

**EAST LINDSEY DISTRICT COUNCIL
FULL COUNCIL**

Report of: Councillor Craig Leyland
Leader of the Council/Executive Councillor for Corporate Affairs

Report to:	Full Council
Date:	4th March 2020
Subject:	Update to the Council Constitution

Decision:	Council Decision
Relevant Executive Member:	Leader of the Council/Portfolio Holder for Corporate Affairs – Councillor Craig Leyland
Report author:	John Armstrong: john.armstrong@e-lindsey.gov.uk Date: 10-02-2020
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Signed off by:	Robert Barlow (Chief Executive) Robert.barlow@e-lindsey.gov.uk Date:
Approved for publication	Councillor Craig Leyland
Does the report identify information that is exempt from publication	NO

SUMMARY

The purpose of this report is to seek Member support to amend the Council's Constitution, to:

- Provide delegated authority to the Service Manager - Public Protection to immediately suspend or revoke a hackney carriage or private hire vehicle

driver's licence where it is considered necessary and appropriate in the interests of public safety. The suspension or revocation process to be in line with the Rapid Response (Fast Track) Procedure set out at Appendix 2 to this Report; and

- To amend the Scheme of Delegation and the Financial Procedure Rules so as to remove the inconsistencies' in respect of write off limits afforded to the Council's Section 151 Officer, and to bring them all into line with the write off limit contained within the Table at Page 214 at Part 4 - Article 31 (Financial Procedure Rules) of the Council's Constitution.

It is important that the Constitution is regarded as a dynamic document which maintains its currency by incorporating changes to reflect constantly changing circumstances, and amendments to remedy inconsistencies. The suggested changes require approval by Council.

RECOMMENDATION

It is recommended that Council approves the amendments to the Constitution outlined at **Appendix 1 (a) & (b)** to this report.

REASON: To enable the Council to maintain a current, consistent and up to date Constitution and to align it with proposed changes in the Council's practices and procedures.

1. BACKGROUND TO REPORT

- 1.1. This report looks at: amending the scheme of delegation in relation to:
 - a) Amending the Council's Scheme of Delegation in relation to the Service Manager – Public Safety
- 1.2. The Council has a mandatory duty to licence those persons who seek to drive a hackney carriage or private hire vehicle and to ensure that those drivers are fit and proper persons to do so. The prime focus for the Council is to ensure public safety, as well as providing an efficient and effective licensing service.
- 1.3. The council does not currently have in place delegated authority or specific policies to enable a rapid response for existing drivers about whom serious public safety concerns regarding their fit and proper status are raised. The Local Government Association (LGA) Taxi and Private Hire Vehicle Licensing Councillor's handbook advises that if an allegation of a serious nature is received then the Council should have in place procedures which will allow for a rapid response. The Handbook is of the view that in serious cases it is not appropriate to wait for a licensing Committee hearing to be convened.

- 1.4. Examples of situations where immediate suspension or revocation may be warranted include allegations:
- of indecency, including sexual assault and rape;
 - that the driver is unfit to drive as a result of being under the influence of drugs or alcohol.
- 1.5. Immediate suspension may also take place when the driver no longer meets the Council's medical standards for licensed drivers.
- 1.6. With this in mind the General Licensing Committee at its meeting on 21st October 2019 gave support for the introduction of the new Raid Response (Fast Track) Procedure set out at Appendix 2 to this Report, and the provision of a delegation to the Service Manager – Public Protection to act in accordance with those procedures. The suggested amendment at **Appendix 1 (a)** to this Report seeks to reflect the required delegation.
- b) Amendment to the Council's Scheme of Delegation & Financial Procedure Rules in relation to write offs.
- 1.7. Within the Council's Scheme of Delegation at Page 70 of the Constitution there are a number of alternative thresholds for write off given to the Section 151 Officer depending on alternative circumstances, as set out below:
- To take any action to recover debts due to the Council and to write-off any outstanding sums owed to the Council up to £5,000 in respect of each debt, or to an unlimited amount in respect of any debt where the debtor is bankrupt or in liquidation.
 - Debt Recovery:
 - (c) To write off individual debts due to the Council of up to £200.
 - (d) In appropriate cases, to write off debts up to £2000 each which remains outstanding after all reasonable recovery action has proved unsuccessful.
 - (e) To write off legal costs up to £500 where a Court has determined they shall not be awarded
- 1.8. The Council's Financial Procure Rules (FPRs) within the Table at page 214 at Part 4 - Article 31 of the Council's Constitution makes reference to write offs up to £50,000 being delegated to the Council's Section 151 Officer in consultation with the Finance Portfolio Holder and Budget Portfolio Holder. Within the FPRs there is a further anomaly whereby:

