

COMMITTEE	GENERAL LICENSING COMMITTEE
DATE:	2 DECEMBER 2019
TITLE:	DELEGATION OF POWERS TO DETERMINE APPLICATIONS FOR TAXI LICENCES.
PURPOSE:	TO REVIEW THE DELEGATION SCHEME AND CONSIDER OPTIONS FOR AMENDING THE ARRANGEMENTS
AUTHOR:	HEAD OF ENVIRONMENT DEPARTMENT

1.0 BACKGROUND INFORMATION - LEGAL CONTEXT

- 1.1 The Council as a Licensing Authority has a duty under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 to license private hire and hackney vehicle drivers, vehicles and operators.
- 1.2 The powers to grant driver/operator licences are included in Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (The Act). The Licensing Authority is required to ensure that an individual applying for a driver's/operator's licence, or applying for the renewal of such a licence, is a 'fit and proper' person to hold that licence.
- 1.3 The powers to suspend, revoke or refuse to renew a driver's licence are included in Section 61 of the Act. The powers are relevant to situations where the applicant / licence holder has
- been found guilty of an offence involving dishonesty, indecency or violence
 - failed to comply with the provisions of the Town Police Clauses Act 1847
 - failure to comply with the provisions of Part 2 of the Local Government (Miscellaneous Provisions) Act 1976
 - Or any other fair reason.
- 1.4 The main purpose of licensing vehicles, operators and drivers is to safeguard public health. This is the main priority no matter what the Council's arrangements may be for deciding whether or not an application for a licence is to be approved.

2. THE CONSTITUTION AND DELEGATED POWERS

- 2.1 The Constitution sets out a specific procedure in terms of which decisions are delegated to officers; and which decisions fall under the Sub-committee's responsibility. Clause 11.3.5 of Appendix 3 to Section 3 notes that decisions regarding taxi licences are delegated to the Head of Environment Department, with the exception of the matters noted below -

11.3.5 To exercise the Council's powers in the field of hackney and private hire vehicle licensing except for the following matters which are the responsibility of the Sub-committee of the General Licensing Committee.

- a) To determine an application for a hackney/private hire driver's licence when the report of the Criminal Records Bureau discloses a conviction or police caution.
- b) To determine an application for a hackney/private hire vehicle licence when the vehicle does not comply with the authority's policy.
- c) To determine an application for a private hire operator licence when the report of the Disclosure and Barring Service discloses a conviction or police caution.

2.2 All other decisions relating to the above legal requirements are delegated to the Head of Environment Department, who has authorised specific officers to implement these powers on his behalf.

2.3 The power to revoke or suspend a licence is regularly exercised by officers authorised by the Head of Environment Department. When an individual is unsatisfied with the decision to suspend or revoke a licence; the individual may appeal to a Magistrates Court within 21 days of receiving the suspension/revocation notice.

3. OTHER MATTERS FOR CONSIDERATION

3.1 In addition to the need to refer applications by individuals who have convictions or Police cautions noted on their DBS; there are wider circumstances which cause applications to be referred to the General Licensing Sub-committee for a decision.

3.2 This can include an accusation or information received regarding an individual's behaviour which has not led to a conviction, or where the case has not yet been heard in court.

3.3 In accordance with the requirements of current Council policy - *Suitability Criteria for Drivers and Operators* - the following circumstances also lead to an individual's referral to a Sub-committee hearing for a decision, namely:

- Breach of an Act, a Bye-law or a Licensing condition
- Serious traffic offences or several convictions for minor traffic offences

4 THE CURRENT SITUATION

4.1 As has been the case for over a year, a report is submitted to the Sub - Committee with a recommendation based on guidance from current Council Policy - *Suitability Criteria for Drivers and Operators*, and the Officer's professional opinion. The report gives detail on the offences or other relevant matters; and the application form, DBS and any relevant information submitted for the Sub - Committee to consider. The offences are elaborated upon in the context of relevant clauses of the policy. It is believed that

submitting a formal report with a recommendation is an effective method of ensuring that the Sub-committee is given clear guidance on an application, including relevant evidence which forms the basis for the recommendation. The report also formally provides the applicant (and any other parties) with information regarding how the Officer has reached his/her recommendation for the application.

4.2 Every applicant who appears before the Sub - committee is given the opportunity to give the background of the offences or relevant matters. Therefore, the Officer's report and recommendation, in addition to evidence submitted by the applicant, ensure that the Sub-committee has all the evidence and information necessary for it to reach its decision.

4.3 The table below shows applications referred to the General Licensing Sub-Committee, along with the recommendation and decision, between October 2018 and September 2019.

