



14 March 2018

Dear Sir/Madam

A meeting of the Licensing and Appeals Committee will be held on Thursday, 22 March 2018 in the New Council Chamber, Town Hall, Beeston at 10.00am.

Should you require advice on declaring an interest in any item on the agenda, please contact the Monitoring Officer at your earliest convenience.

Yours faithfully

Chief Executive

To: Members of the Licensing and Appeals Committee:

E H Atherton	R D MacRae
D Bagshaw	J C Patrick
D A Burnett (Chair)	M E Plackett
M J Crow	K E Rigby
T A Cullen	P D Simpson
W J Longdon (Vice Chair)	A W G A Stockwell

## AGENDA

1. APOLOGIES FOR ABSENCE

2. DECLARATIONS OF INTEREST

Members are requested to declare the existence and nature of any disclosable pecuniary interest and/or other interest in any item on the agenda.

3. MINUTES

PAGES 1 - 2

The Committee is asked to confirm as a correct record the minutes of the meeting held on 13 February 2018.

4. DELEGATION OF ENFORCEMENT POWERS FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES PAGES 3 - 14

To ask the Committee to approve the delegation of enforcement powers relating to hackney carriage and private hire vehicles and drivers to officers of other licensing authorities.

4. EXCLUSION OF PUBLIC AND PRESS

**The Committee is asked to RESOLVE that, under Section 100A of the Local Government Act, 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Schedule 12A of the Act.**

5. APPEAL AGAINST STAGE 2 DECISION UNDER THE COUNCIL'S GRIEVANCE POLICY PAGES 15 - 16  
BUNDLE A  
BUNDLE B

## LICENSING AND APPEALS COMMITTEE

13 FEBRUARY 2018

Present: Councillor D A Burnett BEM, Chair

Councillors: E H Atherton	J C Patrick
D Bagshaw	M E Plackett
E Cubley (substitute)	M Radulovic MBE
W J Longdon	P D Simpson
R D MacRae	A W G A Stockwell

Apologies for absence were received from Councillors M J Crow and T A Cullen.

### 27. DECLARATIONS OF INTEREST

There were no declarations of interest.

### 28. MINUTES

The minutes of the meeting held on 16 January 2018 were confirmed as a correct record and signed.

### 29. EXCLUSION OF PUBLIC AND PRESS

**RESOLVED that, under Section 100A of the Local Government Act, 1972, the public and press be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Schedule 12A of the Act.**

### 30. APPEAL AGAINST DISMISSAL

The Committee noted the hearing procedure, with particular reference to the Council's policy, natural justice and the code of conduct.

Members considered the representations made by the appellant through his union representative and the representations made by the Investigating Officer. The appellant attended the hearing and was assisted by a translator.

The Committee considered that on the balance of probabilities there was not enough evidence to suggest that the allegation had occurred as stated. The Committee wished to place on record its thanks to the Investigating Officer for

presenting the case in the manner he did, together with its thanks to the translator (an employee of the Council) for her assistance in interpreting on behalf of the appellant.

**RESOLVED that the decision to summarily dismiss the appellant be revoked and the appellant be reinstated.**

## Report of the Chief Executive

**DELEGATION OF ENFORCEMENT POWERS FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES**1. Purpose of report

To ask the Committee to approve the delegation of enforcement powers relating to hackney carriage and private hire vehicles and drivers to officers of other licensing authorities to enable those officers to undertake enforcement against vehicles licensed by Broxtowe Borough Council when operating in their area. There would also be a reciprocal arrangement in respect of this Council's officers.

2. Background

Following the introduction of the Deregulation Act 2015, it has become increasingly difficult to regulate vehicles and drivers licensed by the Council who are able to operate freely throughout Nottinghamshire and across the country.

It was identified in April 2016 by Nottinghamshire officers undertaking a countywide taxi review that it would be advantageous to produce a licensing enforcement protocol between all Nottinghamshire and potentially other neighbouring authorities to allow officers from any authority to take enforcement action against driver and vehicle from other authorities. (Currently only police officers have such powers.) Such a protocol has been drawn up and is contained in appendix B.

Further detail of the arrangement, including the legislative background, is given in the appendix to this report.

Members are asked to consider the protocol and report and resolve accordingly.

