Health

Portfolio: Finance, IT & Customer

Ward(s) affected: ALL

Purpose of the Report

For Members to consider the fees to be charged in relation to the licensing of Private Hire and Hackney Carriage Licensing.

Recommendations

That Committee agree the fees to be charged for the licensing of Private Hire and Hackney Carriage Licensing for 2018/2019.

Reasons

Decisions relating to the setting of non-statutory fees and charges for taxi licensing have been delegated from Council to Public Protection Committee.

1. Background

- 1.1 The approval of certain fees and charges relating to the licensing of Private Hire and Hackney Carriage licensing regimes are Council functions.
- 1.2 Council at their meeting on 22nd February 2017, delegated this function to Public Protection Committee.

2. Private Hire and Hackney Carriage

- 2.1 A report was presented to Public Protection Committee on 31st October 2017 in respect of the proposed fees and charges for Private Hire and Hackney carriage driver, vehicle and operator fees and charges for 2018/19. The committee recommended agreement to the proposals and that the fees and charges should be advertised and a period of consultation undertaken in accordance with the requirements of the Local Government (Miscellaneous Provisions) Act 1976.

- 2.2 The Local Government (Miscellaneous Provisions) Act 1976 (sec. 70) states the following in relation to Operator and Vehicle licence fees:

“(1) Subject to the provisions of subsection (2), a district council may charge such fees for the grant of vehicle and operators’ licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part:
(a) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;
(b) the reasonable cost of providing hackney carriage stands; and

(c) any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.

(2) The fees chargeable under this section shall not exceed—

- (a) for the grant of a vehicle licence in respect of a hackney carriage, twenty-five pounds;
- (b) for the grant of a vehicle licence in respect of a private hire vehicle, twenty-five pounds;
- and
- (c) for the grant of an operator's licence, twenty-five pounds per annum;

or, in any such case, such other sums as a district council may, subject to the following provisions of this section, from time to time determine.

(3) (a) If a district council determine that the maximum fees specified in subsection (2) of this section should be varied they shall publish in at least one local newspaper circulating in the district a notice setting out the variation proposed, drawing attention to the provisions of paragraph (b) of this subsection and specifying the period, which shall not be less than twenty-eight days from the date of the first publication of the notice, within which and the manner in which objections to the variation can be made.

(b) A copy of the notice referred to in paragraph (a) of this subsection shall for the period of twenty-eight days from the date of the first publication thereof be deposited at the offices of the council which published the notice and shall at all reasonable hours be open to public inspection without payment.

(4) If no objection to a variation is duly made within the period specified in the notice referred to in subsection (3) of this section, or if all objections so made are withdrawn, the variation shall come into operation on the date of the expiration of the period specified in the notice or the date of withdrawal of the objection or, if more than one, of the last objection, whichever date is the later.

(5) If objection is duly made as aforesaid and is not withdrawn, the district council shall set a further date, not later than two months after the first specified date, on which the variation shall come into force with or without modification as decided by the district council after consideration of the objections.

(6) A district council may remit the whole or part of any fee chargeable in pursuance of this section for the grant of a licence under section 48 or 55 of this Act in any case in which they think it appropriate to do so."

2.3 The advertisement was placed in the Sentinel newspaper on 3rd November 2017 and a copy placed at the Civic Offices. The consultation period ran from publication until 30th November 2017. No comments, objections or representations were received in respect of the proposed fees and charges.

2.4 The Deregulation Act 2015 amends the Miscellaneous Provisions Act 1976 in relation to the duration of licences for hackney carriage and private hire drivers and private hire operators, to a standard 3 year licence for drivers and a standard operator's licence for 5 years. The proposed fees and charges are for the aforementioned time periods.

3. Issues

3.1 **The European Services Directive states (Art 12.2):**

"Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and

proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures”

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme.

Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

3.2 Guidance for Local Authorities on the Provision of Service Regulations States (2nd Edition June 2009 Para 12d):

“Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should the service provider feel that the level of fees are being used as an economic deterrent or to raise funds for local authorities Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.”

