

REPORT OF THE HEAD OF ENVIRONMENTAL SERVICES

**REVISION TO HACKNEY CARRIAGE / PRIVATE HIRE DRIVER  
POLICY AND DELEGATED AUTHORITY TO SUSPEND OR REVOKE  
A LICENCE**

**REASON FOR REPORT**

1. A decision of the High Court has implications on the process this council follows when suspending or revoking a Hackney Carriage / Private Hire driver's licence. This report sets out how this council can act in accordance with this decision.

**RECOMMENDATIONS**

1. That Members resolve to adopt the process and policy amendments as set out in this report.

**RELATIONSHIP TO CORPORATE PLAN**

1. None.

**FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS**

Any financial, legal and/or risk assessment implications are set out below:

<b>Financial</b>	Costs awarded against the council when decisions are challenged.
<b>Legal</b>	Policies and procedures for suspending / revoking a driver's licence must be lawful.
<b>Risk Assessment</b>	The council must consider and adapt practices based on court decisions or risk challenge

**CONSULTATION CARRIED OUT WITH:**

1. Not relevant.

## 1.0 BACKGROUND

- 1.1 Under Section 61 (1) of the Local Government (Miscellaneous Provisions) Act 1976 a district council may suspend, revoke or refuse to renew a Hackney Carriage / Private Hire drivers licence. This may be for the following reasons:

- (a) since the grant of the licence they have been convicted of an offence involving dishonesty, indecency or violence, or
- (b) any other reasonable cause.

Under this specific section the driver has 21 days to appeal against the decision to the Magistrates Court and during the appeal period the licence holder can continue to drive Hackney Carriage / Private Hire vehicles.

- 1.2 Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976 however enables a decision to suspend or revoke a Hackney Carriage / Private Hire drivers licence to take immediate effect should the council believe it to be necessary in the interests of public safety. This means the driver cannot continue to drive Hackney Carriage / Private Hire vehicles during the appeal period.

- 1.3 The following example is given to show how this piece of legislation was used in practice, **prior** to the Singh case.

Information is given to the licensing team about a Hackney Carriage / Private Hire driver which raises concerns regarding their suitability to hold a licence i.e. they may no longer be fit and proper. Under Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976 the licence would be suspended with immediate effect. This would allow time for a full investigation and in this sense the suspension could be classed as an 'interim' measure. It would not be a final decision; it would be a way of stopping the driver from working while further information could be gathered. Once the investigation is complete the matter could then be referred to a sub-committee who may decide, amongst other things, to revoke the licence.

## 2.0 IMPLICATIONS OF R (SINGH) V CARDIFF CITY COUNCIL [2012]

- 2.1 As a result of the Singh case such an interim suspension (as set out in 1.3) is now unlawful. The decision to suspend is a final sanction in itself and cannot be used as a holding power to allow time for an investigation. This means that revocation is the necessary recourse. A copy of an article by Prof Roy Light in the Local Government Lawyer is attached as Annexe 1 which discusses the decision and its implications in more detail.

## 3.0 FUTURE USE OF SECTION 61 (2B) - EXAMPLES

- 3.1 An immediate suspension under Section 61 (2B) may take place when a driver is no longer fit to Group 2 medical standards. In these circumstances the suspension could have effect until the driver can provide evidence to show they are once again fit to the required standard.
- 3.2 An immediate revocation under Section 61 (2B) may take place when the licensing team have been made aware of information concerning a driver which indicates they are no longer fit and proper. In this situation the decision to revoke must be made relatively quickly and a full investigation may not be possible until after the revocation

itself. In this situation further evidence may come to light which either substantiates the initial decision to revoke the licence or alternatively, exonerates the driver and indicates they are fit and proper to hold a licence.

- 3.3 In this scenario, and when a driver is once again adjudged to be fit and proper, a procedure must be in place that allows them to regain the licence as quickly as possible and with minimal fuss. It would be unfair for the driver to have to re-apply for a new licence in line with our current policy as this would imply they have to pay an application fee and supply us with a new DBS form, medical etc.

#### 4.0 **RECOMMENDATIONS**

- 4.1 That the Licensing Committee delegate authority to the Head of Environmental Services to **immediately** suspend or revoke a Hackney Carriage / Private Hire vehicle driver's licence where it is considered necessary in the interest of public safety. This ensures action can be taken immediately.
- 4.2 That a 'fast track' procedure be adopted to re-licence those drivers who have had their licence revoked but have subsequently been found to be fit and proper. The driver would need to supply us with a new application form but there would be no application fee. All pre-check enquiries (DBS, medical, references etc.) would stand and be automatically set to the dates they were previously due to expire, as would the licence itself.

#### 5.0 **TIMESCALE**

- 5.1 If approved the recommendations would be implemented with immediate effect.

<b>Contact for any more information</b>	Mr Thomas Keating – 01884 244618 Licensing Officer
<b>Background Papers</b>	'Suspension of taxi drivers' licences' – Prof Roy Light / R (Singh) V Cardiff City Council [2012]
<b>File Reference</b>	Licensing / Taxis / Report for revocation
<b>Circulation of the Report</b>	Regulatory Committee

***Roy Light looks at the role suspension of a taxi driver's licence plays in the aftermath of a key High Court ruling.***

### **The law**

By s.61(1) Local Government (Miscellaneous Provisions) Act 1976 'a district council may suspend or revoke... or refuse to renew the licence of the driver of a hackney carriage or a private hire vehicle' on the grounds (a) that he has since the grant of the licence been convicted of an offence involving dishonesty, indecency or violence or (b) any other reasonable cause.

