

**SOLIHULL METROPOLITAN BOROUGH COUNCIL**

<b>Report to:</b>	Licensing Sub-Committee
<b>Meeting date:</b>	23 April 2012
<b>Report from:</b>	Director of Places
<b>Report Author/Lead Contact Officer:</b>	Gavin Morrice
<b>Wards affected:</b>	All Wards
<b>Public/Private report:</b>	Public
<b>Exempt by virtue of Paragraph:</b>	N/A of Schedule 12A of the Local Government Act 1972.

**Subject/Report Title:**

**TO CONSIDER VARIOUS DELEGATIONS FROM THE LICENSING SUB-COMMITTEE TO THE PUBLIC PROTECTION MANAGER AND/OR HIS DEPUTY.**

**1. Purpose of Report**

- 1.1 To consider various delegations from the licensing sub-committee, to the Public Protection Manager (licensing) and/or his Deputy, in respect of hackney carriage and private hire related matters.
- 1.2 To consider various delegations from the licensing sub-committee, to the Public Protection Manager (licensing / business compliance) and/or his Deputy, in respect of certain licensing matters.

**2. Decision(s) Recommended**

- 2.1 All matters relevant to this report, to be considered on their merits.

**3. Background**

- 3.1 A report in respect of the proposed delegations was considered by Members of the licensing sub-committee at their last meeting held on Monday 2<sup>nd</sup> April 2012. On that occasion the Members requested additional detail and requested that it be brought before them again on 23/04/12.

- 3.2 Members are aware that it is the usual practice for the licensing sub-committee of Solihull Council to meet and receive reports every three weeks in respect of certain licensing matters, (mainly vehicle and driver related), which are considered in line with existing policy guidelines.
- 3.3 The licensing sub-committee has recently acknowledged that there is a more efficient and less bureaucratic way of dealing with a range of licensing matters and as such, has indicated that by delegating certain functions to the Public Protection Manager (Licensing), or his Deputy, a less costly and more effective service can be provided by the local authority, to its customers, without additional risk to public safety, or negative impact on the prevailing legal requirements.
- 3.4 Attached at **Appendix A**, are a number of proposed delegations in respect of new applicants for hackney carriage and/or private hire licences. At **Appendix A1** can be found proposed delegations in respect of certain general licensing matters and at **Appendix B** proposed delegations in respect of existing hackney carriage and private hire licence holders. These proposed delegations would enable the Public Protection Manager (Licensing) and/or his Deputy to make decisions on behalf of the Licensing Sub-Committee in such circumstances that bureaucracy and delays do not impact on applicants or the authority.
- 3.5 In matters relating to the grant of a licence, it is the case that an individual aggrieved by a decision of a committee, or of an officer, has the right of appeal to the Magistrates within 21 days of being notified about any matter for which he feels aggrieved.
- 3.6 Under the proposed scheme of delegations, where certain matters are of such an unusual or sensitive nature, the Public Protection Manager (Licensing) or his Deputy will ensure that the circumstances concerned, are reported to the Licensing Sub-Committee for their attention and action, as appropriate.
- 3.7 It is also proposed that where delegated powers are used by the Public Protection Manager (Licensing) or his Deputy, these matters are reported to the Members of the Licensing Sub-Committee, quarterly.

<b>4.</b>	<b>Evaluation of Alternative Option(s)</b>
4.1	No alternative option to 2.1
<b>5.</b>	<b>Reasons for Recommending Preferred Option</b>
5.1	To ensure that all concerned are at all times treated fairly, without any interference to their legal rights.
<b>6.</b>	<b>Scrutiny</b>
6.1	N / A
<b>7.</b>	<b>Implications</b>
7.1	<b>Policy/Strategy Implications</b>
7.2	This report has been prepared in line with the requirements of the Licensing Sub-Committee, with a view to creating a new policy for dealing with licensing matters.
7.3	<b>Meeting the duty to involve</b>
7.4	<b>Financial Implications</b>
7.5	To be discussed. See also Risk Implications
7.6	<b>Legal implications</b>
7.7	See Risk Implications
7.8	<b>Risk Implications</b>
	<p>In respect of this matter, any person aggrieved by the decision of the Council, may appeal against that decision to the Magistrates Court within 21 days of notification.</p> <p>Following any appeal, the Council decision may be upheld, overturned or varied. If the decision is upheld, the Council may claim cost against the appellant, but any award is at the discretion of the Courts and may not cover the full extent of the expenditure. Should the Council decision be overturned or varied, the appellant may claim costs against the Council.</p> <p>If an appellant is aggrieved by the decision of the Magistrates, an appeal to a higher court may be permitted. In such circumstances, the associated financial / reputational risk to the Council is increased.</p>

During any appeal, the decision of the Council is suspended until the matter is determined, except in cases of public safety, when the decision of the Council shall continue to have effect until the matter is resolved.

