

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 27th January, 2009.

Present: Cllr Bill Woodhead (Chairman), Cllr Dick Cains, Cllr Mrs Eileen Craggs, Cllr Paul Kirton, Cllr Colin Leckonby, Cllr Maurice Perry, Cllr Roy Rix, Cllr Fred Salt, Cllr Steve Walmsley

Officers: C. Barnes, D. Kitching, S. Mills, M. Vaines (DNS), J. Douglas, M. Jones (LD)

Also in attendance: 70 Members of Taxi Trade, 1 member of Disability Action Group

Apologies: Cllr Ken Dixon, Cllr Miss Tina Large, Cllr Alan Lewis, Cllr Mrs Ann McCoy, Cllr Mrs Kath Nelson

L Declarations of Interest

76/08

There were no interests declared.

L Hackney carriage and Private Hire Licensing Policy Review

77/08

Consideration was given to a report that sought Members views on the comments received from the trade and other interested parties following consultation on the proposed draft Hackney Carriage and Private Hire Licensing Policy with a view to producing a final document for approval by Cabinet and for Members to determine how pending applications for Hackney Carriage and Private Hire Vehicle licences would be dealt with.

At the meeting held on 13th October 2008, Members agreed a draft consolidated policy document in respect of Hackney Carriage and Private Hire licensing and that a consultation be carried out with the trade and other interested parties on the proposed policy. A copy of the draft policy was made available to members. The consultation had been completed, and officers had attended three meetings with trade representatives and numerous letter and comments had been received as follows:

- (i) A document on behalf of the Stockton Hackney Carriage Drivers Association and some representations of the private hire trade.
- (ii) Letters supporting this document received from 142 individuals, some of whom made additional comments.
- (iii) A general letter criticising the process received from 16 drivers.
- (iv) Two copies of an amended version of a letter.
- (v) Individual letters from members of the trade.
- (vi) E-mail with feedback from the Disability Advisory Group.

Copies of the documents received were made available to members.

Member were also respectfully reminded that following the trade meetings, representations were discussed at Licensing Committee meeting held on 9th December 2008 where it was resolved that:

(i) Applications for replacement of existing hackney carriages and private hire vehicles (e.g. when written off or when subject to uneconomic repairs) with a similar vehicle would be permitted, each being determined on its merits and in consultation with the Chairman of Vice Chairman, and;

(ii) The proposed policy change requiring new and/or replacement private hire vehicles to be fitted with a swivel seat arrangement be deferred until the final policy is agreed.

The main issues raised by the trade following the consultation exercise were discussed and members of the public in attendance were given an opportunity to speak on the issues. The issues raised were as follows:

1. The requirement for the replacement of an existing licensed Hackney Carriage Vehicle or Private Hire Vehicle to comply with the proposed specification for new applications (Paragraph 74, page 10 and Paragraph 80, page 11 of the policy).

The trade believed this requirement would produce a severe financial burden on them by requiring the replacement of existing vehicles to one with a much higher standard both in terms of emission standards and in the case of hackney carriages the imposition of a compulsory wheelchair adapted vehicles only policy. The trade also believed in the case of wheelchair accessible vehicles that the public find them unpopular and some passengers would refuse to use them, which was a disincentive to any existing trade member facing the need to replace his existing vehicle.

In the case of Private Hire vehicles the trade believed there was no justification for the proposed requirement for them to be fitted with a swivel seat.

Members had already agreed that existing vehicles could be replaced on a like for like basis when the vehicle had either been written off or is subject to an uneconomic repair.

Officers agreed that the proposal for Hackney Carriage vehicles to be replaced with a wheelchair accessible vehicle and Private Hire vehicle to be fitted with a swivel seat could be considered unreasonable in the current economic climate.

The issue relating to replacement vehicles having to meet Euro IV Emission Standards was also reconsidered. Whilst there were still financial burdens on the existing trade there would need to be balances on the gradual air quality improvements that would be obtained bearing in mind the Council had no age restriction policies in place.

