

**Wards Affected:***All Wards***APPOINTMENTS TO REGULATORY SUB-COMMITTEES – CONVENTION**

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**Executive Summary:**

The Constitution Commission has recommended that the Regulatory Committee accept the below convention in respect of the methodology applied by Democratic Services when selecting Members of the Committee to sit on a Sub-Committee;

- “1. Democratic Services staff will contact by email all trained members of the Regulatory Committee to seek volunteers to form a Sub-Committee.
2. Five members will be selected on a ‘first come first served’ basis to achieve a political balance. Where less than five ‘volunteers’ are forthcoming Democratic Services staff will aim to achieve a quorum from those councillors provided that it meets the required political balance.
3. Where a member of the Committee has previously considered an application or review in respect of a particular individual, that same member of the Committee will not be selected to sit on any sub-committee conducting any further reviews of the license, unless no other members of the committee are available.

## Notes:

- (a) A Sub-Committee is made up of 5 members with a quorum of 3.
- (b) All requests for membership of a sub-committee are made with a proviso that councillors are not eligible to sit where the applicant is a resident of his / her Ward, is known to the councillor, or the councillor has a disclosable pecuniary interest.”

This report seeks to identify the benefits and potential issues of the recommendation

**1. Recommendation(s)**

1.1 The options available to the Committee are:

- (a) To adopt the Convention;
- (b) To thank the Constitution Commission for its recommendation but advise the Commission that the Committee believes the existing system is adequate; or
- (c) To adopt an alternative proposal.

## **2. Background**

- 2.1 The existing arrangements allow for any trained member of the Committee to sit on any sub-committee considering an application or the review of an application.
- 2.2 Following an Audit Investigation into an incident where an applicant with serious criminal convictions was granted a license by a Regulatory Sub-Committee and subsequently that same applicant was permitted to retain the licence at a review hearing it was identified that one or more of the members of the 'reviewing' sub-committee had sat on both hearings. The Audit Investigation proposed that a Councillor should not sit on a sub-committee to review an application.
- 2.3 The case referred to was one where the reviewing Sub-Committee was asked to consider the suitability of the applicant to continue to hold a license based on the same information that had been made available to the original Sub-Committee that granted the application, following concerns raised by the Police. No new information that had not been made available to the original 'granting' Sub-Committee was put before the 'reviewing' Sub-Committee, the reviewing Sub-Committee allowed the licensee to retain the license.
- 2.4 The Constitution Commission considered the risks of a repeat of the situation and have made the recommendation as above that no Councillor should be selected to sit on any sub-committee conducting any further reviews of the license, unless no other members of the committee are available.

## **3. Issues**

- 3.1 The number of Regulatory Sub-Committees that undertook a review of a licence in the year 2014/14 was 25 of which two were in respect of licence holders where no new information was considered, i.e. the review was of the information presented with the original application and in essence was a review of the decision made by the sub-committee that granted the application.
- 3.2 All other reviews during that period resulted following the identification of information that had either not been made available to the original 'granting' panel or had arisen since the original application.
- 3.3 Whilst the Regulatory Committee is made up of 14 Councillors of which 5 regularly volunteer and participate in Sub-Committees, others have occasionally done so.
- 3.4 The Constitution Commission recommendation does not go as far as stating that a Councillor will not sit on both a sub-committee looking at granting an application and reviewing that same application, as a proviso is made to allow a councillor to sit in such circumstances as, 'unless no other members of the committee are available'. This would allow a quorum to be formed when there are not sufficient Councillors available to review a case who have not previously had an involvement with the License holder.

#### **4. Considerations**

- 4.1 When a Sub-Committee is requested to consider the review of a License where new information is to be presented, it would not be unreasonable to presume that had that information been available to the original Panel it may have resulted in a different decision having been made, therefore is it reasonable to exclude a member of the original Sub-Committee from reviewing a decision made on the original information presented now taking account of new information?
- 4.2 When a Sub-Committee is requested to review a decision to grant a license where the review is based the original information only, is it reasonable or appropriate for the same Councillor to be asked to reconsider their original decision?
- 4.3 The introduction of a new 'Penalty Points' system for Hackney and Private Hire drivers is likely to result in a greater number of reviews based on new information.
- 4.4 It is important to recognise that the foremost concern in any decision making process is to ensure public safety, and any safeguards to ensure that this is prioritised should be welcomed.
- 4.5 The Constitution Commission recommendation, in its current form, could be difficult to interpret in respect of councillor availability, when requests for volunteers to sit on a sub-committee are made as not all members of the Committee reply and therefore who is available can be difficult to assess, particularly for short notice reviews.
- 4.6 It should be noted that a Sub-Committee would not have authority to overturn a decision previously made by a body of the Council without new information being made available and therefore the likelihood of a review taking place again under the circumstances of the case referred to above is unlikely.

#### **5. Options**

- 5.1 Accept the recommendation unchanged.
- 5.2 Accept that a Councillor should not sit to review a case where there is no new information to be presented, this could be considered as a review of the original decision rather than a review of the drivers suitability, but may sit where new information is to be considered.
- 5.3 Decline to accept the recommendation and maintain the status quo where any member of the Committee may sit on any sub-committee to consider any application or review (subject to the proviso that the applicant/license holder is not known to them personally).

## 6. Implications

### 6.1 Policy

The current version of the Council's Policy was adopted in December 2014 following consultation but remains under regular review.

#### Resource and Risk

The recommended amendment has been requested by the private hire trade.

N	Capital	N	Revenue	N	Accommodation
N	IT	N	Medium Term Plan	N	Asset Management

### 6.2 Carbon and Energy Management

None

### 6.3 Legal

The Local Government (Miscellaneous) Provisions Act 1976 and Town and Police Clauses Act 1847 permit the Council to set the requirements it has of the vehicles it licences. The Council's requirements are enshrined within its Policy.

### 6.4 Other Implications

Y	Equalities/Diversity	N	Sustainability	Y	Human Rights
N	E-Government	N	Stakeholders	N	Crime and Disorder

Background Papers:

Constitution Committee Decision Sheet 22 July 2015