

Report to the Cabinet Member for Highways and Environment

28 August 2014

**Review of Hackney Carriage and Private Hire Vehicle Licensing Policies
(Key Decision Ref. No. HE010)**

1. Summary Statement

- 1.1 This report seeks approval to a review of the Council's Policies on the Licensing of Hackney Carriages and Private Hire Vehicles. The current policy is contained in Section 3 of the Private Hire and Hackney Carriage Licensing Handbook (The Handbook).
- 1.2 The current vehicle policies were approved by the Cabinet Member for Safer Communities on the 29 May 2009 and were implemented on the 8 June 2009. However new policies on security screens in private hire vehicles and CCTV in hackney carriage and private hire vehicles were implemented in March 2011. The Advertising Guidelines for Hackney Carriage and Private Hire Vehicles were also amended during March 2011.
- 1.3 The policy and procedure amendments detailed in the revised Section 3 of the Handbook are attached at Appendix 1. The Cabinet Member is also asked to consider the approval of a new policy document, attached at Appendix 2, entitled 'Supplementary Vehicle Testing Criteria'. The new document is designed to provide greater clarification to the trade on what is required in terms of the vehicle's mechanical safety, and both internal and external appearance.
- 1.4 The Cabinet Member is asked to consider the following Policy matters: -
- Removal of Age Policy for Private Hire Vehicles.
 - Implementation of Supplementary Vehicle Testing Criteria.
 - Relaxation of Colour Policy for Private Hire Vehicles.
 - Implementation of a Colour Policy for new Hackney Carriage licences.
 - Withdrawal of Private Hire Vehicle Door Stickers/Door Magnets.
 - Requirement for Private Hire Vehicles and Hackney Carriages to display window stickers in both rear passenger windows.
 - A new Policy regarding Hackney Carriages working outside of Sandwell.

- 1.5 Representations have been received from a number of trade members requesting the removal or relaxation of vehicle policies due to financial reasons. The proposed policy changes may provide some financial relief to members of the trade but do not compromise public safety.
- 1.6 Any proposed changes to policy are subject to a formal consultation process and this will be carried out between 5 September and 17 October 2014. The consultation documents will also be made available for inspection on the Council's website. Any objections received during the consultation period will need to be considered by the Cabinet Member before final determination.
- 1.7 If the recommended policy changes are approved, there are no financial implications for the Council. The cost of providing the window stickers will be off-set by the savings from no longer providing door stickers or door magnets. The administrative costs incurred by the changes will be recovered via the self financing Licensing budget.
- 1.8 The Licensing (Miscellaneous) Committee will be considering this report on 26 August 2014. A verbal update will be given to the Cabinet Member at her Decision Making Session on the 28 August 2014.

Further details are attached for your information

2. Recommendations

- 2.1 That the proposed amendments to the vehicle policies in Section 3 of the Private Hire and Hackney Carriage Licensing Handbook, as set out in Appendix 1, be approved.
- 2.2 That the proposed new Supplementary Vehicle Testing Criteria policy document, as set out at Appendix 2, be approved.
- 2.3 That, by way of consultation, the Licensing Manager be requested to notify all Sandwell Private Hire and Hackney Carriage licence holders and all prospective applicants for a Private Hire or Hackney Carriage licence in writing, about the proposals referred to in 2.1 and 2.2 above. The consultation documents will also be made available for inspection on the Council's website. The proposed policies will take effect from 1 December 2014, subject to no objections being received during the consultation period from 5 September 2014 to 17 October 2014.
- 2.4 That subject to the outcome of the consultation referred to in 2.3 above, and the Area Director - Street Scene being satisfied that there are no significant issues arising, the Area Director - Street Scene be authorised to implement the new policy with affect from 1 December 2014.

In accordance with the authority delegated to the Cabinet Member for Highways and Environment, the following course of action has been agreed, which will be set out in the formal record of the decisions taken by the Member:

- (1) the recommendation(s) above is/are approved.
- (2) the recommendation(s) above is/are approved as now amended.
- (3) the recommendations above are not approved.

