

**Licensing Regulatory Committee - Consideration  
of Appeals against Warnings  
13 January 2016**

**Report of the Chief Executive**

**PURPOSE OF REPORT**

To enable Council to review the implications of a decision of the Licensing Regulatory Committee.

**This report is public**

**RECOMMENDATIONS**

- (1) **That in view of the inconsistency across the Council that will arise from the decision of the Licensing Regulatory Committee to consider appeals from hackney carriage and private hire drivers and private hire operators against informal warning letters, Council consider whether it wishes to request that arrangements across all the enforcement functions of the Council be reviewed to introduce a similar right of appeal, or whether it wishes to request the Licensing Regulatory Committee to reconsider its decision.**

**1.0 Introduction**

- 1.1 At its meeting on the 26<sup>th</sup> November 2015, the Licensing Regulatory Committee considered a report on the status and implications of written warnings issued by officers to hackney carriage and private hire drivers and private hire operators. A copy of the report and its appendices are at Annex 1 to this report. The relevant minute of the 26<sup>th</sup> November is at Annex 2.
- 1.2 This report relates to the second part of the minute and to the information set out in paragraphs 2. 5 to 2.10 of the report to the Committee.
- 1.3 The Committee had requested a report on a proposal from one of its members that *“A suspected offender in receipt of a warning letter shall have the right to request within 21 days of receipt of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn.”*
- 1.4 Warning letters constitute informal enforcement action, and are issued by officers in respect of minor infringements to draw attention to conduct or action that is unacceptable and to offer guidance to prevent any recurrence. In this

respect, warning letters issued by licensing enforcement officers are no different from those issued by other enforcement officers across the Council.

- 1.5 The officer recommendation was that the proposal should not be taken forward. A number of reasons for this recommendation were set out in paragraphs 2.6 to 2.10 of the report, the main reason being that if the Committee were to consider appeals against warnings issued by officers, this would make the process for taxi licensing different from that which applies to warnings across the whole range of the Council's functions. For example, for planning, the Planning and Highways Regulatory Committee has no involvement with warnings, and in areas such as food safety, health and safety, and benefit fraud, which are executive functions, there is no member involvement with informal (or indeed formal) enforcement action. That is the case in local authority enforcement generally.
- 1.6 At the meeting, the Chief Executive indicated that should the Committee proceed with the proposal, he would refer the matter to full Council because any such decision would make the taxi licensing enforcement procedures different from those adopted throughout the rest of the Council.
- 1.7 Whilst the Committee did not approve the proposal as set out in paragraph 1.3 above, it resolved that "a suspected offender in receipt of a warning letter shall have the right to request within 21 days of receipt of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn. If in the opinion of the Licensing Regulatory Committee, the appeal was vexatious, this shall be recorded and the warning letter which was the subject of the appeal shall remain available for reference in a subsequent report to the Licensing Regulatory Committee for 5 years from the date of the appeal hearing."
- 1.8 This decision would therefore still introduce a right of appeal to the Committee against warnings issued to hackney carriage and private hire drivers and private hire operators. No such right of appeal applies in respect of other warning letters issued by officers across the other functions of the Council, including warning letters in respect of other matters within the terms of reference of the Licensing Regulatory Committee. The Chief Executive has, therefore, referred the matter to full Council for consideration, given that the Licensing Regulatory Committee is a Committee of Council.

## **2.0 Proposal Details**

- 2.1 Accordingly, Council is requested to consider the decision of the Licensing Regulatory Committee, and its implications in view of the inconsistency that would arise between taxi licensing enforcement and enforcement across the whole range of the Council's other functions.

## **3.0 Options and Options Analysis (including risk assessment)**

- 3.1 If Council is of the view that the inconsistency arising from this decision is inappropriate, it would be open to Council to request the Licensing Regulatory Committee to review its decision and to report back to Council. Alternatively, Council could request that arrangements across all the enforcement functions of the Council be reviewed to introduce a similar right of appeal, to ensure consistency. A third option would be for Council to simply note and accept the inconsistency.

3.2 If Council were minded to request that arrangements across the Council be brought into line with the decision of the Licensing Regulatory Committee, it would be necessary for officers to review the enforcement policies and arrangements across the Council, and make recommendations for an appeal process in respect of both executive and non-executive functions where warning letters are routinely issued.

#### **4.0 Conclusion**

4.1 Council's views are sought.

#### **CONCLUSION OF IMPACT ASSESSMENT (including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

Enforcement action is generally taken to ensure public health and safety and public amenity. Warning letters are an informal and preliminary part of that process, and when formal action is taken, whether by way of notice, order, or suspension or revocation of licence, there is generally a statutory right of appeal to the courts. Likewise, when the enforcement action leads to prosecution, the matter is heard in a court of law. The right to a fair hearing under human rights legislation is therefore protected.

#### **LEGAL IMPLICATIONS**

There is no legal requirement to provide a right of appeal to elected members against an informal warning.

#### **FINANCIAL IMPLICATIONS**

The option of reviewing enforcement arrangements across the Council and implementing an approach consistent with the Licensing Regulatory Committee's decision would have considerable resource implications in terms of officer and member time. Whilst at this stage it is not possible to quantify the actual cost, the concept does raise concerns regarding value for money (see also the s151 Officer's comments below).

Should Council decide on that option, once the review was complete the financial implications of adopting a consistent approach would need to be considered by Council, to be taken account of in its final decision-making.

#### **OTHER RESOURCE IMPLICATIONS**

##### **Human Resources:**

As set out above

##### **Information Services:**

None

##### **Property:**

None

##### **Open Spaces:**

None

**SECTION 151 OFFICER'S COMMENTS**

The s151 Officer would advise Council to consider carefully the value for money to be gained in reviewing and introducing appeals processes for any informal enforcement action. Generally it is understood that the Council is seeking to streamline its processes and be more efficient, not least in response to the financial challenges it faces. It is unclear as to how tying up resources with a view to introducing appeals for informal enforcement action fits with that aim. This concern applies to the original decision of the Licensing Regulatory Committee; the widening of that principle to other areas of enforcement action would clearly heighten those concerns.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has assisted the Chief executive with the preparation of this report and her comments are therefore incorporated.

**BACKGROUND PAPERS**

None

**Contact Officer:** Mrs S Taylor

**Telephone:** 01524 582025

**E-mail:** STaylor@lancaster.gov.uk

**Ref:**