

Gambling, Licensing & Regulatory Committee

17 September 2018

Report of the Assistant Director – Legal and Governance

Council's Constitution – Licensing Appeals

Summary

1. This report is brought following the request of Gambling, Licensing and Regulatory Committee members at the meeting held on 21 May 2018. It outlines that York is the only authority in the region with 'two routes of appeal' for licence holders who are dissatisfied with an officer decision.
2. The report seeks a recommendation to Full Council to change the Constitution and allow only one route of appeal.

Recommendations

3. That Members approve Option 1 of this report and recommend to Full Council that a new appeals procedure is approved.
4. Reason: To enable applicants/licence holders who are aggrieved by a decision made by an Officer of the Council to appeal that decision in line with the requirements of the relevant legislation. In the process creating a more efficient system (avoiding 'duplication' across the wider public sector) and ensuring our approach is consistent with other Authorities in the region.

Background

5. The law enables certain functions to be delegated to officers. These powers are set out in the Council's Constitution and are typically decisions relating to 'day to day' matters, such as making decisions to grant or refuse various licences. The extent of these delegated powers are set out in the Council's 'Delegation Scheme'.

6. Certain taxi¹ 'licensing decisions' are delegated to officers, for example decisions to grant/refuse licences to drivers, their vehicles and operators. Decisions to suspend or revoke these licences are also delegated.
7. Within relevant legislation there is provision for an applicant or licence holder who is aggrieved by a decision made by an officer on behalf of the Council, to appeal that decision to Magistrates Court. However, the Council also offers the applicant/licence holder the right of appeal to a Sub-Committee of the GLRC (from here on referred to as a Sub Committee). Therefore, an aggrieved party has two rights of appeal.
8. For the avoidance of doubt, the importance of a 'right of appeal' for a person aggrieved by an officer decision is not in issue. This report, is simply enabling Members to reflect again on whether it is appropriate to provide two routes of appeal. There is no legal requirement for the council to provide an additional appeal mechanism and our research shows that there are no authorities in the West Yorkshire region (with whom we are working to align our taxi licensing policies) are providing this.
9. Between 24th April 2017 - when the last report on this matter was heard and 31 July 2018 (the time of preparation) officers have:-

Officer decision	Total
Refusal to grant a driver licence	1
Suspended driver licence - on medical grounds	7
Revoked driver licence – no longer considered a fit and proper person	5
Revoked driver licence – medical grounds	3
Appeals to sub committee	3 (all upheld officer decision)
Appeals to Magistrates	2 (1 subsequently withdrawn)

1. Term 'taxi' is used in its generic sense to include both 'hackney carriage' and 'private hire' licences.

10. In the event that a licence application is refused, or a licence is suspended/revoked the current procedure is to offer the applicant/licence holder both rights of appeal within the decision letter.
11. An appeal to the Magistrates Court must be made in accordance with the requirements of the legislation, which is normally within 21 days of the decision notice being served. The applicant/licence holder can only appeal the Officer decision (not the outcome of the appeal to the Sub Committee – although this may still be subject to judicial review). In practice therefore, appellants often exercise both avenues of appeal at the same time.

Consultation

12. A consultation has not taken place in relation to this report.

Options

13. Option 1 – Recommend to Full Council that the Council's Constitution is changed and a new 'single appeal' procedure for dealing with licensing appeals is approved. In line with the requirements of relevant legislation licence applicants and licence will be able to appeal a decision made by Officers to refuse/suspend/revoke to the Magistrates Court, thereby no longer providing an internal appeals process.
14. Option 2 – Retain the status quo. Licence applicants and licence holders can continue to appeal a decision made by Officers to refuse/suspend/revoke to a Sub-Committee of the Gambling, Licensing and Regulatory Committee. Sub Committees are established from the membership of the Committee (or substitutes) with members being appointed in rotation subject to their availability to attend. In line with the relevant legislation, licence applicants/holders can also to appeal Officers decisions to Magistrates Court.
15. Option 3 – Provide an alternative way forward.

Analysis

16. Option 1 - Applicants/licence holders will still have the right of appeal if they are aggrieved by a decision made by Officers; however this

right of appeal will be in accordance with the requirements of the relevant legislation (and will typically result in an appeal to the Magistrates Court). Removing the internal right of appeal to the Sub-Committee will create a more efficient system (avoiding 'duplication' across the wider public sector) and ensuring our approach is consistent with other Authorities in the region. It also removes any risk of the decision or the process of the Sub-Committee being challenged – perhaps through judicial review.

17. Option 2 – It may be seen that the Sub-Committee appeal route provides a 'cheaper alternative' to statutory mechanisms. However, experience suggests that this is not the case as many appellants – often on legal advice - are using both mechanisms in any event. There current system could also lead to potential confusion in the event that they both reached different conclusions.

18. Option 3 – analysis will depend on the options chosen.

Council Priorities

19. This will support the Council's plan of being more responsive and flexible council that puts residents first and meets its statutory obligations

Implications

20. The direct implications arising from this report are:

(a) **Financial** – There are no financial implications for the council.

(b) **Human Resources (HR)** - There are no HR implications.

(c) **Equalities** – There are no equalities implications.

(d) **Legal** – There is no legal requirement to offer an internal appeal in addition to the statutory rights to bring appeals before the Magistrates.

(e) **Crime and Disorder** – There are no crime and disorder implications.

(f) **Information Technology (IT)** - There are no IT implications.

(g) **Property** - There are no property implications.

(h) **Other** - There are no other implications.

Risk Management

21. Applying the council's Risk Scoring Matrix, the option 1 reduces the 'risk' to the council from a score of '13' - a 'yellow' risk (arising from a 'potential impact' of action in court resulting substantive costs and local media coverage – albeit 'unlikely') to a risk score of '8' – a 'green risk' (arising from a 'potential impact' of 'local restrictions' and 'little or no media coverage' – albeit 'unlikely').

Contact Details

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Report

Approved



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Specialist Officer Implications: None

Wards Affected:

All

Background Papers:

None