In the event that there is no right of appeal to the Magistrates, or where the statutory appeal process is exhausted, an application for a Judicial Review may be submitted.

**7.9 Fair Treatment Assessment**

**7.10 Carbon Management/Environmental**

7.11 N/A

**7.12 Partner Organisations**

**7.13 Safeguarding/Corporate Parenting Implications**

**7.14 Customer Impact**

**7.15 Other implications**

**8. List of Appendices Referred to**

**8.1 Appendix 'A' 'A' 1 & 'B'**

**9. Background Papers Used to Compile this Report**

9.1 N/A

**General policy of delegations from the Licensing Sub-Committee, to the Public Protection Manager (Licensing), or his Deputy when dealing with hackney carriage and private hire related matters.**

**(All applications will be considered on their merits)**

**New Applications.**

**1. Documentation**

Any applicant for the grant of a vehicle, driver or operators licence, will be required to fully complete the relevant application forms, as specified by Solihull Council and produce supporting documentation in their original format, unless permission to the contrary is given by a member of the licensing staff. Where the application process is not properly completed, the Public Protection manager (Licensing) or his Deputy may refuse, or suspend the application.

**2. Behaviour**

Any applicant for the grant of a vehicle, driver or operators licence, will be required to behave in civil and orderly manner at all times and treat others with courtesy and respect. Where this is not the case, the Public Protection manager (Licensing) or his Deputy may refuse, or suspend the application.

**3. Dishonesty.**

Any applicant for the grant of a vehicle, driver or operators licence, having a conviction, caution, or warning for dishonesty, may have the application refused by the Public Protection Manager (Licensing) or his Deputy. Where there is a suggestion of dishonesty on the part of the applicant, through the failure to supply relevant information, or the supply of false information to the Licensing Authority, the Public Protection Manager (Licensing), or his Deputy may refuse or suspend the application.

**4. Refusals & Revocations**

Any applicant for the grant of a vehicle, driver or operators licence, who has previously been refused a licence, or had his licence revoked or suspended by any authority, will be considered by the Public Protection Manager (Licensing) or his Deputy. Where the reason for that refusal, revocation or suspension is considered by the Public Protection Manager (Licensing) or his Deputy, to be of such a serious nature, the application may be refused or suspended.

**5. Violence**

Any applicant for the grant of a vehicle, driver or operators licence, having a conviction, caution, or warning for violence, or similar matters involving other persons or property, may have the application refused or suspended by the Public Protection Manager (Licensing), or his Deputy.

## **6. Sexual Offences**

Any applicant for the grant of a vehicle, driver or operators licence, having a conviction, caution, or warning for any matter of a sexual nature, may have the application refused or suspended by the Public Protection Manager (Licensing), or his Deputy.

## **7. Driving Offences**

- a) Any applicant for the grant of a vehicle, driver or operators licence, having a conviction, caution, or warning for any matter involving alcohol or drugs, or any similar matter, may have the application refused or suspended by the Public Protection Manager (Licensing), or his Deputy.
- b) Any applicant for the grant of a vehicle, driver or operators licence, having a conviction, caution, or warning for any matter involving dangerous or careless driving, failing to stop at the scene of, or report an accident, or no insurance, or any other matter indicative of poor driving, may have the application refused or suspended by the Public Protection Manager (Licensing), or his Deputy.
- c) Any applicant for the grant of a vehicle, driver or operators licence, having ten or more current penalty points endorsed on his DVLA driving licence will be refused by the Public Protection Manager (Licensing), or his Deputy

## **8. Drug & Alcohol Related Matters**

Any applicant for the grant of a vehicle, driver or operators licence, having a conviction, caution, or warning for any matter involving the misuse of drugs and/or alcohol, or any similar substances, may have the application refused or suspended by the Public Protection Manager (Licensing), or his Deputy.

## **9. Medical Fitness**

Any applicant for the grant of a vehicle, driver or operators licence, who is unable to obtain a medical certificate issued by the Council approved doctor, in line with appropriate guidance, will have the application refused by the Public Protection Manager (Licensing), or his Deputy.

## **10. Plying for Hire**

Any applicant for the grant of a vehicle, driver or operators licence, having a conviction, caution, or warning for any matter involving the misuse of an existing, or previously held licence, such as plying for hire and/or associated offences, may have the application refused or suspended by the Public Protection Manager (Licensing), or his Deputy.