Cabinet Member for Highways and Environment

28 August 2014

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3. Strategic Resource Implications

- 3.1 The Corporate Risk Management Strategy (CRMS) has been compiled with to identify and assess the significant risks associated with this decision. This includes (but is not limited to) political, legislation, financial, environmental and reputation risks.
Based on the information provided, it is the officer's opinion that for the significant risks that have been identified, arrangements are in place to manage and mitigate these effectively.
This assessment has identified there are no current "red" risks that need to be reported.
- 3.2 There are no direct financial implications on the Licensing target budget arising as a result of the proposals in this report.

4. Legal and Statutory Implications

- 4.1 Section 48(1) of the Local Government (Miscellaneous Provisions) Act 1976 provides that “a District Council may on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence:

Provided that a district council shall not grant such a licence unless they are satisfied – (a) that the vehicle is – (i) suitable in type, size and design for use as a private hire vehicle; (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage; (iii) in a suitable mechanical condition; (iv) safe and (v) comfortable...’

- 4.2 Section 37 of the Town Police Clauses Act 1847 gives the authority concerned a discretion as to whether to grant a Hackney Carriage licence or not.

The case of R (App Newcastle City Council) v Berwick-Upon-Tweed Borough Council considered the issue of Hackney Carriage’s being used through Private Hire Operators licensed in a different area to the authority that issued the Hackney Carriage Licence, and considered the purpose of the Town Police Clauses Act 1847.

In his judgement the judge addressed the concerns that arise from the concept of vehicles working remotely from the licensed area by stating:-

“If hackney carriages are working remote from their licensing authority a number of, at the least potentially, undesirable consequences follow. The licensing authority will not easily keep their licensed fleet under observation. It will be carrying out its enforcement powers from a distance. The licensing authority where the hackney carriage has chosen to operate will have no enforcement powers over the vehicle although it is being used in its area. Further, unlike its own licensed vehicles, the hackney carriage from remote areas will not be subject to the same conditions and byelaws as the local vehicles. It is no surprise that the legislation provides for testing and testing centres to be within the licensing authority’s area.

Section 37 of the 1847 Act gives the authority concerned a discretion as to whether to grant a licence or not. Hence the use of the word “may”.

The exercise of that discretion falls to be considered against the back ground of the legislation and in my judgment should be used “to promote the policy and objects of the Act”. The licence permits the vehicle to ply for hire in the prescribed area. The authority, if it

wishes, can restrict the number of licences it issues based on demand within the area. The local authority can issue it its own conditions and make its own byelaws. It can make provision for its own inspections of the hackney carriages. Thus the licensing regime is local in character. In addition it can be seen that most of the provisions have public safety much in mind. The local imposition of conditions and byelaws, local testing and enforcement, together with the other statutory provisions I have referred to all seem to me to point clearly to the conclusion that it was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used. Further the 1847 Act provides for licences to be granted for hackney carriages to ply for hire within the prescribed distance (i.e. within the area of the licensing authority).

In my judgment a local authority, properly directing itself, is entitled, and indeed obliged, to have regard to whether the applicant intends to use the licence to operate a hackney carriage in that authority's area and also to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area. This should result in each local authority licensing those hackney carriages that will be operating in their own area and should reduce the number of hackney carriages which operate remotely from the area where they are licensed."

4.3 Section 57 of the Local Government (Miscellaneous Provisions) Act 1976 states:-

- (1) A district council may require any applicant for a licence under the Act of 1847 or under this Part of this Act to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.
- (3) If any person knowingly or recklessly makes a false statement or omits any material particular in giving information under this section, he shall be guilty of an offence.

5. **Implications for the Council's Scorecard Priorities**

- 5.1 The Licensing process contributes to the Scorecard priority of Great Prospects by making opportunities available for employment locally. The service indirectly supports within great prospects by investing in business, people and jobs.

- 5.2 Through the provision of the Private Hire and Hackney Carriage licensing service, the Licensing Section is committed to contributing to the Scorecard Priority of Great Place.
- 5.3 There are no implications in this report for the Council or its partners working towards their priorities.