Members therefore recommended that the requirement for Hackney Carriage vehicles to be replaced with a wheelchair accessible vehicle and Private Hire vehicle to be fitted with a swivel seat be removed from the draft policy, as the issue could be revisited when the policy is next reviewed, and recommended the following policy in respect of vehicle emissions:

(i) Renewal of existing licences will only be granted if the vehicle can meet Euro II emission standards as a minimum

(ii) Replacement vehicles (i.e. of an existing licensed vehicle) must meet Euro III emission standards.

(iii) New vehicles applications must meet Euro IV emission standards.

This would allow for a more phased approach, which could be reviewed at the next policy review and amended accordingly.

2. The requirement for all new and replacement Hackney Carriages to be wheelchair accessible (Para 74, Page 10 of the draft policy)

The trade believed that this requirement without modification was a move towards 100% of the fleet being wheelchair accessible.

The trade suggested either a fixed number of vehicles or a percentage of the fleet should be adopted after which time this policy requirement would be reviewed. It had been intended to review the policy every 3 years.

During a meeting with the trade a figure of 20% was suggested and at a meeting of the Stockton Disability Advisory Group one of their members suggested a figure of 25%. Members were advised that there were 27 wheelchair accessible vehicles licensed.

As was indicated at the Licensing Committee meeting held on 13th October 2008, there were no guidelines as to what numbers or percentages represent a "mixed fleet" and it was a matter for Local Councils to determine. It was noted that it was not the intention of the policy to move towards a 100% wheelchair accessible fleet, as this was an issue that the Government were proposing to address through the introduction of national legislation. Until this was introduced Members recommended that the policy be amended to require it to be reviewed when the number of Wheelchair Accessible Hackney Carriages meeting the new specification reaches a figure which represented 25% of the total number of Hackney Carriages licensed at this time, which was 288 vehicles, or after 3 years from the date of implementation of the policy which ever was reached first. This equated to 70 vehicles.

3. The requirement that all new and replacement Private Hire Vehicles shall be fitted with a swivel seat base (Para 80, Page 11)

This issue was given consideration at the Licensing Committee meeting held 9th December 2008, when it was agreed to defer further consideration to this meeting.

Members were reminded that following discussions with representatives of the trade there was no support for this requirement.

The trade had also challenged the legality of this requirement because under the provision of The Disability Discrimination Act 1995 (the DDA) the duty imposed to make reasonable adjustments in respect of their services and to overcome a physical feature by removing it, altering it, avoiding it or providing services by alternative means did not apply in relation to the provision or use of a vehicle.

Whilst the Council could attach conditions to vehicle licences as they considered reasonably necessary under the Provisions of The Local Government (Miscellaneous Provisions Act) 1976 it was a matter of interpretation as to whether the requirement to install a swivel seat or base is a physical feature of the vehicle and as such would conflict with what the DDA states. The DDA also placed a legal duty on service providers to provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of those services. The legislation did not define physical feature or auxiliary aid but did state that the following were not to be treated as auxiliary aids or services, namely devices, structures or equipment the installation of which would necessitate making a permanent alteration to or which would have a permanent effect on either the internal or external physical fabric of the vehicle. A swivel seat mechanism could be deemed to be a temporary installation as the original seat could be reinstated.

The question of need had also been raised on two points. First, the current seats in Hackney Carriages were rarely used. Members were reminded that this claim was supported by the statistical evidence produced following consultation with the disabled community, which showed only 4% of respondents had made use of them. Second, most if not all Private Hire Operators also licensed Hackney Carriages, which were either fitted with swivel seats or were fully wheelchair accessible and some had licensed wheelchair accessible Private Hire Vehicles.