4. Proposed Fees:

4.1 All proposed license fees and charges are detailed in table 1:

Table 1:

Private Hire/Hackney Carriage (subject to consultation)	Fee/Charge 2017-18 (£)	Proposed Fee/Charge 2018-19 (£)	Difference (£)
OPERATORS			
Private hire operators 5 year licence			
1 vehicle	175.00	180.00	5.00
2-5 vehicles	350.00	365.00	15.00
6-15 vehicles	615.00	640.00	25.00
16-25 vehicles	1,650.00	1,710.00	60.00
26-35 vehicles	2,655.00	2,750.00	95.00
36-50 vehicles	3,675.00	3,810.00	135.00
Additional vehicle after 50 vehicles	22.00	23.00	1.00
DRIVERS			
Dual Driver Badge (Hackney Carriage and Private Hire) 3 years	230.00	240.00	10.00
Change of Address (NEW)	NEW	20.00	
Replacement badge	15.00	16.00	1.00
Reissue/Replacement badge (with amended details) (NEW)	NEW	35.00	
DBS (CRB check)	44.00	44.00	0.00
DBS (CRB (online)) NEW	NEW	58.00	
Safeguarding Training		35.00	
Exemption Certificates (NEW)	NEW	25.00	

Knowledge Test (NEW)	NEW	45.00	
VEHICLES			
Hackney carriage - vehicles	295.00	310.00	15.00
Private hire – vehicles	290.00	305.00	15.00
Private hire - vehicles 8+ seats (DELETE)	DELETE	DELETE	
Transfer of vehicle	40.00	45.00	5.00
Change of Vehicle Registration (NEW)	NEW	45.00	
Failure to attend for vehicle test	105.00	110.00	5.00
Retest	38.00	40.00	2.00
Replacement plate carrier - front	10.00	10.00	0.00
Replacement plate carrier - rear	15.00	15.00	0.00
Replacement Vehicle plate - Front (NEW)	NEW	10.00	
Replacement Vehicle plate - Rear (NEW)	NEW	15.00	
Copy of paper part of licence	10.50	11.00	0.50
Exception Vehicle Test	67.50	70.00	2.50
6 Monthly Test following an Exception Test	115.00	120.00	5.00
Replacement Vehicle Signage (NEW) (each)	NEW	3.00	

5. **Proposal**

- 5.1 That Committee agree the fees to be charged for the licensing of Private Hire and Hackney Carriage Licensing for 2018/2019.

6. **Reasons for Preferred Solution**

- 6.1 The fee can be used to cover the cost of the following:

Administration – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

Initial visit/s – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.

Third party costs – Some licensing processes will require third party input from experts,

Liaison with interested parties – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

Management costs – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time referenced below.

Local democracy costs – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

Development, determination and production of licensing policies – The cost of consultation and publishing policies can be fully recovered.

Web material – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

Advice and guidance – This includes advice in person, production of leaflets or promotional tools, and online advice.

Setting and reviewing fees – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

7. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

7.1 The proposals relate to the adoption of fees and charges which would contribute to the following:

A clean, safe and sustainable borough

- The negative impacts that the Council, residents and local businesses have on the environment will have reduced.

A borough of opportunity

- Fair, proportionate and consistent fees create an equal opportunity for business to thrive.

A co-operative Council delivering high quality, community driven, services.

- High performing services and support will be delivered for businesses and customers.

8. **Legal and Statutory Implications**

8.1 **Hemming v Westminster**

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In Hemming v Westminster, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to

include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Where fees charged result in a surplus, *Hemming v Westminster* stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of *R v Tower Hamlets LBC (1994)* may also be of relevance, as the High Court indicated that "a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers".

9. **Financial and Resource Implications**

- 9.1 Should a challenge be made in relation to the fee level as detailed in the *Hemming v Westminster* there could be detrimental financial implications for the Council

10. **Major Risks**

- 10.1 As detailed under Legal and Statutory Implications

11. **Key Decision Information**

- 11.1 Not applicable

12. **Earlier Cabinet/Committee Resolutions**

- 12.1 The Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31st March 2010 which came into effect on 3rd August 2011.
- 12.2 Council delegated the function of setting fees and charges to Public Protection Committee on 22nd February 2017.

13. **Recommendations**

- 13.1 That Committee agree the fees to be charged for the licensing

14. **Background Papers**

LGA Guidance on Local Fee Setting

APPEAL OUTCOME MR MOHAMMED SAJJAD MIAH

Submitted by: Head of Environmental Health Services

Portfolio: Finance, IT & Customer

Ward(s) affected: All

Purpose of the Report

To advise committee of the outcome of Mr Mohammed Sajjad Miah's appeal to the Magistrates Court of Public Protection Committees decision to revoke his Private Hire Drivers Licence.

Recommendations

That the report be received.

1. **Background**

- 1.1 On 1st August 2017, Public Protection committee considered Mr Miah's private hire drivers licence (reference 012273), following notification of convictions that falls within the Council's guidelines.
- 1.2 The notification revealed a conviction for speeding, using a defective tyre and not wearing a seatbelt.
- 1.3 Committee resolved that due to the nature of the offences the Committee saw no reason to depart from its policy and agreed that Mr Miah's licence should be revoked with immediate effect.