- Sums up to £5,000 may be written off by the appropriate Budget Manager, with the approval of the Section 151 Officer/Deputy Section 151 Officer.

1.9. The intention is to align all write offs with the limits and key controls as set out in the Table at Page 214 within the Council's Financial Procedure Rules at Part 4 Article 31, and this is reflected by the proposed changes to the Constitution set out at **Appendix 1 (b)** to this Report.

2. OTHER OPTIONS CONSIDERED

2.1 No other options have been considered. The Constitution must be kept up to date and reflect current governance practices and to assist with improving operational efficiency of decision making.

3. RESOURCE IMPLICATIONS

3.1 None

4. RISK AND MITIGATION

Risk has been considered as part of this report and any specific risks are included in the table below:

Category Risk – State if high medium or low	Action / Controls

5. ISSUES AND MATTERS TO TAKE INTO ACCOUNT ARISING FROM KEY CORPORATE CONSIDERATIONS (EQUALITY, SAFEGUARDING, DEPRIVATION, HEALTH & SAFETY etc.)

5.1 It is important that the Council has safeguards in place to protect vulnerable people within our community and the proposed delegation to the Service Manager – Public Protection will assist in this regard.

6. COUNCILLOR COMMENTS

6.1 As alluded to above the General Licensing Committee at its meeting on 21st October 2019 gave support for the introduction of the new Rapid Response (Fast Track) Procedure set out at **Appendix 2** to this Report, and the provision

of a delegation to the Service Manager – Public Protection to act in accordance with those procedures.

- 6.2** In addition, the Council’s Audit and Governance Committee, at a meeting held on 22nd January 2020, they supported and recommended the proposed changes to Council.

7. CARBON REDUCTION IMPACT/IMPLICATIONS

- 7.1** N/A

8. CRIME AND DISORDER IMPLICATIONS

- 8.1** N/A

9. FINANCIAL CONSIDERATIONS/IMPLICATIONS

- 9.1** As with all licensing matters it is possible that a licensing decision may be appealed to the Magistrates’ Court, and if the appeal is upheld costs may be awarded against the Council. However, the judgment of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

- 9.2** No financial implications have been identified in terms of the proposed changes to the Scheme of Delegation in relation to write off limits.

10. LEGAL CONSIDERATIONS/IMPLICATIONS

- 10.1** The Constitution needs to be kept up to date to reflect current governance practices and provide lawful authority for officers to take decisions as appropriate on behalf of the Council.

11. APPENDICES

- 11.1** **Appendix 1 (a)** – proposed changes to the Scheme of Delegation for Service Manager – Public Safety

Appendix 1 (b) - Proposed changes to the Financial Procedure Rules and the Scheme of delegation relating to write off.

Appendix 2 – the Council’s proposed new Rapid Response (Fast Track) Procedure

12. BACKGROUND PAPERS

- 12.1 Reports & minutes of the General Licensing Committee of 21st October 2019:
<https://democracy.e-lindsey.gov.uk/ieListDocuments.aspx?CId=118&MId=6175&Ver=4>