6 Background Details

6.1 The current age policy, colour policy and vehicle identification policy for private hire vehicles were introduced at different stages between 2007 and 2008. The policies were the subject of a court appeal in February 2007 and the authority reached an out of court agreement with the trade known as a Tomlin Order. The policies were implemented with the intention of making the vehicles easier to identify and raise the standard of vehicles licensed by the authority. No such policies exist for hackney carriages licensed by the authority.

6.2 Age Policy

The current private hire vehicle age policy states: -

‘From 1st August 2008, the Council will only accept applications for vehicle licences that fulfil the following criteria: -

- If you are licensing the vehicle for the first time, the vehicle must be under 5 years of age at the time of application, unless the vehicle is in an exceptional condition*.
- If you are renewing the vehicle licence then the vehicle must remain under 8 years of age for the entire duration of the licence period applied for. If the vehicle would reach 8 years old during that period, the licence would not be renewed unless the vehicle is in exceptional condition*.

The above changes in Policy, do not apply to specialist vehicles such as limousines or vintage cars i.e. vehicles used for ‘special events’ only and not ‘normal’ private hire work. If you are unsure about whether your vehicle is affected, please contact the Licensing Office for clarification.

***The exceptional condition of the vehicle must be certified by an independent professionally qualified automotive engineer. In addition, the Council reserves the right to have an in-house inspection carried out by the MOT Inspectors at Waterfall Lane. In respect of ‘normal’ private hire vehicles; only vehicles which are certified to be in**

exceptional condition as above, may be licensed outside the terms of the Council's age policy'.

Members of the private hire trade have made representations to the Council requesting consideration of a relaxation or complete removal of the age policy for private hire vehicles. The trade members claim that due to the current economic climate they are unable to afford to purchase newer vehicles that would comply with the council's age policy. Owners of older vehicles are still able to get the vehicle licensed by the authority providing the vehicle is in 'exceptional condition'. There is no definition of what constitutes 'exceptional condition'. The 'exceptional condition' route for licensing older vehicles was recommended by the National Private Hire Association who was representing the interests of the Sandwell private hire trade during the court appeal.

Members of the Licensing (Miscellaneous) Committee have accepted a fully comprehensive report from the AA, RAC or DEKRA in order to determine applications for vehicle licences that did not comply with the vehicle policy.

During the period May 2012 to April 2013 the Licensing (Miscellaneous) Committee approved 130 vehicles as being in exceptional condition. In May 2013 the Licensing Manager received delegated authority to carry out the 'exceptional condition' inspections and determine if a vehicle could be considered to be in exceptional condition or not. This has increased the efficiency of the licensing process and enabled the time for people waiting to attend committee meetings for driver or operator matters to be significantly reduced.

Between May 2013 and April 2014 the Licensing Manager has approved 216 vehicles as being suitable to be considered to be in exceptional condition for its age. Since the exceptional condition decisions have been delegated to the Licensing Manager the number of applicants or licence holders pursuing this route has increased considerably.

Vehicle owners state that the private hire vehicle age policy is placing an unnecessary additional financial burden on them as the cost of AA, RAC or DEKRA fully comprehensive vehicle inspection reports range between £154 to £305 depending on the engine size of the vehicle and membership to the organisation.

The Department for Transport (DfT) Best Practice Guidance issued in March 2010 states with regard to age limits: -

Age Limits. It is perfectly possible for an older vehicle to be in good condition. So the setting of an age limit beyond which a local authority will not license vehicles may be arbitrary and inappropriate.

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But a greater frequency of testing may be appropriate for older vehicles.

The DfT guidance is therefore consistent with the proposed amendments. The Cabinet Member is asked to consider the removal of age limits for new and existing private hire vehicle licences. Licences should be issued based on the quality of the vehicle not its age. Providing the vehicle is suitable in terms of its mechanical safety, internal and external appearance, and meets all the other licensing criteria there should be no reason not to issue a licence to an older vehicle. It is possible that some newer vehicles that have been in the licensed trade for a number of years could potentially have a worse cosmetic appearance and have completed more miles, which may make them more prone to mechanical defects than an older vehicle which is being licensed for the first time.