**Recommendation**

**Committee is asked to RESOLVE the following matters:**

- 1. Approve the delegation of taxi licensing enforcement functions under the Local Government (Miscellaneous Provisions) Act 1976 as set out in appendix 2 of the protocol at appendix B of this report, to the licensing authorities contained in appendix 1 of the protocol, subject to those authorities accepting the delegation.**
- 2. Authorise the Head of Public Protection to appoint authorised officers to carry out enforcement functions under the Local Government (Miscellaneous Provisions) Act 1976 as set out in appendix 2 of the protocol transferred to this authority by the licensing authorities contained in appendix 1 of the protocol, subject to those authorities delegating those functions to Broxtowe Borough Council.**
- 3. That the Head of Public Protection be authorised to sign the agreement contained within the protocol attached as appendix B to this report on behalf of Broxtowe Borough Council.**

**APPENDIX A**

- 1.1 In October 2010 the High Court in its decision in the case of Stockton on Tees Borough Council v Fidler, Hussain and Zamanian (2010 England and Wales High Court 2430) ruled that a hackney carriage and driver licensed in one controlled district, may work in another controlled district, undertaking private hire work, allocated to the driver through a licensed operator without the driver, vehicle or operator being licensed by the local authority for that controlled district.
- 1.2 In addition, following the introduction of the De-regulation Act 2015 in October 2015, private hire operators were able to sub-contract to taxi firms outside of the controlled area within which they were licensed. As a result of the ruling and the changes to legislation, it has become increasingly difficult to regulate drivers and vehicles licensed by Broxtowe who are free to operate throughout Nottinghamshire and indeed the country.
- 1.3 Under the Local Government (Miscellaneous Provisions) Act 1976 (“the Act”) enforcement against private hire vehicles and drivers can only be undertaken by authorised officers of the licensing authority who issued the licence, as such, Broxtowe licensed vehicles and drivers, being driven outside of the Broxtowe boundary cannot be the subject of enforcement action under the Act unless Broxtowe authorised officers conduct enforcement activity outside their area.
- 1.4 In order to address this issue and to try and improve driver and vehicle standards across the county, Nottinghamshire authorities have been working together to find a way to work in partnership, and conduct enforcement across licensing boundaries.
- 1.5 Under section 101 of the Local Government Act 1972 it is possible for Broxtowe Borough Council to make arrangements to delegate the exercise of its function of taxi licensing enforcement to another local authority, whilst still exercising the function itself within Broxtowe Borough. The other local authority, if it accepts that transfer of function, would then deal with the enforcement function as if it were their own. That authority can put appropriate delegations in place and appoint authorised officers in its own organisation to undertake enforcement against Broxtowe licensed vehicles and drivers operating in that authority’s area.
- 1.6 Likewise, as this is a problem which is shared across Nottinghamshire, other authorities are currently obtaining their own approvals to delegate their enforcement functions under the Act to Broxtowe Borough Council. If those arrangements are approved by the Committee, it would be practical to tie those enforcement functions in with Broxtowe’s own enforcement functions and delegate responsibility to the Head of Public Protection to appoint authorised officers within this authority to undertake enforcement against drivers and vehicles licensed by other licensing authorities but operating within the Broxtowe boundary.
- 1.7 In order to ensure this transfer of function works well at an operational level, officers have worked together on a document, originally put together by the City Council, which sets out how the cross border enforcement would work

operationally, and how the information gathered through enforcement would be shared by the authorities. The document has already been signed by the City Council, Gedling Borough Council and Rushcliffe Borough Council and will ultimately be signed by all authorities listed in Appendix 1 of that agreement which is attached at Appendix B to this report. The agreement provides that all authorities listed in the agreement will, before signing the agreement, provide written evidence to each other confirming the delegation of the enforcement powers.

1.8 The agreement also sets out in Appendix 2, exactly which enforcement powers would be delegated to other licensing authorities. They are limited to the following sections under the Act:

- S.53 (3) – production of driver’s badge/licence for inspection to an authorised officer
- S.68 – authorised officer can require a vehicle to be inspected and tested at reasonable times and suspend the vehicle licence if not satisfied as to the vehicles fitness.
- S.73 obstruction of an authorised officer

The authority delegating is still able to carry out these enforcement functions itself within its area. Any decisions which may need to be taken in relation to a licence following any enforcement action above would be passed back to the relevant authority to be dealt with. As such the Licensing and Appeals Committee would not be taking decisions in relation to drivers from other licensed authority areas.

