

**Body:** General Licensing Committee  
**Date:** 17 October 2005  
**Subject:** Taxi Matters  
**Report Of:** Karen Plympton, Licensing Manager  
**Ward(s)** All  
**Purpose** To delegate appropriate powers and authorisations to nominated Officers.  
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**Recommendation:** That the powers and authorisations be delegated to the nominated Officers as detailed in the report.

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## **1.0 Background**

- 1.1 Enforcement of hackney carriage and private hire matters falls to the Local Authority. The duties to implement hackney carriage legislation are applied by virtue of the Town Police Clauses Act 1847, the Public Health Act 1875, the Local Government (Miscellaneous Provisions) Act 1972 and the Transport Act 1985. The Local Government (Miscellaneous Provisions) Act 1976 and the provisions contained therein apply to both hackney carriages and private hire vehicles. This has also been adopted by Eastbourne Borough Council (EBC), who act as the enforcing body.
- 1.2 In March 1998, the Better Regulation Unit of the Cabinet produced the enforcement Concordat, which provides a framework within which enforcement is undertaken and has been adopted by EBC. This will be presented, if required, at the Committee.

## **2.0 Purpose Of The Report**

- 2.1 Since my appointment in June 2005, my primary focus of work has been the Licensing Act 2003, however, amongst other duties I also oversee the all matters relating to the licensing of private hire and hackney carriage vehicles. One clear discrepancy with regard to the enforcement of inter-related legislation, it has been identified that key members of the Licensing Team may not have been properly authorised to conduct role specific duties and as such this affects their ability to enforce legislation and/or instigate prosecutions.
- 2.2 At the time of writing this report, no such "official authority" appears to have been sought or indeed approved by the relevant Committee in relation to specific individuals.

### **3.0 Legal Framework**

- 3.1 If enforcement involves prosecution for offences and/or action being taken against members of the taxi trade for breach of licence conditions or offences, then it is **essential** that Eastbourne Borough Council (EBC) can demonstrate that they can fulfil two prerequisites;
- In **all** cases, EBC must be able to show that they have the authority to bring proceedings. This will be a decision by EBC, by way of Committee or Officer who has the delegated power to make the decision to prosecute the particular case.
  - If the prosecution is for an offence committed under the Local Government (Miscellaneous Provisions) Act 1975, the authority must be able to demonstrate that the Act has been adopted. If, since the adoption of the Act reorganisation of local government has taken place, it will also be necessary to demonstrate how and why an adoption by the authority, which has since been re-organised, still applies to the authority bringing proceedings. Legal services have confirmed that EBC adopted the Act in late 1980.
- 3.2 The above points are fundamental to the question of prosecution. Authorisation cannot be granted retrospectively. Cases have also been lost on the lack of properly documented authorisations.
- 3.3 This viewpoint is supported by case law. In the case of *Dee and Chwyd River Authority versus Parry (1967)* the Divisional Court upheld a decision by the Magistrates Court that a minute recording the decision to institute a prosecution or a certified copy of such a minute was essential to demonstrate that a prosecuting authority had taken such a decision and has authorised its Officers accordingly. This is further supported by the case of *Kingston-Upon-Hull City Council versus Wilson (1995)*

### **4.0 Human Resource & Financial Implications**

- 4.1 A significant amount of time has been spent by the Licensing Manager researching the legal requirements in relation to taxi enforcement, with a view to increasing the number and frequency of enforcement visits. The costs involved in this are recouped and associated enforcement activities are re-cooped via licence fees.
- 4.2 It is essential that procedures are established and adhered to, in order that public safety can be maintained and appropriate action taken against members of the taxi trade who fail to comply with licence conditions as set by EBC or indeed, inter-related legislation set by Central Government.

### **5.0 Outcome of decision by members**

- 5.1 Failure to appropriately authorise Officers will adversely affect enforcement action taken and render cases invalid for prosecution, since there would be no case to answer if the Officer is not properly authorised.
- 5.2 The various costs being incurred on the part of EBC could be significant, both in terms of staff resources and associated Court costs
- 5.3 Furthermore, this would negatively impact on the public perception of EBC. It may also result in the wider taxi trade losing confidence in the effectiveness of EBC's taxi licensing regime; since those parties breaching legislation and licence

conditions would not be challenged, rendering licence conditions and taxi legislation “unenforceable.”

- 5.4 This, in turn, would undermine the quality of vehicles and drivers operating in the town and could impact on public safety, which must be the main focus of the Committee.

## **6.0 Recommendation**

- 6.1 In order to avoid the position detailed above, the Committee are asked to minute and agree the following nominated Officers with the relevant delegated authority. This will enable the effective execution of enforcement visits, allowing Officers the appropriate “authority to demand,” and thereby ensuring that the relevant authority is in place to enable Officers to take action against errant members of the trade, and to allow prosecutions to progress correctly.
- 6.2 A list of all authorisations required (at this time) is included in Appendix A.
- 6.3 Authorisation is sought for the following Officers:
- Miss Kareen Plympton, Licensing Manager
  - Mrs Claire Groves, Licensing Officer
  - Mr Jay Virgo, Licensing Officer

## **7.0 Human Rights Implications**

- 7.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Committee when taking licensing decisions. Particular regard should be made to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property, since it has been determined that Hackney Carriage vehicles and licences are generally viewed as possessions by the ECHR. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:
- (i) The interference must be in pursuit of a legitimate aim
  - (ii) The interference must be “prescribed by law”
  - (iii) The interference must be “necessary in a democratic society

## **8.0 Background Material**

- Taxis Licensing Law and Practice 2004, James Button
- Local Government (Miscellaneous Provisions) Act 1976