## **11. Operators**

- a) Any applicant for the grant of an operators licence, having a conviction, caution, warning, revocation or suspensions in respect of a previously held operators licence, with any authority, may have his application refused or suspended by the Public Protection Manager (Licensing) or his Deputy.

- b) Any applicant for the grant of an operators licence, who is an undischarged bankrupt, may have the application refused or suspended by the Public Protection Manager (Licensing), or his Deputy.

## **12. Vehicles**

- a) Any applicant for the grant of a vehicle licence, will be required to ensure that the vehicle concerned meets the licensing criteria of Solihull Council, with regards to the make, model, colour and suitability of the hackney carriage, or private hire vehicle. Where this criterion is not met, the application may be refused or suspended by the Public Protection Manager (Licensing), or his Deputy.
- b) Any applicant for the grant of a vehicle licence, will be required to provide satisfactory proof of insurance for that specific class of vehicle and a valid MOT certificate as required. The vehicle concerned must in all other ways comply with the conditions attached to vehicle licences granted by Solihull Council and the prevailing legislation regarding the use of that vehicle on a road. Where these requirements are not met, the application may be refused or suspended by the Public Protection Manager (Licensing), or his Deputy
- b) Any applicant for the grant of a vehicle licence, which includes a request for an exemption from displaying a licence plate, will be required to produce proof one or more appropriate contracts for which the vehicle(s) will be used. The vehicle(s) concerned must also be of such a make, model and design, so as to meet the licensing criteria of Solihull Council. Where this criterion is not met, the application may be refused or suspended by the Public Protection Manager (Licensing), or his Deputy.

***(Where an application is refused or suspended, the individual concerned will be advised in writing of the reasons for that decision. If the applicant feels aggrieved by the decision made, he may challenge that decision by way of an appeal to the magistrates, within 21 days of notification being received).***

**Matters delegated from the Licensing Sub-Committee, to the Public Protection Manager (Licensing), or his Deputy when dealing with general licensing matters.**

**1. Hypnotism**

Any application received for consent to be granted in respect of a public performance of hypnotism, will be considered by the Public Protection Manager (Licensing) or his Deputy, in line with the prevailing legislation. The Public Protection Manager (Licensing) or his Deputy, may grant or refuse the application, with or without appropriate conditions attached.

**2. Street Trading**

a) Any application received for an existing Street Trading Consent to be renewed by the holder, shall be considered by the Public Protection Manager (Licensing) or his Deputy, who will consult with the Police, Highways, Town Centre Management, or others, as deemed appropriate. In the absence of any objection(s), the Public Protection Manager or his Deputy may issue Consent for the specified period.

b) Where a street trader ceases his activities or fails to renew his Consent and another trader wishes to occupy that place and sell products deemed suitable by the authority, the Public Protection Manager or his Deputy may, in the absence of objection from appropriate consultees, issue Consent for the specified period.

**3. Non-Medical Poisons**

It shall be the duty of the Public Protection Manager (Licensing) or his Deputy, to maintain a register of all persons entitled to sell non-medical poisons, in line with the prevailing legislation.

**4. Charitable Collections**

Any application received for the grant of a permit or authority to collect for charitable or other purposes, will be considered by the Public Protection Manager (Licensing) or his Deputy and provided that the application is made in line with the prevailing legislation, or existing requirements, a permit or authority may be granted for the specified period.

**5. Salvage Yard Operators**

The Public Protection Manager (Licensing) or his Deputy, shall maintain a register of all premises that operate as a vehicle salvage yard and those persons engaged in the operation of such premises. Providing that any application made for registration as a vehicle salvage yard / operator, is in line with the prevailing legislation, the appropriate certificate will be issued.

**6. Safety of Sports Grounds**



Any application received for the grant of a safety certificate in respect of a sports ground, shall be considered by the Public Protection Manager (Licensing) or his Deputy, providing that the application is made in line with prevailing legislation. The Public Protection Manager (Licensing) or his Deputy, may grant, refuse, cancel, amend or replace such certificates, as appropriate.

**7. Registration of Food Business Premises**

A register will be maintained of all food business premises and any application received for the registration of a food business premises, will be considered by the Public Protection Manager (Business Compliance) or his Deputy and provided that the application is made in line with the prevailing legislation, the name of the business will entered in the appropriate register.

**8. Food Preparation Premises**

Any application received to register and approve any product specific food business premises, will be considered by the Public Protection Manager (Business Compliance) or his Deputy, in line with the prevailing legislation and/or regulations. The Public Protection Manager (Business Compliance) or his Deputy, may refuse registration, or approve the application with or without conditions attached.