APPENDIX B



**Broxtowe  
Borough  
COUNCIL**

**CROSS BORDER  
ENFORCEMENT**

**OPERATIONAL PROTOCOL**

**PRIVATE HIRE & HACKNEY  
CARRIAGE VEHICLES & DRIVERS**

**Nottingham City Council  
Nottinghamshire District Councils**



## 1. APPLICATION AND BACKGROUND

- 1.1 This Operational Protocol (“Protocol”) applies to the Partner Council’s listed in the Schedule attached. The purpose of this Protocol is to facilitate the discharge of the Delegated Powers by Authorised Officers of the Partner Councils in relation to Private Hire and Hackney Carriage Vehicles and Drivers. The Protocol encourages a collaborative working partnership between all Partner Councils
- 1.2 This Protocol is intended to bind a Partner Council from the date of their signature hereto as reflected in Appendix 1 and will cease to apply to a Partner Council either by the withdrawal of the Delegated Power in accordance with paragraph 1.3 below or upon the expiry of 3 months written notice given to all other Partner Council(s) which ever shall occur first.
- 1.3 Notwithstanding the terms and conditions of this Protocol, it does not prejudice the right of any Partner Council to withdraw the Delegated Powers at any time or to exercise the Delegated Powers concurrently. However each Partner Council undertakes not to withdraw the Delegated Powers unreasonably.
- 1.4 For the avoidance of doubt, this Protocol shall cease to bind a Partner Council if the Delegated Functions ever become the responsibility of the Executive of that Council.

## 2. INTERPRETATION

For the purposes of this Protocol the following words or phrases shall have the following meaning:

Authorised Officers	Officers authorised by a Partner Council under section 80 of the 1976 Act
Contact Officer	a designated officer of a Partner Council for the purpose specified at Clause 3.3 of this Protocol.
Controlled District	an area in relation to which a resolution has been passed by a district council under section 45 of the 1976 Act applying Part II of that Act
Delegated Powers	the powers identified in Appendix 2
Enforcement Action	any action to be taken by a Partner Council as a result of information obtained from the exercise of the Delegated Powers of whatever nature
Hackney Carriage Vehicle	a vehicle licensed under section 37 of the 1847 Act
Hackney Carriage Driver	a driver licensed as such under section 46 of the 1847 Act

Licensing Partner Council	the Partner Council which has issued the licence for the vehicle/driver concerned
Partner Council	any Council listed in Appendix 1 to this Protocol
Personal Data	any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person
Private Hire Vehicle	a vehicle licensed under section 48 of the 1976 Act
Private Hire Driver	a driver licensed as such under section 51 of the 1976 Act
1976 Act	the Local Government (Miscellaneous) Provisions Act 1976
1847 Act	the Town and Police Clauses Act 1847

### **3. WORKING ARRANGEMENTS**

- 3.1 Authorised Officers may discharge the Delegated Powers in respect of Private Hire and Hackney Carriage Vehicles and Drivers licensed by any other Partner Council whilst such a vehicle and/ or driver are in the Controlled District of the Authorised Officer.
- 3.2 Each Partner Council will designate a Contact Officer to whom information, concerns and intelligence gathered in relation to any of its licensed Private Hire and Hackney Carriage Vehicles or Drivers can be passed by secure means, digitally or otherwise and in compliance with section 4 of this Protocol.
- 3.3 Where Enforcement Action is deemed necessary as a result of an exchange of information under 3.2 above the Partner Council supplying that information will provide all reasonable and necessary assistance to the Licensing Partner Council, including, if necessary the provision of witness statements and attendance at court.
- 3.4 In relation to the exercise of the Power under section 53 of the 1976 Act, an Authorised Officer requiring a hackney carriage/private hire driver to produce his driver's licence for inspection at the principal offices of their Licensing Partner Council shall both:

- a) warn the driver of the criminal offence committed if there is a failure to comply with his request, without a reasonable excuse and
  - b) notify the Licensing Partner Council as soon as reasonably practicable, of the request and provide the relevant details of the action in writing.
- 3.5 In relation to the exercise of the Power under section 68 of the 1976 Act:
- a) if an Authorised Officer is not satisfied as to the fitness of a hackney carriage or private hire vehicle they may suspend the vehicle licence until such time as an Authorised Officer of the Licensing Partner Council is so satisfied as to its condition.
  - b) If an Authorised Officer suspends the vehicle licence written notification of the suspension must be given by the Authorised Officer to the Licensing Partner Council as soon as practicable as well as to the proprietor of the vehicle.
- 3.6 Enforcement of the Power under section 68 of the 1976 Act: rests with the Licensing Partner Council which authorised the officer.
- 3.7 Where a joint operation between Partner Councils is being carried out Authorised Officer's remain at all times the responsibility of the Partner Council by whom they are authorised and will provide all reasonable and necessary assistance to any other Partner Council involved in the operation. The Contact Officers of the Partner Councils involved in the joint operation will agree which Authorised Officer will be appointed to oversee the operation. Risk assessments should be carried out by the Lead Authority in any operation and agreed in advance with the relevant Partner Councils.
- 3.8 Unless there is prior agreement between Partner Councils no reimbursement will be made by one Partner Council to another for time spent/ cost incurred by any Authorised Officer in the exercise of any of the Delegated Powers pursuant to this Protocol.
- 3.9 Partner Councils will be solely responsible for the Health and Safety of their own Authorised Officers and provide training, support and assistance suitable to the role as required.
4. **TRANSFER OF INFORMATION/INTELLIGENCE BETWEEN PARTNER COUNCILS**
- 4.1 Information and intelligence shared by Partner Councils should be concise and accurate and provided in a timely manner to the relevant Contact Officer. Personal data should only be shared for a specific lawful purpose or where appropriate consent has been obtained.
- 4.2 This agreement does not give licence for unrestricted access to information another partner may hold. It sets out the parameters for the safe and secure sharing of information for a justifiable need to know purpose.

