



Derby City Council

LICENSING COMMITTEE
14 July 2016

ITEM 8

Report of the Strategic Director of Communities
and Place

**Consultation on Changes to Taxi Licensing Administration &
Decision Making**

SUMMARY

- 1.1 At Council on 18 May 2016, it was agreed to undertake a review of the taxi licensing sub-committee decision making processes and procedures. A series of proposals and recommendations were agreed. A consultation exercise with the trade and the public as primary stakeholders of the Council's licensing function on the proposed changes was also approved.
- 1.2 Officers were asked to consider and propose an administrative scheme for licence applications for determining such applications, to include the renewal of hackney carriage and private hire licences.
- 1.3 The report sets out more detail about the consultation process and seeks comments from Committee on the proposals.

RECOMMENDATION

- 2.1 Consider the details of the draft consultation scheme set out in the report and make any appropriate comments, for consideration by the Cabinet Member.

REASONS FOR RECOMMENDATION

- 3.1 To give effect to the mandate given by Council at its meeting on 18 May 2016.

SUPPORTING INFORMATION

- 4.1 At Council on 18 May 2016, members considered and approved a set of recommendations that requested officers to undertake a review of the taxi licensing sub-committee decision making processes and procedures, and consider and propose an administrative scheme for determining licence applications, to include the renewal of hackney carriage and private hire licences.

- 4.2 Robust principles, processes and procedures will be needed to enable the implementation, from an agreed date, of a new system for making clear and consistent decisions which are in the public safety interest.
- 4.3 Underpinning the proposal is a need to consult with the trade and relevant stakeholders about the proposals detailed in Paragraphs 4.4 – 4.16 of this report. This is an established principle of licensing law and practice where significant changes to a licensing system, such as those being proposed, are sought to be introduced, and without which any change initiative becomes vulnerable to a successful judicial challenge. A twelve week consultation exercise with the trade and public on the key elements of the proposal will be undertaken. The consultation timetable is set out at Appendix 2.
- 4.4 Consultation is being proposed on the basis of either or both of two alternative options, the broad details of which are set out below as the First Proposal (paragraph 4.5) and the Second Proposal (paragraph 4.6). The aim of both would be to identify and implement a consistent, fair and transparent licensing administration system that is fit for purpose, while still achieving the statutory target of safeguarding the safety of the public.

The First Proposal

- 4.5 This relies on the introduction of an administrative system for determining licensing applications and renewals based on established current taxi licensing sub-committee processes, but with officers standing in the members' stead. It will replace the current system of member-based taxi licensing sub-committee hearings, and will be chaired by the officer delegated to carry out the role, should this be resolved by Council as the preferred option. The existing member guidelines will be updated to make them fit for application by officers. Changes to the existing scheme of delegations from Licensing Committee to officers will also be required to give effect to the proposal.

The Second Proposal

- 4.6 This relies on the development of proposals with the Cabinet Member for Regulatory Services that are consistent, fair and transparent, and which will then be consulted upon with the trade and the public as primary stakeholders of the Council's licensing function. Officers have since reviewed, developed and are now ready to present to the member more detailed best practice approaches to dealing with the administration of licensing, in the knowledge of other licensing authorities' experiences. This includes, but is not limited to, considering the introduction of a new penalty points system, the application of a minimum-requirement application threshold, and housekeeping around the current imposition of age limits. Having regard also to the Jay and Casey reports on matters relating to child sexual exploitation, officers were also tasked with securing that the consultation process includes proposals requiring all new licence applicants to successfully undertake approved safeguarding training, and for existing drivers and operators to undertake similar training prior to renewal of their licences.

Penalty Points System

- 4.7 The effectiveness of an officer based administrative decision making process will require the introduction of a points based system that would be equally applicable to both existing and prospective licence holders, with a threshold maximum number of 12 points above which, as applicable, a licence will be administratively suspended or revoked. The points system takes account of all possible driving and criminal convictions and/or conduct/behavioural transgressions. It will be made available on the Council website for all current and prospective licence holders to consult. The proposed penalty points table is set out at Appendix 3.

Minimum Application Threshold

- 4.8 The proposal to transfer administrative decision making offers an opportunity to refresh a number of operational practices. Investigations conducted with other licensing authorities across the country identify that a significant number apply minimum application criteria before an application can be processed, for which an initial fee, separate to the licence fee, is chargeable. An application that does not address the criteria prerequisites will be deemed 'incomplete' and returned to the applicant without a refund of the application fee; applications that meet the prerequisites will proceed to determination, and will need to be supported by a separate non-refundable licence fee.
- 4.9 In future, for an application to be deemed 'complete' it is proposed that it must comprise of:
- (a) the application fee
 - (b) a signed application (or renewal) form, complete with a declaration of truth
 - (c) a valid Disclosure and Barring Service (DBS) certificate
 - (d) a clear Group 2 medical clearance (see paragraph 4.11 below)
 - (e) as may be applicable, a Driver & Vehicle Licensing Agency (DVLA) driving standards trade test (see paragraphs 4.13 & 4.14 below)
 - (f) confirmation of having passed a prescribed safeguarding training course
 - (g) proof of right to work in the UK
- 4.10 A new style application form and guidance notes to support the changes proposed will need to be put in place.