**General policy of delegations from the Licensing Sub-Committee, to the Public Protection Manager (Licensing), or his Deputy when dealing with hackney carriage and private hire related matters.**

**(All applications will be considered on their merits)**

**Existing Licence Holders.**

**13. Documentation**

The holder of a Solihull vehicle, driver or operators licence, who makes an application to renew, replace, vary or cancel a licence, will be required to follow the required process and fully complete the relevant documentation, as specified by Solihull Council. Supporting documentation produced must be in its original format, unless permission to the contrary is given by a member of the licensing staff. Where the process is not properly completed, the Public Protection manager (Licensing) or his Deputy may refuse, or suspend the application, until such times as the matter is resolved

**14. Behaviour**

The holder of a Solihull vehicle, driver or operators licence, will behave in civil and orderly manner at all times and treat other people with courtesy and respect. Where this is not the case, the Public Protection manager (Licensing) or his Deputy may require the individual to complete an anger management and / or customer care course within a specified period of time. Failure to do so may result in the suspension of the licence by the Public Protection manager (Licensing) or his Deputy until the matter is resolved.

**15. Dishonesty**

The holder of a Solihull vehicle, driver or operators licence, who is convicted or cautioned for an offence of dishonesty, will normally be required to appear before the Licensing Sub-Committee, which may revoke or suspend a licence, or take any other action deemed to be reasonable and proportionate. Where the licence is revoked due to the nature of the conviction, the Rehabilitation of Offenders Act 1974 will apply. Where a licence has been obtained by dishonest or fraudulent means, the individual(s) may be subject to legal proceedings

**4 Indictable Offences.**

The holder of a Solihull vehicle, driver or operators licence, who is convicted, cautioned, or warned for any indictable offence, will normally be required to appear before the Licensing Sub-Committee, which may revoke or suspend a licence, or take any other action deemed to be reasonable and proportionate. Where the licence is revoked due to the nature of the conviction, the Rehabilitation of Offenders Act 1974 will apply.

**5 Violence**

The holder of a Solihull vehicle, driver or operators licence, who is convicted cautioned or warned for any incident of violence, or similar matter, involving other

persons or property, will normally be required to appear before the Licensing Sub-Committee, which may revoke or suspend a licence, or take any other action deemed to be reasonable and proportionate. Where the licence is revoked due to the nature of the conviction, the Rehabilitation of Offenders Act 1974 will apply.

## **6 Sexual Offences**

The holder of a Solihull vehicle, driver or operators licence who is convicted cautioned or warned for any offence of a sexual nature, or similar matter, may in the first instance have his licence suspended by the Public Protection Manager (Licensing) or his Deputy on the grounds of public safety and Members of the Licensing Sub-Committee advised of such action. At the appropriate time, the individual concerned will normally be required to appear before the Licensing Sub-Committee, which may revoke or suspend a licence, or take any other action deemed to be reasonable and proportionate. Where the licence is revoked due to the nature of the conviction, the Rehabilitation of Offenders Act 1974 will apply.

## **7. Driving Offences**

- a) The holder of a Solihull, drivers licence, who is convicted, cautioned or warned for any driving offence involving alcohol or drugs, or any similar matter, may have his licence suspended by the Public Protection Manager (Licensing) or his Deputy, until they are satisfied that the individual concerned is a fit and proper person. Where there is doubt, the individual concerned will normally be required to appear before the Licensing Sub-Committee, which may revoke or suspend a licence, or take any other action deemed to be reasonable and proportionate. Where the licence is revoked due to the nature of the conviction, the Rehabilitation of Offenders Act 1974 will apply.
  - b) The holder of a Solihull driver's licence, who is disqualified from driving by a court for any period, will have his hackney carriage or private hire drivers licence revoked by the Public Protection Manager (Licensing) or his Deputy, on the grounds that he is no longer qualified to hold such a licence. Should this occur, once the DVLA licence is reinstated, the individual concerned must serve a period of rehabilitation, equal to the period of disqualification, before another application for a licence can be considered. Any such application will be treated as a new application.
8. The holder of a hackney carriage or private hire driver's licence, who allows his licence to expire, for whatever reason, must immediately cease his activities as a licensed driver. In exceptional circumstances, the Public Protection Manager (Licensing) or his Deputy, may allow the licence to be renewed, provided the expiry is brought to their attention within a few days of the occurrence and the individual successfully completes the standard half day induction course for new applicants, at his own expense.. It is unlikely that any licence which has been expired for more than five days will be renewed and in such cases the individual will be required to re-apply for a new licence.
  9. The holder of a hackney carriage or private hire driver's licence who is convicted, cautioned or receives a fixed penalty notice for a motoring offence, must report the matter the licensing authority as required. The Public Protection Manager (Licensing) or his Deputy will consider all the prevailing circumstances and may in the appropriate circumstances, require the driver to undertake a driving re-assessment

with the Driving Standards Agency, at his own expense. In the event that such a re-assessment is not satisfactorily completed within the required time period, the Public Protection Manager (Licensing) or his Deputy may suspend the licence until the matter is resolved.