- 4.3 Partners are responsible for ensuring that their organisational and security measures protect the lawful use of information shared under this agreement.
- 4.4 partners will ensure that a reasonable level of security is applied to all data held appropriate to the level of risk and in accordance with the data protection principle 7 and any similar principle in successor legislation.
- 4.5 Partners employees processing information shared under this agreement are expected to be trained to a level that enables them to undertake their duties confidently, efficiently and lawfully.
- 4.6 Each partner has the power to audit the other to ensure compliance with the agreement.
- 4.7 Partners should have procedures in place to report misuse, loss, destruction, damage or unauthorised access, suspected or otherwise, of information. The partnership organisation originally supplying the information should be notified of any breach of confidentiality or incident involving a risk or breach of the security of information supplied under this agreement.
- 4.8 Personal data shall not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the data subject in relation to the processing of personal data.
- 4.9 All Partner Councils agree:
- a) To process Personal Data and information fairly and lawful;
  - b) To keep the Personal Data confidential at all times and ensure it is used only for the purpose intended.
  - c) The Personal Data held will be secured and disclosed solely for the discharge of the defined delegated powers or as otherwise required by law. The data must and will not be used for any other purpose.
  - d) Requests for information received from an individual or organisation not party to this Protocol, whether for Personal Data or other information, shall be answered by the Partner Council receiving such a request in accordance with the relevant legislation, but before making a decision as to disclosure the relevant party it shall first consult such other Partner Council(s) as may be required.
  - e) Personal Data shall only be accessed or disclosed by or to Authorised Persons.
  - f) For the avoidance of doubt Personal Data held by any Partner Council is held by that Council as data controller and each Partner Council agrees to fulfil all its obligations under the Data Protection Act 1998 and successor legislation including the General Data Protection Regulation.

- g) Any request for information by a Partner Council to another shall be answered promptly where such request is for the purpose of meeting or delivering the discharge of the Delegated Powers; but any such request will only be answered where to do so does not breach the Data Protection Act 1998 and successor legislation including the General Data protection Regulation, the Freedom of Information Act 2000; and/or other legislation
- h) Personal Data shall be retained for no longer than 12 months after which is shall be securely destroyed or, in the case of a prosecution by the Licensing Partner Council, until that prosecution has been discharged.

**6. RESPONSIBILITIES AND ACTIONS OF PARTNER COUNCIL'S**

- 6.1 The employing Partner Council shall be liable for the actions of the Authorised Officers within its employ and shall take all reasonable steps to ensure the competence of those persons in carrying out their functions and that they comply with legislative requirements and the spirit of this Protocol.
- 6.2 Information/intelligence provided between Partner Councils shall be used for the purpose intended and shall not be divulged to third parties unless to do so would be lawful.

**7. SIGNATORY PARTNER COUNCILS**

- 7.1 Before signing this Protocol each Partner Council will provide written evidence to each other Partner Council of its resolution in accordance with its constitution confirming the delegation of the Delegated Powers to the other Partner Councils pursuant to section 101 of the Local Government Act 1972 and its appropriate authority to enter into reciprocal arrangements for the exercise of those Delegated Powers.



Broxtowe Borough Council

Name: David Gell

Position: Head of Public Protection

Signature.....  
On behalf of Broxtowe Borough Council

Date:

**Appendix 1**

**LIST OF COUNCILS**

**Ashfield District Council**

**Bassetlaw District Council**

**Broxtowe Borough Council**

**Gedling Borough Council**

**Mansfield District Council**

**Newark & Sherwood District Council**

**Nottingham City Council**

**Rushcliffe Borough Council**

**Appendix 2 - DELEGATED POWERS**

**Local Government (Miscellaneous) Provisions Act 19726**

- S53(3)                    produce drivers badge/licence for inspection**
- S68                        to inspect and test vehicles at reasonable times and suspend  
the licence if not satisfied as to their fitness.**
- S73                        obstruction of authorised officer.**