2. **Issues**

- 2.1 All drivers have the right to appeal the decision, to the Magistrates court, Mr Miah lodged an appeal against the decision and the matter was heard at Newcastle-under-Lyme Magistrates court on 13th November 2017. Mr. Miah attended and was represented by a solicitor.
- 2.2 The Magistrates' heard submissions from the Council, and Mr Miah's solicitor and read the accompanying bundle. The Magistrates decided to dismiss Mr. Miah's appeal. They said that due to the nature of the convictions they saw no reason to overturn the Council's decision to revoke Mr. Miah's licence.
- 2.3 The magistrates also ordered that Mr. Miah should pay the Council's costs of £880.00.

3. **Proposal**

- 3.1 That members receive the report.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 4.1 In line with the Council's objectives –
 - Promoting a cleaner, safer and sustainable Borough
 - Promoting a Borough of Opportunity

5. **Financial and Resource Implications**

5.1 No costs were awarded against that Council in respect of this case.

6. **Earlier Committee Resolutions**

6.1 Public Protection committee considered the application at meeting on 1st August 2017.

<u>REPORT TITLE</u>	Environmental Protection Act 1990 – Miss Jennifer Mason Case ref T/000031- Outcome of prosecution proceeding's on 13th November 2017
<u>Submitted by:</u>	Head of Environmental Health Services
<u>Portfolio</u>	Operational
<u>Ward(s) affected</u>	All

Purpose of the Report

To inform committee of the outcome of prosecution proceedings against Miss Jennifer Mason Environmental Protection Act 1990 for failing to comply with a noise abatement notice on various dates between 8th February 2017 and 2nd August 2017.

Recommendations

To receive the report

Reasons

The Council has a statutory duty to investigate noise complaints under the Environmental Protection Act 1990. A formal statutory noise abatement notice has been served and prosecution proceedings have been taken in the magistrates' following a failure to comply with the legal notice without reasonable excuse.

1. Background

- 1.1 Chair's approval has been given to instigate proceedings against Miss Mason a resident of Coppice Road, Talke for offences occurring between 8th February 2017 and 2nd August 2017. The case concerned failing to comply with a noise abatement notice which required the abatement of a statutory noise nuisance caused by barking and howling dogs by 6th January 2017 .
- 1.2 The case was heard on the 13th November 2017 in Newcastle under Lyme Magistrates' court. Miss Mason entered a guilty plea.
- 1.3 The Magistrates' considered the facts of the case and the previous offending history. They also took account of the evidence provided by an affected neighbour, evidence obtained on the Councils noise monitoring equipment, evidence gathered via the Noise App as well as evidence from your officers. Miss Mason informed the court that she was making steps to relocate the dogs from the house into a garage which would be soundproofed.
- 1.4 The Court accepted the guilty plea of failing to comply with noise abatement notice on various dates between 8th February 2017 and 2nd August 2017
- 1.5 Having considered the evidence and taken account of the guilty plea the court imposed the following penalty on Miss Mason

12 month conditional discharge
An order to pay a contribution towards the Council's costs of £700
Victim surcharge £20
Total £720 to be paid at £10 a fortnight commencing 11th December 2017

- 1.6 The outcome of this case was subsequently reported by Staffordshire Evening Sentinel, Radio Stoke and also promoted via the Council's website.

2. Issues

- 2.1 The noise abatement notice remains in force, any future breaches will be investigated, and action taken in line with established policies and procedures.
- 2.2 The current council scheme of delegation requires that prosecution proceedings brought under Part III of the Environmental Protection Act 1990 are approved by the Public Protection Committee.

3. Options Considered

- 3.1 The action taken is in line with the council's adopted procedures.

4. Recommendation

- 4.1 To receive the report

5. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

The report relates to the adoption of a consistent and effective enforcement which contribute to the following:

1. A clean, safe and sustainable borough
2. The negative impacts that the Council, residents and local businesses have on the environment will have reduced.
3. A healthy and active community
4. Fair, proportionate and consistent enforcement creates an environment for prevention, maintenance or improvement in health and wellbeing.

6. Legal and Statutory Implications

- 6.1 The Council has legal powers to undertake the action subject of this report and the authority to proceed is in line with the Council's constitution.
- 6.2 The Council's Enforcement Policy 2014-17, details that a graduated and proportionate approach to enforcement will be undertaken.
- 6.3 It also required that due regard to the public interest test is made in relation to enforcement action undertaken. It is considered that in this case the public interest test is satisfied for the proposed course of action given the ongoing situation.

7. Financial and Resource Implications

- 7.1 The legal costs in taking this action have been recognised by the Court and a partial costs award has been made which has reflected the investigation and prosecution costs.

8. Major Risks

- 8.1 None identified.

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