Group 2 Medical

- 4.11 It is also proposed to adopt the Group 2 medical standard for hackney carriage and private hire drivers licensed by the Council. This is the same standard prescribed by the DVLA, for bus and lorry drivers. This recognises the fact that licensed drivers are on the road for significantly longer hours than non-trades/private car drivers, and that they may have to provide assistance to passengers. These reasons underline the existing acceptance within the licensed trade that hackney carriage and private hire drivers should have more stringent medical standards than those of a normal car driver. The Council believes that the expectation of the public is that journeys they contract with drivers or firms for will be conducted safely, and that the driver is medically fit to undertake the journey. Adopting the DVLA standard ensures there is consistency of medical standards amongst service drivers.

Age Limit

- 4.12 It is a statutory requirement that a drivers licence will not be issued to any person who, at the time of application, has not held a full driving licence for a continuous period of one year. The Council currently stipulates that licences will only be issued to applicants over the age of 21. It is proposed that consideration is given to removing the minimum age requirement.

4.13 Driver Tests – New Applicants

The Council wishes to satisfy itself that licence applicants achieve the highest possible driving standard, in the public interest. It is proposed that new applicants for hackney carriage or dual badge licences will be required to have successfully undertaken the DVLA's 'Hackney Enhanced Wheelchair Assessable Vehicle Test and Taxi Wheelchair Exercise Test', prior to application. New private hire driving licence applicants will be required to undertake the DVLA's 'Hackney and Saloon Vehicle and Private Hire Saloon Vehicle Test', prior to application.

Driver Tests – Existing Applicants

- 4.14 For existing licence holders, the points system discussed at paragraph 4.7 earlier will incorporate a facility for referral to sit the applicable DVLA test detailed in the preceding paragraph, as appropriate, where the background to any referral of a complaint to officers for consideration arises out of a proven complaint about the holder's driving standard. The fact of a referral and any omission to undertake the test itself will also incur additional points. It is proposed to also retain the existing BTEC penalty sanction, where the background to any referral of a complaint to officers for consideration arises out of a proven complaint about the holder's conduct or standard of service, in tandem with the new points system. The existing NVQ qualification for existing drivers, which must be taken within three years of first obtaining a licence, will also remain in place. This too will be linked to the penalty system should the holder not provide appropriate certification that they have undertaken the training within the prescribed period.

Safeguarding Training

- 4.15 The Jay and Casey reports into child sexual exploitation have had a profound and continuing impact on licence holders across the country, the latter in particular identifying a nation-wide common thread between taxi licensing and child sexual exploitation. The Council here in Derby has already introduced a number of changes to address a number of identified shortcomings. However, more can and still needs to be done to increase safeguarding awareness within the trade, and place safeguarding at the forefront of existing and aspiring licence holders minds. It is proposed that all new applicants (drivers and operators) will be required to successfully undertake an approved safeguarding training course prior to applying to be licensed. Existing drivers and operators who are currently licensed will be required to undertake similar safeguarding training prior to the next renewal of their licences, again without exception. Where the operator is a corporate entity, the company will be expected to nominate an individual in a position of authority (e.g. a director or manager with day-to-day responsibility for decisions), capable of implementing the 'corporate mind', to undertake the training.

Right to Work

- 4.16 A new Immigration Bill is under consideration which is aimed at tackling central government's concerns around the issue of illegal working. It is important that driver licences are only issued to individuals who have the right to work in the UK/EEA, as applicable. Licence holders, like any other employed persons in the UK, will need to be able to demonstrate a right to work. Any new applicant will need to provide evidence of that right as part of the application process. Any limitations on the period for which a person can lawfully undertake work will be reflected in any licence issued. Current licence holders will also need to be retrospectively checked for compliance with the requirement.

Other Matters

- 4.17 As part of the process of reviewing current practices, a number of practice principles, policies and licence conditions have also been looked at. In a number of areas, the need for improvements have been identified and the opportunity to consult so extensively with the trade about the First and Second Proposals also affords an opportunity to consult with the trade about a number of changes which the review has identified as necessary and/or appropriate. These are set out below within paragraphs 4.18 – 4.32.