This issue had been raised with the Stockton Disability Advisory Group again when mixed views were expressed on this issue, the views included

- Not been aware that they existed but would be useful
- One person had found them useful
- Difficult to move once a heavier person was in them and so didn't like them
- Reservations about them because they can be quite high and make head space restricted if the person is tall and so preferred fully accessible vehicles
- Swivel seats should naturally phase out static seats
- They are helpful but not a "must"

Members considered that the support for the provision of these seats and that evidence suggested that they were rarely, if ever, used in existing Hackney Carriages. It was therefore recommended that:

- the requirement be removed from the Policy at this time
- the requirement be removed from the specification when replacing a saloon Hackney Carriage Vehicle with another saloon vehicle
- the issue be reconsidered at the next review of the policy when further consultation had taken place with the Disability Advisory Group on the impact the policy changes had made.

4. The provision of calendar controlled meters (Para 61,62 and 63, Page 9)

The trade requested that the Council did not restrict approval to the calendar

controlled meters and that the Council restrict involvement to merely requiring meters which had current European Approval granted by the appropriate bodies.

As discussed at the Licensing Committee meeting held on 13th October 2008, the proposal was agreed as the tariff rates changed automatically on these meters and they could not be changed or tampered with by the drivers, thus protecting the customer and the driver in respect of complaints of overcharging. As it was proposed to allow existing vehicle proprietors a period of three years to comply with this requirement it was not considered to be unreasonable and it was therefore Members recommendation that the requirement remained within the policy.

5. CCTV In Vehicles (Para 132 – 137, Page 16)

The trade requested the Council establish a working body to examine the questions of the acceptability of this in licensed vehicles and determination of safeguards to ensure that such systems were effective and operated in line with Data Protection legislation. Members considered this request and recommended that such a body be established.

Members noted that there was no proposal to make CCTV a mandatory requirement and it was being left to the judgement of the owners and drivers themselves. Members recommended that the policy should be amended to ensure that where CCTV was installed, that this must be done by registered installers, who must be approved by the NSI (National Security Inspectorate or SSAIB Security System and Alarm Inspection Board) accredited by UKAS (United Kingdom Accreditation Services).

6. Driver Knowledge /Locality Test (Para 164 -165, Page 19)

The Trade requested that this requirement be revised and the necessity for detailed topographical knowledge tests to be undertaken should be reconsidered in the light of modern technology available to drivers e.g. satellite navigation systems

Members were advised that applicants undergo a written test in this respect. This was currently being reviewed with a view to changing it to one taken using a computer-generated test similar to the Driving Standards Agency. The use of satellite navigation systems had been considered as an alternative to applicants for Private Hire Driving licences having to demonstrate the use of an A to Z but this had not been progressed to date.

Members recommended that any change to the current requirement for the driver knowledge/locality test be deferred until after the computer generated testing system was installed later this year, as decisions would be required on what system would be deemed appropriate; who would be required to provide them i.e. the vehicle proprietor or the driver; and would a further testing regime on an ability to use the equipment be required.

7. The need for applicants who have spent time abroad to provide a

The Trade were concerned that the requirements for an applicant to provide a Certificate of Good Conduct or equivalent document from any country that they had lived in prior to coming to the UK would delay the application process. For current licence holders taking prolonged holidays, they believed it would be difficult if not impossible for drivers to obtain the statement from the jurisdiction visited.

Officers noted that it was only proposed that drivers tell the Council when they were intending to leave the country for extended periods of three months or more and that they complete a statutory declaration on their return. There were two reasons for this: it allowed the Council to update the records so that formal letters e.g. requirements to complete a CRB application, were not sent out which could and had resulted in drivers being suspended and even revoked when they were out of the country and the Council had not been informed; and the driver must on their return make a statutory declaration that they had not been convicted of any offence in the country that he had visited. It was intended that the Trading Standards and Licensing Unit would provide the statutory form. Members recommended that Para 179 be amended to reflect this.

In respect of new applicants, whilst this requirement could delay the application process Members considered this an essential part of the vetting process. Whilst the Criminal Records Bureau did provide advice and contact addresses for a large number of countries it was accepted that this may not be possible for all countries and Members recommended the wording in the policy be amended to reflect this i.e. adding the words "... and where non exist each case will be determined on its merits" at the end of paragraph 175, page 21.

