



Protocol for decisions on Immediate Suspensions

Background information

The purpose of this protocol is to give guidance to officers and set out a clear procedure for them to follow and one which can be understood and supported by the courts, elected members, the public and the hackney carriage and private hire trade.

The protocol is based upon primary legislation contained within the Local Government (Miscellaneous Provisions) Act, 1976 and the Road Safety Act 2006. The purpose of the former being that of creating a safe licensing regime and the latter being to emphasise the change to a safety priority, putting public safety first in ensuring that those drivers who may present a danger to the public cannot take advantage of previous legislation by continuing to transport the public until there is a hearing before the Magistrates' Court.

Because of the impact on a licensed driver, the decision to issue an immediate suspension notice should not be taken lightly and each of the following steps in this protocol should be followed.

Operational protocol

Where an allegation or information is received about a licensed driver, and is of such a nature that a real and reasonable concern is raised in terms of public safety or crime and disorder about the suitability of a licensed driver to continue to hold a local authority driver licence for the time being, then consideration should be given to the suspension of that licence.

Only on those drivers:

- who have committed a serious offence;
- who are alleged to have committed a serious offence;
- who are in breach of the requirements placed upon that type of licence within primary legislation;
- who are in conflict with a significant part of the Council's Hackney Carriage and Private Hire Licensing policy; or
- where there is intelligence provided which raises a significant concern and it is necessary to immediately remove that potential risk

should an immediate suspension be imposed.

Officers are referred to the guidance on immediate suspension considerations as an Appendix to this protocol.

Proportionality

Proportionality means relating the enforcement action to the potential risk posed. Any action taken by officers to reduce the perceived risk to public safety should be proportionate to the seriousness of any conviction, allegation, intelligence or breach of policy. Such convictions, allegations, intelligence or breaches could be indicative of a serious risk to service users or the Council. The decision to suspend with immediate effect must be proportionate to the potential risk posed and the seriousness of any offence, allegation or breach of licensing policy.

Openness

Explaining to the licence holder what is alleged and the reason the Council is taking the decision to impose an immediate suspension is a very important feature which enables the licence holder to exercise their rights and understand exactly what the Council is thinking. At the first opportunity, and in accordance with any legal requirement, the detail of the allegation and the reasons why an immediate suspension is being imposed should be set out in writing and in plain English to the licence holder. In some circumstances, the licence holder will be invited for a formal interview prior to such a decision being taken.

Consistency

Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances from a public safety viewpoint but also taking each case on its own merits and demonstrating the difficult balance of public safety and fairness to the driver has been taken into account.

The courts, individuals, the public and the Council have the right to expect consistency in the use of enforcement decisions. Officers need to take into account many variables including the potential impact upon public safety, the risk to the licensing objectives, and possibly the history of previous incidents. Decisions are a matter of professional judgement and the officer must exercise both discretion and consistency.

Accountability

Both the Council and officers may be accountable for making decisions that are unfair or not compliant with the legislation and it is important that serious consideration is given before taking such a decision and it is well reasoned.

Operational Review

When an immediate suspension takes place it should normally be following discussions between the Licensing Enforcement Team Leader and the Licensing Manager and should be approved by the Licensing Manager or Consumer Protection Manager prior to issue.

If there is a change in circumstances the decision should be reviewed, changing a decision is a natural part of a review process and not necessarily indicative of a wrong decision. It is important that those decisions which can safely be taken to restore the licence are taken at the earliest opportunity and it is the duty of officers to review any significant change of information at an early stage and to produce the case for review. Where the matter is undergoing a criminal court process or Magistrates appeal process and therefore wholly out of the Council's hands, it should be reviewed at no more than a maximum of two monthly intervals to determine if there has been any change in the circumstances.

Where the matter is not subject to a Court process (criminal or appeal) that review process should be undertaken at no more than two monthly intervals from the date of suspension by the Licensing Enforcement Team Leader, ensuring that all reasonable progress is being made on the investigation.

To ensure review dates are not overlooked, they should be recorded within the Civica database and in the log of suspended drivers.

Appendix 1 – Guidance on Immediate Suspensions

Legislation

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides that the 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 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 of this Act; or
- (b) Any other reasonable cause.

Section 61(2) goes on to provide that a suspension or revocation normally takes effect at the end of the period of 21 days beginning on the day on which notice is given to the driver but;

if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes the statement that this is so and an explanation why then the suspension or revocation takes immediate effect when the notice is given.