10. The holder of a private hire driver's licence, who applies for an exemption from displaying a vehicle licence plate, will be required to produce proof of one or more appropriate contracts for which the vehicle(s) will be used. The vehicle(s) concerned must also be of such a make, model and design, so as to meet the licensing criteria of Solihull Council. Where this criterion is not met, the application may be refused or suspended by the Public Protection Manager (Licensing), or his Deputy. If granted, specific conditions may be attached to the exemption which must be complied with at all times.
11. The holder of a hackney carriage or private hire driver's licence, who has his DVLA driver's licence revoked or suspended by the DVLA, must cease driving immediately and notify the licensing authority forthwith. Where it is discovered that such a DVLA revocation or suspension is in place, the Public Protection Manager (Licensing), or his Deputy will suspend the hackney carriage or private hire driver's licence until such time as the DVLA drivers licence has been re-instated and all enquiries have been satisfactorily completed.

## **12 Plying for Hire**

The holder of a Solihull, drivers licence who is convicted, cautioned, warned, or admits to, any offence of plying for hire or associated offences, may have his licence suspended by the Public Protection Manager (Licensing) or his Deputy. For a first offence, the driver can normally expect to have his licence suspended for a period of between 4 and 6 months. For a second or subsequent offence, the Public Protection Manager (Licensing) or his Deputy will normally revoke the drivers licence.

## **13 Medical Fitness**

- a) The holder of a Solihull, drivers licence, must at all times possess a current medical certificate, issued by the approved Solihull Medical Advisor. Should the certificate expire, the driver shall immediately cease his activities as a hackney carriage or private hire driver, unless the matter has been discussed and agreed with a licensing officer. Where no such discussion has taken place and it is discovered that a drivers medical certificate has expired, the Public Protection Manager (Licensing) or his Deputy will immediately suspend the drivers licence. The suspension will remain in place until such time as a valid medical certificate is obtained and produced to a licensing officer.
- b) Where a driver is unable to obtain a medical certificate due to a serious health problem, the Public Protection Manager (Licensing) or his Deputy will discuss the matter with the Medical Advisor and if necessary, based on medical advice, the drivers licence may be revoked.
- c) All drivers less than 60 years of age will be required to obtain a medical certificate every three years, unless the Medical Advisor suggests a shorter period. All drivers who are 60 years or older at the time of their driver licence renewal, will be required to obtain a medical certificate annually. A licence to

drive a hackney carriage or private hire vehicle, will normally only be issued for the duration of the medical certificate.

- d) Where it is considered appropriate by the Public Protection Manager (Licensing) or his Deputy, that a licensed hackney carriage or private hire driver should complete a medical examination at any time with the approved Medical Advisor, the individual shall do so within the agreed time period. Failure to make and keep a medical appointment, may result in the driver's licence being suspended by the Public Protection Manager (Licensing) or his Deputy, until the matter is resolved.

#### **14 Criminal Records Bureau Disclosures**

- e) The holder of a hackney carriage or private hire driver's licence must obtain and produce a CRB Disclosure to the authority, in line with prevailing policy. Where such a Disclosure is not produced, the Public Protection Manager (Licensing), or his Deputy may suspend the driver's licence, until the matter is resolved. In certain circumstances, it may be deemed appropriate to require a licensed driver to produce a CRB Disclosure, within the life of a licence and in such circumstances the Public Protection Manager (Licensing), or his Deputy may waive the normal fee payable by the individual, where however there is a failure by that individual to apply for a CRB Disclosure as required, this may result in the driver's licence being suspended by the Public Protection Manager (Licensing) or his Deputy, until the matter is resolved.

***(Where, a licence may be revoked or suspended by the Public Protection Manager (Licensing) or his Deputy,, the licence holder concerned may make written representations to the Public Protection Manager (Licensing) or his Deputy, within 7 days, setting out good reasons why the revocation or suspension should be set aside or reduced. All representations made will be properly considered by the Public Protection Manager (Licensing), or his Deputy, before a final decision is taken).***