Revision of Private Hire Operator Condition 11(a)

- 4.18 Condition No. 11(a) currently states that:

The operator shall, before the commencement of each journey, record in a manner prescribed by the Council, the following details of each booking:-

- i. the time and date of booking;
- ii. the method by which is was received (e.g. telephone, personal call etc);
- iii. by computer, or in a suitable book, with numbered pages set out;
- iv. the picking up and setting down points, by reference to street names;
- v. the date and time when the journey is to commence;
- vi. the name (and address) of the hirer;
- vii. the plate number of the vehicle allocated to the booking;
- viii. the name and badge number of the driver allocated to the booking;
- ix. the call sign of the vehicle allocated to the booking;
- x. the registration number of the vehicle allocated to the booking;
- xi. confirmation that the hirer has been informed of the supply of a vehicle with darkened glass and whether this has been accepted; and
- xii. in the case of bookings taken by text or e-mail, points (iv) and (vi) shall not apply. There must be a unique reference number or name recorded, allowing an audit trail for each booking and the ability to determine the destination of the journey.

- 4.18 cont It has become clear that the exemption in Condition 11(a)(xii) creates the potential for a safeguarding loophole. Fundamentally, if a destination is not recorded until after a journey has concluded, there is the potential for abuse in the event that a dispute arises between a driver/operator and a passenger about what the agreed destination of a journey was. Closing off the loophole, in addition to the obvious safeguarding concern that arises, also protects the driver/operator from allegations of impropriety. The proposal is therefore to delete in its entirety, Condition 11(a)(xii).

Online Renewals of Driver Licences

- 4.19 In line with a number of other local authorities, the Council proposes to introduce online renewals for driver licences, the benefits of which would be that drivers would no longer be required to attend the council offices for renewal. The proposal is expected to drive efficiency by quickening the current administrative regime.

MOT for vehicles

- 4.20 At present, subject to a vehicle meeting the requirements set out in the Council's vehicle licence conditions and specifications, an approved garage issues the proprietor with a 'Certificate of Compliance', not an MOT certificate. This certificate confirms the vehicles compliance with the vehicle conditions and specification and is used for licensing purposes effectively as a replacement for an MOT certificate. This can create potential issues for a vehicle proprietor, such as being able to apply for vehicle tax and car insurance online, so it is proposed that the use of a 'Certificate of Compliance' is discontinued and approved garages issue the compliant vehicle with an MOT Certificate and a Vehicle Compliance Sheet. In order for a vehicle to be licensed, both documents will need to be submitted.

DBS to be administered by a 3rd party

- 4.21 The DBS process for hackney carriage and private hire drivers has changed over the last few years and the Council have made further changes to the process recently following the introduction of deregulation legislation. Currently, these DBS applications are countersigned by an officer from the Licensing Team which means a new applicant or existing driver must attend the council offices for this to be done. There are now a number of other organisations that can undertake this service, often via online services, and so it is proposed that the DBS counter-signatory process for hackney carriage and private hire driver licences in Derby is carried out by one of these organisations through direct arrangement with the applicant. The Council will continue to provide specific information to the applicant about the level and type of DBS required and it will be the responsibility of the applicant to ensure this is done. The proposal offers more flexibility and control over the process to the applicant.

Dual Badges

- 4.22 Currently the Council does not issue a dual badge but does issue separate hackney carriage drivers' licences and private hire drivers' licences to a small number of individuals. A dual badge allow a hackney carriage driver only the flexibility to be able to work as a hackney carriage driver or a private hire driver attached to a private hire operator. In line with a number of other local authorities, the Council proposes to introduce the option for a dual badge. It will only be available as an option to licensed hackney carriage drivers because of the legislative provisions that allow hackney carriages to undertake private hire work. It will not be an option for private hire drivers. An appropriate fee for a dual badge would need to be calculated.

DVLA Driving Licence Mandate

- 4.23 From 8 June 2015, the paper counterpart to the photo card driving licence is no longer issued by the DVLA. In order to be able to check the status of drivers licences, it is proposed that drivers should be required to sign up to this mandate to enable the Council to view individual driving history. This is necessary to determine whether or not drivers are safe and capable of driving a vehicle in the manner expected of a taxi driver. It will also be used to confirm that an applicant has held a full driving licence for the statutorily prescribed period of at least twelve months prior to application.

Good Conduct Certificate

- 4.24 A criminal record check is an important safety measure and is widely required by local authorities as part of the application process. Your officers consider that it is important that checks are also conducted on applicants who come from overseas, in relation to whom the British Police/DBS would not have access to the equivalent quality of information. To achieve this purpose, it is proposed that new overseas drivers should be required to provide a 'Certificate of Good Conduct', authenticated by their relevant embassy. For existing drivers, the proposal is that all renewal applications for hackney carriage or private hire licences must be accompanied by a 'Certificate of Good Conduct' if the holder has lived or has otherwise been outside the UK for more than three months since their last licence was issued.