'Any other reasonable cause' is generally taken to mean something that may lead the authority to consider that the driver is no longer a fit and proper person to hold a drivers' licence – to grant a drivers' licence the authority must be satisfied 'that the applicant is a fit and proper person' (by s.51 for PHVs and s.59 for hackney carriages).

It has been suggested that 'any other reasonable cause' extends beyond a simple consideration of whether the evidence suggests that the driver continues to satisfy the fit and proper person criterion. For example, it may be considered in the interests of public safety that a person who has been charged with a serious criminal offence should not be allowed to continue as a taxi driver. However, in order to be able to conclude that it is against the public interest for a driver to continue to operate as a taxi driver there would need to be a consideration of the risk posed by the driver – in other words a consideration of whether the person is considered fit and proper to hold a driver's licence.

If 'any reasonable cause' was interpreted to mean other than 'fit and proper' it would put a driver facing action under s.61(1) in a worse position than a new applicant for a licence who must satisfy the fit and proper person criterion. The better view must be that 'any other reasonable cause' under s.61(1)(b) simply extends s.61(1)(a) to include matters other than a criminal conviction for the offences specified in that subsection. For example, charges being laid, a failed prosecution or a criminal matter not involving dishonesty, indecency or violence (such as drink-driving).

### **The practice**

Councils may come into possession of information that raises concerns as to whether a person holding a taxi driver's licence remains a fit and proper person. For example, the council may have been informed that a driver has been charged with a serious criminal offence. The practice of a number of councils has been to suspend the driver's licence under s.61 in order to allow a full investigation into the matter to be conducted and to consider at a later date what action, including revocation, should be taken.

### ***R (application of Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)***

This decision now seems to make such an approach unlawful as Singh J decided that s.61 does not confer a power of interim suspension: "it is rather after a considered determination ... a final decision on whether a ground for either revocation, or suspension of a licence is made out"(para.103). So suspension is a sanction and cannot be used as an administrative measure to allow an authority to investigate matters: "it is not, as it were, a protective or holding power. It is a power of final suspension, as alternative to a power of final revocation" (para.105). So it is a final determination on the fitness and propriety of the driver and, as such, appealable.

This is the case whether the suspension is made under s.61(1) or if deemed necessary for public safety under s.61(2B) where the suspension takes place with immediate effect rather than 21 days after notice is given. Note also that if a suspension or revocation is made under s.61(1) and an appeal is lodged within the 21 days the suspension or revocation does not take effect until the appeal is abandoned or determined.

### **Practice after Singh**

A council on receiving information which causes concern over whether a taxi driver is a fit and proper person will need to have delegated powers and a policy framework in place to enable it to take action quickly and without delay. This was good practice even before *Singh*.

The difference post-*Singh* is that the action that is taken by the council can no longer be an interim step pending a fuller investigation with a final adjudicated at a later date. The council must therefore approach the matter in the

same way that it would approach a final determination – because it is a final determination.

There will have to be a full consideration of the available evidence and the driver should be given the opportunity to state his or her case. The council must then weigh the evidence and decide how to exercise its discretion. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.

However, while the determination is a 'final' one, it is a determination based on the evidence available to the council at the time it made the determination. New evidence may, of course, become available at a later date.

New evidence may be adduced at an appeal leading the appeal court to a determination different to that reached by the council or an appeal may be settled by agreement between the council and the driver on terms which, in the light of subsequent evidence, becomes the appropriate course.

If, for example, the allegations against the driver were unfounded, a suspension could be lifted and if the licence was revoked, an expedited re-licensing process used (if the council has formulated one).

### **When to suspend**

The pre-*Singh* practice of suspension of a licence pending the outcome of serious criminal charges may have been a reasonable one and was clearly a useful tool for councils to use. Now that suspension can no longer be used in this way when would suspension be an appropriate sanction? Can suspension be used as a punishment?

If on a consideration of the evidence the council decides that the driver can no longer be considered a fit and proper person then revocation would seem appropriate. The more serious the conduct, the more likely this will be.

However, *Singh J* suggests that suspension may be appropriate "even if misconduct has been established" if something "less than complete revocation" is appropriate and suspension "will constitute sufficient sanction in the interests of the public" (para.104). What does this mean?

It is clear that the aim of suspension is to protect the public (*Leeds City Council v Hussain* [2002]). It is not to punish the driver. Punishment in the form of retribution (legally sanctioned revenge) is therefore not a proper use of suspension. Retribution is backward looking and its aim is no more than to give the driver his or her just deserts for their conduct ('an eye for an eye').

Other purposes of punishment – variously termed utilitarian, reductive or corrective – look to the future and have a positive aim. Most appropriate when considering suspension of taxi drivers' licences are 'corrective' measures aimed at the driver. This may entail the driver attending a driver training course or other improving measure (rehabilitation) or the sanction of suspension operating as an individual deterrent against future misconduct by the driver.

The public interest is not in seeing a driver punished for his conduct as this is not the function of the licensing regime. The licensing regime is concerned with protection of the public. If a sanction by way of suspension is imposed the aim is to ensure that the drivers' conduct will not be repeated.

Therefore, if on the evidence, the conduct of the driver has not been that of a fit and proper person but revocation is seen as a disproportionate response it may be considered that a period of suspension will serve to deter the driver from misconduct in the future and so render him or her once again a fit and proper person.