8. The introduction of random drug testing (Para 205 – 206, Page 23)

The trade suggested that this should only be required when there was clear and independent information, which suggested a driver may be abusing any substance; there should be no cost to the driver if tests were negative and safeguards should be in place for the testing regime and the individual concerned.

Officers noted that it was intended to collect saliva samples, which could be carried out in Council Offices, which would then be submitted for laboratory analysis at a UKAS accredited laboratory. It was not intended to recover the costs from individual drivers tested but to recover them via the fee income on the Transport Budget. Officers assured that records would remain confidential and any positive results and/or failures to submit to testing could result in the suspension of the drivers licence and/or referred to the committee when each case would be determined on its merits.

Members were concerned that, while there were benefits of random drug testing particularly for public safety and public perception of taxi drivers, there were issues regarding residual level of narcotics in the blood system, the need for consistency for drug testing across all Council employees whose duties included driving, and the trade being fully informed of the processes. Members therefore recommended that drug testing should be deferred until these issues

were examined.

9. Driver Training and the requirement to undertake both the BTEC Intermediate – Transporting Passengers By Taxi and Private Hire Trade and NVQ Level 2 in Road Passenger Vehicle Driving (Para 235 – 243, Page 26

The trade requested that as many drivers (but there were no details as to how many) had already embarked on an NVQ only basis with local training providers, that the Council limit this requirement to the NVQ qualification only with the BTEC Certification being voluntary.

Officers were not aware of local training providers that were only providing NVQ training. They had been contacted in recent months by several training providers regarding the proposals and all had indicated that they were able to offer both courses.

It was understood that the BTEC course provided candidates with the knowledge to underpin and subsequently gain the relevant NVQ and it was for this reason that undertaking both courses was considered to be the best option.

Members noted that all training providers who had contacted officers were able to and do deliver both courses which were still funded by Government and were therefore free to the driver. Members therefore recommended that this requirement remain.

The trade asked what would happen if a driver did not obtain the qualification in the timeframe given, and there was concern for new application where English was not the drivers first language. Members recommended that each case would be determined on its merits at the time.

10. Appendix G – Relevance of Convictions, Cautions, Reprimands, Warnings and Complaints (Page 69)

The Trade asked why the Council had departed from Home Office Guidelines issued in 1992 in respect of the relevance of previous convictions.

They also found the terms of paragraph 317 (page 34) offensive and an invitation to the exercise of subjective and partial bias on the part of the Council.

Members noted that these guidelines were not new, only minor amendments were being proposed. The Council was not obliged to adhere to guidelines, as they were just that, guidelines. The current adopted guidelines were revised in December 2004. Since that time they had been tested and upheld in the court system on numerous appeals against decisions made by the Committee.

Paragraph 317 was in the section dealing with the conduct of drivers which did not always mean dealing with a conviction or caution and it was a test often used in the courts when determining issues relating to a drivers behaviour, without causing offence or criticism.

Therefore members recommended that the guidelines remained in the policy.

11. The requirement for new hackney carriages to have been tested, or

re-tested after modification to meet European Whole Vehicle Type Approval standards in the M1 category. (Appendix A, Page 55, Para 26)

The Trade requested that this requirement be relaxed to permit those converted vehicles that had 'Small Volume' approval to be licensed, as there was a range of such vehicles available in the market place.

Members were reminded that the 'Type Approval' system was based on a system of testing vehicles and components to provide confirmation that production samples were of a design that would meet specified performance standards.

Members requested clarification on the classifications of approval. Whole Vehicle approval was to a higher specification than Small Volume approval, where requirements were derogated and therefore either lower or exempt. Whole Vehicle approval permitted unlimited production whereas with Small Volume approval sales were limited to 1,000 vehicles throughout member states. Members therefore recommended that the requirement should remain Whole Vehicle Type approval.

