

EAST LINDSEY DISTRICT COUNCIL

Report of: Councillor Richard Fry
Executive Member for Finance

Report to:	Leader of the Council
Date:	April 2020
Subject:	The Rapid Response (Fast Track) Procedure

Decision:	Leader key decision
Relevant Executive Member:	Cllr Richard Fry Finance Portfolio Holder
Report author:	Jonathan Challen jonathan.challe@e-lindsey.gov.uk 01507 613051 Date: 28 th February 2020
Reviewed by:	Michelle Howard Michelle.howard@e-lindsey.gov.uk 01507 613216
Signed off by:	Date:
Approved for publication	John Armstrong Date: 04.03.20 Cllr Richard Fry Date:04.03.20
Does the report identify information that is exempt from publication	No

SUMMARY

The Report recommends to Members a procedure for the urgent suspension or revocation of hackney carriage / private hire drivers licences where information is received of a serious nature that may affect public safety. The proposed Rapid Response (Fast Track) Procedure is set out in Appendix A of this Report. The Council's current procedures do not address cases where such immediate action is warranted.

RECOMMENDATION

That the introduction of the Rapid Response (Fast Track) Procedure set out in Appendix A of this Report that allows for the immediate suspension or revocation of a hackney carriage or private hire vehicle driver's licence where it is considered necessary and appropriate in the interest of public safety be approved.

REASON:

To protect public safety by enabling swift action to be taken when serious issues regarding the fitness of licensed drivers of hackney carriages and private hire vehicles are notified to the Authority.

1. BACKGROUND TO REPORT

- 1.1** This Authority must satisfy itself that applicants and holders of existing hackney carriage / private hire vehicle driver's licences are a fit and proper person. Under the current policy licensed drivers whose suitability is called into question are referred to a General Licensing Committee hearing where Members determine suitability and can suspend or revoke licences.
- 1.2** This system works well in general but there are occasions where urgent action may be required which in the interest of public safety cannot be delayed until the next available General Licensing Committee hearing. This Report therefore recommends an emergency procedure where swift action can be taken in limited and very serious circumstances. The proposed procedure can be found at Appendix A of this Report.
- 1.3** The Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 set out the licensing regime in respect of hackney carriage and private hire vehicle drivers. Within the East Lindsey District drivers are normally issued with dual licences, entitling them to drive either category of licensed vehicle.
- 1.4** From time to time the Council may come into possession of information that raises concerns as to whether a person holding a driver's licence remains a fit and proper person to hold such a licence. For example, information may be received that a driver has been charged with a serious criminal offence.

- 1.5** Section 61 of the 1976 Act sets out that a Council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle on any of the following grounds:
- (a) That he/she has since the grant of the licence –
 - (i) Been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of this Act: or
 - (b) Any other reasonable cause.

1.6 In the event that a decision is taken to suspend, revoke or refuse to renew a driver licence a notice must be served on the driver advising them of the decision and the reason why. The driver will have 21 days in which to lodge an appeal to the Magistrates Court against this decision and the suspension, revocation or refusal to renew will not have effect until such time as the appeal has been determined or withdrawn.

1.7 The 1976 Act was amended by Section 52 of the Road Safety Act 2006 so as to add a provision whereby if it appears that the interest of public safety requires the suspension or revocation of a licence, that suspension or revocation shall have immediate effect. A notice must be given to the driver which includes a statement that the suspension or revocation has immediate effect and an explanation of the reason for the decision. The driver still has a right of appeal to the Magistrates Court within 21 days of receiving the notice but is not entitled to drive a licensed vehicle until such time as any appeal is determined or withdrawn.

1.8 Examples of situations where immediate suspension or revocation might be warranted include:

- Allegations of indecency, including sexual assault and rape.
- Allegations that the driver is unfit to drive as a result of being under the influence of drugs or alcohol.