DATE	RECOMMENDATION	DECISION	DATE	RECOMMENDATION	DECISION
17/10/18	Refuse	Approved	20/3/19	Refuse	Approved
21/11/18	Refuse	Refused	20/3/19	Refuse	Approved
21/11/18	Refuse	Approved	12/4/19	Approve	Approved
27/11/18	Refuse	Refused	16/4/19	Refuse	Approved
27/11/18	Approve	Approved	16/4/19	Refuse	Refused
10/12/18	Approve	Approved	3/6/19	Approve	Approved
20/12/18	Refuse	Refused	20/6/19	Approve	Approved
28/1/19	Refuse	Approved	01/8/19	Refuse	Refused
28/1/19	Refuse	Approved	18/9/19	Approve	Approved
28/1/19	Refuse	Approved	18/9/19	Approve	Approved
20/3/19	Refuse	Approved	18/9/19	Approve	Approved

4.4 22 applications were referred to the Sub - committee for a decision between October 2018 and September 2019. 9 applications were approved contrary to the recommendation for refusal based on policy. 5 applications were refused in accordance with the recommendation; and 8 applications were approved in accordance with the recommendation. Approval was given in accordance with the recommendation in every case where the offences did not contravene the policy for approval.

4.5 The Sub-committee's decisions are robust as each applicant receives a fair hearing; and is given a full verbal and written explanation of the reasoning behind the decision by

the Solicitor. There is specific reference to the relevance of policy clauses in the decision letter; as well as any other matters which were material considerations in deciding whether the applicant was a 'fit and proper' person.

- 4.6 The 8 applications approved in accordance with the recommendation over the past year were applications where it was apparent that the offences or other matters for consideration were not contrary to policy. These are usually applications where there has been no recent conviction; or in the case of multiple convictions or other matters, where over 10 years has elapsed since the most recent offence. There are certain examples of applications which have been referred to the Sub - committee with only one historic conviction for a violent offence where over 20 years have elapsed. Many applications have been referred lately due to driving licence points only.
- 4.7 The system for the approval or refusal of applications for taxi licences includes the right to appeal to a Magistrates Court. Decisions made by a Sub - committee to refuse applications, or by officers to revoke or suspend licences, are made in order to protect the public; however, it is important that we are able to give evidence for the reasoning behind a decision, as there are rights to appeal against these decisions.
- 4.8 It is believed that the side effects of the Delegation Scheme as it is cause:
- An unnecessary workload for the Sub-committee due to the number of applications which have to be reported as the applicant has a conviction
 - An unnecessary workload for the Licensing and Committees Services due to the need to prepare reports and organise meetings of the Sub-committee at random
 - Delays in the decision process for applications because of the need to report to the Sub-committee, meaning that applicants have to wait longer for a decision
- 4.9 It is believed that there is a need to look at the procedures for the delegation of decisions so that the Sub-committee can continue in its ability to make decisions in an objective and rational way, where the cases, by nature, justify a Sub - committee decision. It is suggested that options should be considered to ensure that applications where there are one or two minor historical offences are not referred to the Sub - Committee.

5 OPTIONS FOR CONSIDERATION

- 5.1 It is believed that the delegation procedure could be reviewed, ensuring that the robustness of decisions made by officers and the Sub - committee continues - but achieving this by allowing the Sub - committee to focus on the most contentious or complex applications.
- 5.2 Arrangements for the delegation of decisions vary from Council to Council. Some Licensing Authorities delegate the right to an officer to decide on any application which is not contrary to policy. Some delegate the right to make decisions to an Officer, but with a procedure for appealing to a Sub - committee should the applicant not agree with a decision.
- 5.3 It is Gwynedd Council's view that the Sub-committee has an important role in considering and making decisions regarding licences, but it seems that the challenge

lies in defining the circumstances in which an application should be referred to the Sub-committee.

5.4 The following options are proposed as initial options to be considered and discussed for approval by the Committee, and for the Licensing Service in consultation with the Legal Department to look at the options (or a combination of options) in more detail.

5.5 **Option A** - To continue with similar arrangements to those already in place, but confirming:

- That applications are referred to a Sub - committee where there are offences or convictions, whether on a DBS report or otherwise
- That there is no need to refer applications if the offences have been previously considered by a Sub-committee (and where the application was approved at that point).

5.6 **Option B** - Delegation to officers of the right to decide to approve applications where offences or other matters for consideration are not contrary to the policy; and where there are one or two historical offences or other matters, with over ten years having elapsed since the most recent offence.

5.7 Option B would mean that applications would be referred to the Sub - committee where an officer recommends refusal on the grounds that the application is contrary to Policy, or that there are other matters to be considered and evidence that the applicant is not a 'fit and proper' person.

5.8 **Option C** - To refer any application to a Sub - committee where there are multiple recent offences, serious and relevant offences, or any other matter for consideration; and where there would be substantial risks to public safety should a decision to refuse be successfully challenged upon appeal.

5.9 **Option D** - To refer decisions to the Sub - committee according to the Head of Environment Department's discretion

6. RECOMMENDATION -

6.1 The Committee is asked to:

- Support the principle of reviewing the current delegation scheme
- Consider the initial options and give approval for the Licensing Service, in consultation with the Legal Service, to look in more detail at the options - or a combination of the options - and to report back to the Committee with final options and the preferred option before the end of March 2020.