6.3 New Policy Document – Supplementary Vehicle Testing Criteria

It is essential that the authority ensures that all the vehicles it licenses are maintained to a suitable standard. Therefore the Cabinet Member is asked to consider the approval of a new document entitled 'Supplementary Vehicle Testing Criteria'. The document is intended to provide greater clarification to the trade on the required standard for both private hire vehicles and hackney carriages. The document includes written guidance on what will be checked during the vehicle inspections and also contains a photographic guide to acceptable and unacceptable defects. The document will help to ensure consistency during the inspection process.

6.4 Colour Policy for Private Hire Vehicles and Hackney Carriages.

Currently, with the exception of Limousines and Special Event Vehicles, all Private Hire Vehicles have to be Silver in colour. There is no colour policy for Hackney Carriages.

The private hire trade have asked for a relaxation or removal of the colour policy as they claim that car dealers in Sandwell and the surrounding area have placed a premium on silver vehicles knowing that Sandwell MBC will only licence silver vehicles.

All hackney carriages licensed by Sandwell MBC must be full hackney specification, wheel chair accessible vehicles. These are either the traditional London-style taxicab or vans converted into Eurocabs. These types of vehicles are commonly known as 'black cabs' and this is a term members of the public associate with a taxi that they can 'flag down' in the street.

It is clear from the legislation that private hire vehicles must bear no resemblance to hackney carriages in order to avoid confusing the public. Currently there are a number of vehicles that have the same external appearance, which are licensed for private hire and hackney carriage. Apart from all private hire vehicles being silver the only way to identify the different type of licensed vehicles is by the type of roof light displayed on the vehicle. Traditional London Style Cabs have integrated taxi bubble lights as do some converted vehicles however some have a detachable rectangular magnetic roof sign similar to the type displayed on private hire vehicles. The policy amendments and new Supplementary Vehicle Testing Criteria document provide clarification that all new applications for hackney carriages must have the tradition London style bubble light.

An additional problem occurs due to the fact that there is currently no colour policy for hackney carriages and therefore some owners have chose to license silver vehicles. This can present problems for the public if they are allowed to flag down a silver hackney carriage they may feel that they can flag down a silver private hire vehicle that has a similar appearance.

There may be personal safety issues if the public are not able to easily distinguish a Sandwell licensed Hackney Carriage from a Private Hire Vehicle or a completely unlicensed vehicle therefore if the colour policy for private hire vehicles is removed it is recommended that a new policy be introduced requiring all applications for a new hackney carriage licence to be for black only vehicles. Existing hackney carriages that are not black will be allowed to continue to be licensed providing the licence is renewed. A new paragraph has been entered in the handbook clarifying that all vehicle licences can only be renewed up to 14 days after the expiry of the licence and only in exceptional circumstances. After that time any further application for a licence will be treated as a new application.

6.5 Vehicle Identification

Currently, with the exception of Limousines and Special Event Vehicles, all Private Hire Vehicles must display either self adhesive or magnetic door signs supplied by the authority. The door signs display the licence number of the vehicle and the words 'Office bookings only' to signify that the vehicle must be pre-booked through a private hire operator and cannot be flagged down in the street. Current policy does not require hackney carriages to display door stickers or door magnets.

It was originally intended that all private hire vehicles would have to display the self adhesive style door signs but following the court appeal in February 2007 and the resulting Tomlin Order the council agreed to allow licence holders to have the option to use magnetic door signs instead.

The trade complained about the self adhesive door signs claiming that they would damage the vehicles paintwork when removed. Since the introduction of these stickers the Licensing Manager has seen no evidence to suggest that the original manufacturers paint finish has been damaged on any vehicle when the door stickers have been removed. The Licensing Manager has however witnessed a few examples of paintwork being damaged when door stickers have been removed after they had been applied to a door that had previously sustained accident damage and undergone a poor quality re-spray.