Also, an immediate suspension may take place when a driver no longer meets the Council's medical standards for licensed drivers. In these circumstances the licence suspension could have effect until the driver provides evidence to show he/she achieves the required medical standard.

1.9 The Local Government Association (LGA) Taxi and Private Hire Vehicle Licensing Councillor's handbook advises that if allegations of a serious nature are received then the Council should have in place procedures which 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.

1.10 With this in mind a Rapid Response Procedure is set out at Appendix A for Member consideration. The Procedure requires determination by the Public Protection Service Manager supported by Licensing Officers and Legal Services (where appropriate). All details relating to the allegation and the identity of the driver shall be excluded from the public domain as the matter may be the subject of formal proceedings at a later stage.

2. OTHER OPTIONS CONSIDERED

- 2.1 To continue without a Rapid Response Procedure. This would put the safety of the public at risk due to the potential delay in arranging a Licensing Committee hearing.

3. RESOURCE IMPLICATIONS

- 3.1 This policy review is being undertaken as part of the normal duties carried out by the Licensing Team with no additional resources involved.

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
Low	Adoption of the Rapid Response Procedure will reduce the risk to the Council to low where it is considered necessary to immediately suspend or revoke a hackney carriage or private hire vehicle driver's licence.

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

- 5.1 **Safeguarding** – The Licensing function carried out by the Council plays a key role in the safeguarding of residents. The adoption of the Rapid Response Procedure will compliment the Council's existing safeguarding practices.
- 5.2 **Equality and Diversity** – The proposed policy does not have the potential to cause negative impact or discriminate against different groups in the community based on age, disability, gender, race/ethnicity, religion or religious belief (faith), or sexual orientation.
- 5.3 **FOI/Human Rights/Data Protection** – Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e. is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

A licence holder is entitled to a fair hearing; Article 6 of the European Convention on Human Rights applies.

Article 8, the right to respect for private and family life, also applies as the "licence" is crucial to the livelihood of the premises licence holder. The Human Rights of the wider community are also engaged.

6. COUNCILLOR COMMENTS

- 6.1** Support for this procedure has been given by both the General Licensing Committee at its meeting on 20th January 2020 and the Audit and Governance Committee at its meeting on 22nd January 2020.

7. CARBON REDUCTION IMPACT/IMPLICATIONS

- 7.1** None

8. CRIME AND DISORDER IMPLICATIONS

- 8.1** All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as Licensing Authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area. The possible crime and disorder implications are clearly relevant factors in the consideration of a driver's licence where information in relation to a relevant crime is revealed. In giving "due regard" to these possible implications the Licensing Authority will need to consider and weigh up all the information made available at the licensing hearing and the submissions made by the licence holder.

9. FINANCIAL CONSIDERATIONS/IMPLICATIONS

- 9.1** This policy review is being undertaken as part of the normal duties carried out by the Licensing Team with no additional costs involved.
- 9.2** As with all licence matters it is possible that if a licensing decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

10. LEGAL CONSIDERATIONS/IMPLICATIONS

- 10.1** The Council has a mandatory obligation to licence those persons who seek to drive hackney carriages or private hire vehicles 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.
- 10.2** The Council does not currently have in place a procedure/policy in relation to a rapid response for existing drivers with serious public safety concerns regarding their fit and proper status. Best practice suggests that such issues should be considered within 48 hours and any decision to suspend or revoke should take immediate effect. The driver would not then be permitted to drive a licensed vehicle unless the decision is overturned on appeal to the Magistrates Court. A potential risk to public safety from the individual driving a licensed vehicle and transporting the fare paying public is removed.
- 10.3** Any new licensing policy, or decision based on such a policy, is open to legal challenge. However, the policy, subject of this Report, and recommended to the Leader, heavily reflects similar procedures already adopted by other Licensing Authorities.

11. APPENDICES

- 11.1** Appendix A – Rapid Response Procedure

12. BACKGROUND PAPERS

- 12.1** None