These provisions (setting out when the decision takes effect) were inserted by the Road Safety Act 2006.

Guidance on decision making – Suspensions and Revocations generally

Section 61 requires the licensing authority to make a finding on the balance of probabilities that that the grounds set out in the legislation are made out.

In Section 61(1)(a)(i) the offence in question must *involve* dishonesty, indecency or violence. Dishonesty, indecency or violence must be part of the commission of the criminal offence for this subsection to apply but it is not necessary for the offence to be one of dishonesty, indecency or violence.

Section 61(1)(b) allows suspension or revocation (or refusal to renew) for any other reasonable cause. No further definition is give of reasonable cause within the legislation and ultimately the question is a matter for the discretion of the decision maker.

Guidance is given in a number of cases from which the following principles can be drawn:-

- 1) The decision maker is entitled to take into account hearsay evidence.
- 2) There is no need to demonstrate a reasonable prospect of conviction, or for the licence holder to be convicted before a licence can be suspended.
- 3) At the point of granting a licence, the licensing authority has to be satisfied that the applicant is a fit and proper person. The burden is on the applicant to prove this.
- 4) When dealing with an existing licence holder, the burden shifts to the Licensing Authority to establish that the driver is **not** a fit and proper person to be licensed.
- 5) The personal circumstances of the driver are irrelevant when determining suitability.
- 6) The discretion under this Section is wide and is not restricted to convictions for criminal offences nor is proof required to the criminal standard. The taxi licensing regime is clearly and expressly in place to protect members of the public travelling in taxi and private hire vehicles. There are issues which undermine that protection which amount to criminal offences in their own right but there are other issues which have significance for the protection of the travelling public where a criminal offence might not have been committed or proven.

Immediate suspension or revocation

Both standard and immediate suspensions require the decision maker to consider the same matters, i.e. whether there has been a relevant conviction or “any other reasonable cause”.

A suspension or revocation can only take immediate effect in the interests of public safety. That means the decision maker should consider whether there is a clear connection between the incidents alleged and the safety of the travelling public which justifies taking this additional step, given that it can deprive a driver of his livelihood pending an appeal.

1. McCool v Rushcliffe Borough Council (1998)
2. Leeds City Council v Hussain (2002)
3. Kaivanpor v DPP [2015] EWHC 4127 (Admin)
4. Kaivanpor v DPP [2015] EWHC 4127 (Admin)
5. Leeds City Council v Hussain [2002]
6. McCool v Rushcliffe Borough Council (1998)

There are no limits or restrictions on the decision maker's exercise of judgement or discretion, providing a proper judgement is made, weighing up the evidence available.

The decision must be taken in the interests of public safety and should be fair, reasonable, proportionate and in accordance with human rights and natural justice principles.

The Council has a published policy relating to applications for drivers licences by those with criminal convictions. The council will have regard to that policy when considering whether an offence, allegation or complaint should be considered as warranting immediate suspension in the public interest. This will be judged against all the circumstances of the case, including any admissions or denials made and any other relevant evidence.

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

- Allegations of violence against a passenger or person wishing to travel.
- Allegations of indecency including sexual assault and rape against a passenger or person wishing to travel.
- Allegations that the driver is unfit to drive as a result of being under the influence of drugs or alcohol.

Allegations that the driver would not meet the DVLA Group II standards of fitness to drive due to a medical condition.

- Admitted sexual contact with a passenger in the vehicle.
- Allegations of dishonesty relating to use of the vehicle such as attempting to pervert the course of justice in relation to a road traffic accident, fraudulent use of tax or insurance documentation, knowingly driving an uninsured vehicle to convey members of the travelling public (e.g. plying for hire).
- Allegations of dangerous driving or driving without due care and attention thereby endangering the safety of passengers and other road users

Each case must be decided on its own facts and any examples given in this guidance are only illustrative. Each decision should be taken in a consistent and reasonable manner having regard to the facts of the case and the risk posed to the public.

Any decision to suspend or revoke a licence should never be taken lightly. However, the licensing system is designed to protect the public and it would be wrong not to suspend where such course of action is clearly appropriate on the facts of an individual case. If there is any doubt whatsoever as to the driver's suitability to hold a licence as a fit and proper person serious consideration must be given to suspension.