

## **Requested Legal Advice in Relation to Recommendation 5 - Changes to the Constitution: Licensing Sub-Committee (Taxis) Functions - (LDS194)**

### **Legal Advice from the Monitoring Officer**

1. At the request of the Governance Committee, legal advice is sought from the Monitoring Officer in respect to the proposed constitutional changes submitted as part of Item 7 of the Governance Committee of 10 October 2022. These proposed changes were set out in Appendix A of the Governance Committee report (LDS/191).
2. On 15 August 2022, the Licensing Committee set the purpose of the new licensing sub- committee and this is shown at Paragraph 1 (Appendix A): *To discharge functions of the Council as Licensing Authority in relation to the suspension of issuing hackney carriage (driver and vehicle) licences and private hire (driver/vehicle/operator) licences.*
3. Under the Council's Constitution, a licensing sub-committee can be created with a set purpose. The Licensing Committee can delegate this purpose to the sub-committee. The Licensing Committee is entitled to exercise the power it has delegated to the new Licensing Sub-Committee for itself, notwithstanding the delegation.
4. There are no legal issues with the provisions shown at Paragraph 2 (Appendix A) which specify that a sub-committee may only be called the Chair or the Licensing Committee and that the meeting must be held within 15 working days.
5. There are no legal issues with the provisions shown at Paragraph 3 (Appendix A) which refer to the responsibilities of the new sub-committee. However, a slight amendment would ensure greater clarity and would read as follows:-

#### **RESPONSIBILITIES OF THE LICENSING SUB-COMMITTEE (TAXIS)**

To ~~review~~ **decide** whether to suspend the issuing of:

- Hackney carriage (driver and vehicle) licences.
- Private hire (driver/vehicle/operator) licences.

6. There are no legal issues with the provisions shown at Paragraph 4 (Appendix A) which refer to the decisions which will be taken by the new sub-committee.
7. There are no legal issues with the provisions shown at Paragraph 5 (Appendix A) which refer to the documents related to the new sub-committee.
8. Advice cannot be provided in respect of the legality or soundness of any decisions which this new sub-committee might make in the future. It is expected that if a sub-committee is convened by the Chair of the Licensing Committee, the reasons for doing so will be set out in an Officer Report together with technical and legal advice and any evidence, information or data as required. As with other committees, the members of the sub-committee will adhere to the Members' Code of Conduct and the Nolan Principles to ensure that their decision making is fair, transparent and based on sound evidence and professional advice. Decisions made by this sub-committee will be open to challenge. Depending on the type of licence involved this would be via an appeal in the Magistrates Court or Crown Court or via judicial review.

9. There was an amendment proposed and agreed at Governance Committee involving the timeframes of suspensions which might be imposed by the sub-committee. It is not possible to predict at this point the exact reason and circumstance for which the sub-committee might be called on to consider suspending the issue of licence(s). Therefore, the sub-committee will need to decide whether to suspend but also decide on an appropriate period of suspension based on the situation. The suspension might be made pending the outcome of some other event. When the suspension period expires, that would be the end of the matter unless (for some reason) it is felt that the sub-committee should consider whether to extend that suspension. This may arise on the instigation of Officers or the Chair of the Licensing Committee. It makes procedural sense for such a determination (extension of suspension) to be made by the sub-committee although the Licensing Committee would not be prohibited from doing so for the reason set out at para 3 above. On this basis, there is no requirement to build in a review mechanism for suspension decisions made by the sub-committee.

The amendment proposed at Governance Committee (timeframes of suspensions) is therefore not required.

10. A revised version of Appendix A of the Governance Committee report (LDS/191) incorporating my advice is attached.

Siraj Choudhury  
Head of Governance, People & Performance  
(Monitoring Officer)

14 October 2022