12. The deferral of new/replacement applications for vehicle licences pending the final policy being agreed.

At an earlier meeting Members agreed to defer the grant of new/replacement vehicle licences pending this review of policy. Notwithstanding the amendments to this decision to allow for the replacement of vehicles on a like for like basis when they had been written off or subject to uneconomic repair and to permit the grant of new private hire vehicles without the fitting of a swivel seat, but subject to the vehicles meeting Euro IV emission standards. There were 12 applications pending, 7 for new saloon hackney carriages; 1 for replacement of an existing saloon hackney carriage; and 4 for new private hire vehicles.

Members agreed to process all applications received to date under current policies and to defer any future applications that did not meet the proposed standards except for the replacement of existing licensed vehicles on a like for like basis when they had been subject to being written off or subject to uneconomic repair pending the final ratification of the new policy, which they would then be expected to comply with.

13. Vehicles that have been declared an 'insurance write off' will not normally be licensed unless the repairs have been carried to a standard that has resulted in the reclassification of the vehicle. (Para 48, page 8)

The trade requested that particular categories of write off's be considered for a licence, where the repairs had been made to specific standard. It was noted that category C and D could be returned to the road but that there would need to be additional policies in place regarding the quality and inspection of repairs carried out and the subsequent safety of the vehicle depending upon the extent and nature of the damage

Category C - An extensively damaged vehicle that the insurer had decided not to repair but which could be repaired and returned to the road

Category D - A damaged vehicle that the insurer had decided not to repair but which could be repaired and returned to the road.

Members considered the request made by the trade, but were concerned for the public safety therefore recommended that insurance write offs should not be licensed.

14. Independent Safeguarding Authority (ISA) (Para 182 - 192 pages 21 -22)

The trade noted the need to discuss the issues surrounding ISA and the possibilities that there may be some drivers, who had been driving taxis for a number of years, who may not be able to obtain the ISA registration. Trade also raised issues with the cost of ISA.

Members were advised that the ISA was a new agency and that the information available from them has been limited. Their new office had now opened in Darlington and officers intended to have discussions with them regarding these issues. After consideration of the issues however, members recommended this remained in the policy pending the further discussions with the ISA.

15. Address From Which An Operator May Operate (Para 266 - 268 page 29)

There was concern from trade that premises must be in the controlled district of the Council, as an operator may be based in several different areas. To only licence operators based in the district of the Council could affect the operation of the business. Members considered that it would not be appropriate due to information provision and enforcement purposes to allow operators licensed with the Council to operate solely from an office based outside the district.

16. Alcohol

The trade were concerned that the policy on alcohol was too harsh and that there should be some consideration of the degrees of the offence.

Members considered that the inclusion of rules on alcohol was only guidelines, and that cases could be viewed on their merit. It was therefore recommended that these be kept within the policy document but be reviewed at a future date, and a detailed report on the issue be taken back to the Committee.

The following implementation dates were noted:

- The policy to take effect from 1st April 2009
- The new meter provision to apply to existing vehicles within 3 years from this date
- Euro II emission standard to apply at next licence renewal i.e. Sept/Oct 2009
- Standards for tinted windows to apply at next licence renewal i.e. Sept/Oct 2009
- Training requirements for drivers/private hire operators (PHO) re NVQ and BTEC qualifications to be obtained within 12 months from next licence renewal (PHO licences will be renewed in Nov 2009; driver renewals are dealt with each month as they are granted for 12 months from the date of issue).

The recommendations detailed above will be incorporated in to the policy and

referred to Cabinet for approval.

The trade thanked both officers and the Committee for giving them an opportunity to be consulted on the policy and for taking their views into consideration.

The Committee thanked the officers for the report, and for the trade who had participated in the consultation process.

RESOLVED that: -

1. The Committees comments be received on the responses to the consultation.
2. The suggested policy be referred to Cabinet for approval.