

Committee: LICENSING

Agenda Item

Date: 9 June 2010

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Title: EXERCISE OF DELEGATED POWERS

**Author: Michael Perry, Assistant Chief Executive,
01799 510416**

Item for information

Summary

1. As members are aware I have delegated authority to suspend a driver's licence where there has been a breach of a condition attached to the licence or where an offence has been committed but a prosecution would be disproportionate or inappropriate. Usually I report upon the exercise of my delegated powers verbally at meetings of the committee. However, since the last meeting of the committee I have exercise delegated powers to suspend drivers on a number of occasions hence this written report.

Background Papers

2. The background papers referred to by the author in the preparation of this report are the driving licences of the various drivers concerned. As such the background papers constitute exempt information within the meaning of section 111(l) and paragraph 1 schedule 12A Local Government (Miscellaneous Provisions) Act 1972.

Impact

- 3.

Communication/Consultation	Members of the hackney carriage trade are aware of my delegated powers and of the intention to use them in cases of breach of condition by briefings at liaison meetings and articles in Taxi Chat.
Community Safety	None.
Equalities	None.
Finance	None.
Health and Safety	None.
Human Rights/Legal Implications	The first protocol of Article 1, part 2 Schedule 1 Human Rights Act 1998 provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. 'Possessions' in this context includes vehicle licences. Although the

	<p>suspension of a vehicle licence would constitute an interference with a possession the Act provides that the protocol does not impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The enforcement of licensing conditions is ultimately important in the public interest to ensure public safety and therefore justifies the interference with the first protocol right.</p> <p>Licence holders have a right of appeal against a suspension of a licence to the Magistrates' Court. If an appeal is lodged within the prescribed timescale the licence holder may continue to drive pending the determination or abandonment of the appeal.</p>
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

4. Drivers' licences are subject to a number of conditions including a condition that they should notify the council in writing within 7 days of any conviction received or any fixed penalty notice. Historically drivers were breaching this condition and only notifying of convictions and penalty points upon renewal.
5. Matters came to a head in 2005 when officers discovered by chance that three drivers had received convictions for excess speed which took the penalty points on their licences above 12. Only one of these drivers was disqualified by the Magistrates, the other two being permitted to retain their licences on a plea of exceptional hardship. However, by virtue of having 12 points on their licence they no longer met licensing standards.
6. All three drivers appeared before the Licensing Committee. Two drivers had their licences revoked (including the driver who was disqualified). With regard to the third driver by the time of the licensing meeting, three points had come off of the licence and he therefore at that stage met the council's licensing criteria. However, members determined to suspend his licence for a period of 3 days for breaching the condition requiring notification of the offence.
7. Historically spring is a very busy period for renewing licences. A number of drivers have been drawn to my attention having failed to disclose convictions within 7 days. I have interviewed eleven drivers in connection with failure to

notify convictions as required. With regard to two of these drivers I was not satisfied on the evidence that they were indeed in breach of the condition and therefore no action was taken. With regard to another driver he maintained he had informed his controller of the conviction and that the controller undertook to inform the council. He notified the council as soon as he realised that the controller had not done this and in advance of the licence being due for renewal. In that case I took no action other than to draw the driver's attention to the fact that it is his personal duty to notify the council in writing of any convictions or points received.

8. At each interview I gave the driver the opportunity of providing me with details of their income from driving so that I could ensure that any suspension is not disproportionate. All of the other drivers admitted to breaching the condition and had no reasonable excuse for having done so. Five of the drivers were suspended for a period of 2 days each. A sixth driver told me he would suffer no financial hardship as he only drives licensed vehicles for administrative purposes (i.e. to take the vehicle to be tested). As his loss was a minor inconvenience only I suspended his licence for 14 days.
9. Both of the other drivers I interviewed had aggravating features. The first had not only failed to notify of the conviction but had also made a false statement upon applying to renew his licence. Making a false statement is an offence under the Local Government (Miscellaneous Provisions) Act 1976 which carries a fine of £1,000. Were a driver to be convicted of such an offence he would no longer meet the council's licensing standards and the committee would need to consider whether the licence should be revoked.
10. In a previous case where a driver has been convicted of making a false statement but otherwise meets our licensing standards members have not revoked the licence. Consistent with that decision I decided that in the circumstances a suspension would be more appropriate and I suspended for a period of 5 days.
11. In the case of the last driver he had breached two conditions on the licence namely not notifying us of a conviction and not notifying us of a change of address. In addition he had made a false statement upon applying to renew his licence and he was untruthful with me during the interview in that he maintained that his controller had told him that he should not drive pending an interview with me, something his controller rigorously denied later. I therefore suspended this driver for 7 days.
12. In addition to the above, I have dealt with 2 cases of hackney carriages failing to display their roof sign as required by the conditions of licence.
13. In respect of one of these the driver clearly knew of the existence of the condition and nevertheless he removed his roof sign for no good reason other than that his customer had requested him to do so. The driver declined to give details of income and I suspended his licence for 2 days.
14. The second hackney carriage driver who failed to display a roof sign was also observed exceeding the speed limit by a considerable margin and during

interview volunteered information indicating breaches of the legislation regarding meters. I suspended his licence for 3 days.

15. As required by the legislation when I have suspended a licence I write to the driver within 14 days confirming my decision and the reasons for it. In that letter (again as required by the legislation) I inform the driver of his right of appeal. Although not a statutory requirement I also inform the driver how an appeal may be lodged and what the court fee is. To date I have not received notice of any appeals having been made.

Risk Analysis

16.

Risk	Likelihood	Impact	Mitigating actions
The council is not seen to be enforcing conditions attached to the licence.	1, delegated powers are adequate save for in the most serious cases.	3, if drivers believe that conditions regarding notification of convictions are not being enforced they may be tempted not to report more serious convictions which may affect their eligibility to drive under licensing standards which may mean that unfit drivers are permitted to drive pending licence renewal.	None required.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.