A large percentage of the trade have requested the magnetic door signs yet these also prove to be unpopular as the trade claim that they come off too easily and are either lost or stolen. The current fee for a replacement door magnetic is £10. As all silver cars are painted with metallic paint some members of the trade have complained that the door magnets affect the metallic elements in the vehicles paint and eventually cause discolouration of the paintwork. Additionally some drivers have reported rust appearing on the surface of the doors underneath the door magnets. Many licence holders who have opted to display door magnets fail to display them, and as they are so easily removed, effective enforcement of this policy is impossible.

It is recommended that the door stickers or door magnets for private hire vehicles be removed on the renewal of a licence and replaced with a dual purpose window sticker. The sticker would identify that the vehicle is a private hire vehicle licensed by Sandwell MBC, its licence or plate number, and the fact that it must be pre-booked. It could also have the dual purpose of displaying the international No Smoking symbol as it is illegal for anyone to smoke in a licensed vehicle regardless of whether the vehicle is being used for work or not.

It is also recommended that all hackney carriages be required to display a window sticker which would identify that the vehicle is a hackney carriage licensed by Sandwell MBC, its licence or plate number, and the fact that it can only be hailed or flagged down in Sandwell. It could also have the dual purpose of displaying the international No Smoking symbol.

It is recommended that the stickers be made from a plastic peel and re-seal material so that they can be removed without the use of specialist tools and solutions. Licence holders and enforcement officers are able to remove licence plates from any vehicle whose licence has been suspended, revoked or has expired however they are not able to remove the self adhesive door stickers and therefore there is the potential that an unlicensed vehicle could be being used illegally if the door stickers remain on the vehicle.

6.6 Hackney Carriages working outside of Sandwell.

Since the case of R (App Newcastle City Council) v Berwick-Upon-Tweed Borough Council a nationwide problem has arisen whereby people who are unable to obtain a licence from a particular authority exploit case law by obtaining a hackney carriage driver and vehicle licence from another authority and then return to the original authority to work carrying out pre-booked work through a private hire operator in the original borough. This practice is perfectly legal but the licensing authority issuing the licence is unable to monitor the driver or vehicle, or enforce the conditions if the vehicle is being used in another borough. Similarly the local authority for the borough in which the vehicle is being used is unable to take any action against the driver or vehicles as they have not issued the licences.

Local authorities are entitled to ask for information to be provided that is relevant to the application and therefore many authorities ask for information as to the intended use of the hackney carriage. Many vehicle licence applicants are aware that the Licensing Office will not issue a licence to anyone who declares on their application form that they intend to use the vehicle outside of Sandwell and therefore some have made false declarations in order to obtain a licence. Once they have obtained the licence they have then used the vehicle wholly or mainly to carry out pre-booked work through private hire operators licensed in Birmingham.

All Sandwell licence holders that have been found to be working wholly or mainly outside of Sandwell have had their licences referred to the Licensing (Miscellaneous) Committee for consideration. This has resulted in a large number of people having their licences revoked.

Shropshire Council have won a number of Crown Court appeals following their decision to refuse to grant a hackney carriage licence to applicants who they are not satisfied intend to use their vehicle to ply for hire in Shropshire.

Locally Birmingham City Council has experienced a large influx of hackney carriages licensed by local authorities all over the country that have gone to work through private hire operators licensed in Birmingham. Some of those boroughs may have no idea that their drivers and vehicles are being used elsewhere in the country and similarly Birmingham City Council will have no knowledge of the driver's criminal or driving record, or whether the driver's licence has been suspended or revoked. Likewise the vehicle licence may have been suspended or revoked and Birmingham City Council would be unaware of this fact if the vehicle was still displaying its licence plates.

The new policy is designed to make it clear to applicants that Sandwell MBC is entitled to refuse to licence any applicant for a hackney carriage licence if they believe that the vehicle will not be used to ply for hire in Sandwell. This should deter anyone from applying for a licence who intends to use the vehicle wholly or mainly to carry out pre-booked work outside of Sandwell.

Attachments: Amended 'Section 3 - Hackney Carriage & Private Hire Vehicle Licence' from the Private Hire and Hackney Carriage Licensing Handbook – Appendix 1

Supplementary Vehicle Testing Criteria – Appendix 2