

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL



EXECUTIVE MANAGEMENT TEAM'S

REPORT TO LICENSING AND PUBLIC PROTECTION COMMITTEE

27 April 2020

Report Title: Review of Scheme of Delegation for Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847

Submitted by: Head of Environmental Health Services

Portfolios: Finance & Efficiency

Ward(s) affected: Not Applicable

Purpose of the Report

To consider a proposed amendment to the scheme of delegation in respect of taxi and private hire licensing. The amendment would allow officers to deal with certain types of applications received that are not fully compliant with the current licensing policy.

Recommendation

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

Reasons

To improve efficiency in dealing with non-compliances with the taxi licensing policy.

1. Background

- 1.1 Licensing and Public Protection Committee (LPPC) 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 2019'.
- 1.2 Officers of the Council also have specific delegated functions for the issuing of licences which are in compliance with the Councils current 'Taxi and Private Hire Policy 2019'. In addition, officers have delegated responsibilities to undertake some enforcement activities.
- 1.3 Members at the LPPC on 8th January 2020 requested officers to review delegated powers in respect of non-compliance with the Taxi Policy 2019 to improve efficiency in dealing with certain types of non-compliances.

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 high and there is an element of core business relating to some breaches of the Taxi Policy.

- 2.2 The area of concern for LPPC members relates to the volume of business taken before sub-committees to consider licence applications where there are aged or relatively minor issues which, whilst technically amounting to a non-compliance with policy, aren't always sufficient to justify a refusal to grant the licence sought.
- 2.3 LPPC Members have frequently found themselves considering lengthy agendas populated with such matters on account of the way in which the delegations are currently set out. They expressed a desire for that issue to be considered with a view to altering the delegations to provide greater flexibility for such matters to be dealt with at Officer level.
- 2.4 In the current scheme of delegation, the following is detailed:

Detail	Responsibility
Power to grant, renew and transfer Private Hire and Hackney Carriage: Vehicle Licences, Driver Licences and Operators NOT in compliance with policy.	Public Protection Committee or Public Protection Sub Committee

- 2.3 It is proposed that the delegation is amended to the following (additional text underlined):

Detail	Responsibility
Power to grant, renew and transfer Private Hire and Hackney Carriage: Vehicle licences, Driver licences and Operators NOT in compliance with policy	Public Protection Committee, Public Protection Sub Committee <u>or Executive Director (Operational Services)/Head of Environmental Health in agreement with the Chair and Vice Chair of Public Protection Committee.</u>

- 2.4 This proposed amendment to the scheme of delegation requires a change to the Constitution so there is a requirement to seek the views of the Constitution and Member Support Working Group (CMSWG) and the Audit & Standards Committee (A&S).
- 2.5 CMSWG, on 17 March 2020, considered and supported a proposal to allow further delegation to officers by enabling the LPPC to set and amend its own local scheme of delegation. However, since that meeting a more efficient approach has been identified, which is described below.
- 2.6 CMSWG members have been consulted on the revised approach and, to date, the Conservative, Labour and Liberal Democrat members have expressed themselves supportive of the revised approach. The views of the Independent member of CMSWG will be reported verbally to LPPC on 27 April 2020. The Portfolio Holder is also content with what is proposed below.
- 2.7 The A&S committee will be consulted on these proposals at meeting on 1 May 2020 and the views of A&S, CMSWG and LPPC will be reported to the next full Council meeting through a recommendation that Council amends the scheme of delegation to achieve the flexibility sought.

3. Options Considered

- 3.1 There are numerous options available in respect of the Scheme of Delegation. These would include:

- 3.1.1 Delegating all functions to Officers;
- 3.1.2 Creating a set of bespoke delegations in the Constitution for Committee, Sub-committee and Officers commensurate with roles and responsibilities.
- 3.1.3 Allow the Licensing and Public Protection Committee to establish (and amend from time to time) its own scheme of delegation down to officers.

3.2 After very careful consideration, it is considered that none of these alternative options strike the optimal balance achieved by the proposal set out below, namely the balance between ensuring that only appropriate business comes before the sub-committee, whilst maintaining strong member oversight of the types of cases delegated to officers to determine.

4. **Proposal**

- 4.1 Where an application was of the type contemplated here, the flexibility introduced by the proposed change to the scheme of delegation set out at paragraph 2.3 above would allow a new process to be applied. The way the new process would work is as follows.
- 4.2 Officers would write a short summary of the application, the issue that has arisen which renders the application in breach of policy and the rationale for why, in their professional opinion, there is sufficient grounds to exercise discretion and grant the application notwithstanding the breach of policy identified. That analysis would be shared with both the Chair and Vice Chair of the Licensing & Public Protection Committee.
- 4.3 If both the Chair and Vice Chair were in agreement, the matter would stand delegated to officers to decide under the new text proposed in paragraph 2.3 above. If either or both the Chair and Vice Chair were not in agreement then the matter would be referred for consideration at a hearing before the sub-committee in the usual way.
- 4.4 Applications which clearly warrant a refusal, those which were judged to be “borderline” and those which officers and/or the Chair and Vice Chair were not entirely comfortable with officer delegations applying would all be referred to the sub-committee in the usual way.
- 4.5 This revised proposal has a number of advantages over the proposal originally considered by CMSWG, which involved LPPC setting and amending its own scheme of delegation. Chiefly, under this proposal there is member involvement in each case where a decision has to be made about whether a matter is determined by officers or the sub-committee. That removes any room for misinterpretation of a local scheme of delegation whereby matters might be determined by officers which members may have wished to hear at sub-committee. It also avoids the need for LPPC to try and devise a local scheme of delegation, and the need to keep the same under constant review.
- 4.6 For these reasons, LPPC is asked to endorse the change to the scheme of delegation proposed at 2.3 above.

5. **Reasons for Preferred Solution**

- 5.1 To enable committee to determine applications and enforcement sanctions 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 –

- Local Services that work for local people
- Growing our people and places
- A healthy, active and safe borough
- A town centre for all

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 Decisions will be taken in accordance with the Human Rights Act 1998, Article 6(1) which 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. **Sustainability and Climate Change Implications**

11.1 Not applicable.

12. **Earlier Cabinet/Committee Resolutions**

12.1 LPPC on 8 January 2020

12.2 CMSWG on 17 March 2020

13. **List of Appendices**

13.1 None.

14. **Background Papers**

14.1 Not applicable.