4.25 Dress Code

In the interest of driving up standards, it is known that a number of other licensing authorities across the country have adopted a dress code for licence holders. The argument is that drivers' dress codes provide a positive image of the hackney carriage and private hire trade, who are often the first point of contact with visitors to the city, and enhances the professional image of licensed drivers. The proposal is therefore for consultation to take place with the trade, in the event that the Council decides that it wishes to do the same.

Staffing Proposals

- 4.26 The success of any implementation of these proposals will require investment to make the delivery of the service robust and resilient. The fundamental principle behind public authority licensing schemes is that they must be self-sustaining, and for that reason any 'profits' are ring-fenced, to be re-applied towards administering the scheme in future years. In practical terms, this means that any additional costs the Council may incur in introducing some or all of the proposals that form this consultation exercise will need to be met by the trade. There is no available budget provision to meet these costs and the Council's budget position is such that there are no plans to meet any additional costs itself. In the interest of utmost transparency with the trade, it is proposed that the consultation process should address this point too.

Vehicle Proprietorship

Vehicle Proprietorship

- 4.27 The transfer of vehicles between different proprietors can often cause administrative problems for the licensing team. Because there is no definitive list of what is acceptable confirmation of a change in proprietorship, the team often receives documentation which does not contain the correct information, or is difficult to read, or is the subject of subsequent challenges/withdrawals.
- 4.28 In order to confirm the legal proprietorship of vehicles which are licensed by the Council, it is proposed to only accept either:
- (a) a copy of the tear-off slip from the V5; or
 - (b) a receipt from the manufacturer/dealer of the vehicle; or
 - (c) the registered keepers log showing the new owner.

Air Quality and Vehicle Emissions/Age

- 4.29 The Council is currently working on a mandate from central government to implement a Clean Air Zone (CAZ) in Derby by 2020. This is necessary to enable legal compliance and reduce levels of nitrogen dioxide (NO₂) to a concentration of below 40µg/m³. It's been identified that there is currently potential to exceed EU limits of NO₂ in Derby by 2020 if no action is taken. Newer vehicles that meet emissions standards will not need to pay to drive in the CAZ, but the Council will have to set charges at levels designed to reduce pollution for non-compliant vehicles. For Derby, the plan identifies a 'Class B' CAZ, which will apply to all buses, coaches, taxis, private hire vehicles and heavy goods vehicles. The minimum acceptable emission standards for car / light commercial (up to 1,305kg) vehicle types will be Euro 6 (diesel) and Euro 4 (petrol). It is expected that this will apply to all taxis and private hire vehicles. Put simply, if a vehicle does not comply with this minimum standard by 2020, the driver will need to pay a charge if they drive within the CAZ. The government has not yet released guidance on what the levels of charge may be. It is highly likely that any CAZ proposal would affect the city centre area (within the inner ring road). The proposal is therefore to use the consultation process to begin to raise awareness within the trade of the impact of a likely CAZ on them.

Minibuses

- 4.30 Recently, it has emerged that a number of minibuses licenced as private hire vehicles in Derby do not meet some of the standards laid out in the Council's vehicle specifications. In particular, this relates to minimum dimensions, modifications to seating layout and the provision of additional interior lighting. All these issues have a potential impact on public safety and consultation on a series of proposals is being sought.

Hybrid Vehicles

- 4.31 At present, all private hire vehicles licensed in Derby must have a minimum of 300 litres of luggage space available for customer use. Some hybrid vehicles, such as the Toyota Prius, cannot meet this requirement because of the additional space required for the vehicles battery cells. It is also recognised that for the significant number of journeys undertaken in private hire vehicles, luggage space is not necessarily needed or used. In addition, as the vehicle has to be pre-booked, the need for luggage space is a topic that could be discussed by the hirer at the time of the booking. Comments are being sought on the continued need to have a defined luggage space requirement.

Basic Skills Test

- 4.32 Related to and extending on from the proposal for mandatory safeguarding training, the Council is also seeking views on the introduction of a basic skills test for all new driver applicants which will include Maths, English (BKSB Level 1 Functional Skills assessments), Customer Service, Licensing Policy and Child Sexual Exploitation awareness training. This will help improve standards for all drivers and ensure continued public safety. For existing drivers, the proposal is to roll this out in due course as a pre-requisite to their renewal application. Agreement would need to be sought from a local college/training provider to administer the test.
- 4.33 The proposed consultation scheme for approval by the Cabinet Member for Regulatory Services is set out for comments at Appendix 4.

OTHER OPTIONS CONSIDERED

- 5.1 It is officers' understanding that maintaining the status quo is not an available option and beyond proposing that as a further alternative, no other option has therefore been considered.

This report has been approved by the following officers:

Legal officer	Lucie Keeler, Solicitor
Financial officer	n/a
Human Resources officer	n/a
Estates/Property officer	n/a
Service Director(s)	John Tomlinson and Janie Berry
Other(s)	David Walsh and David Gartside

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Proposed Implementation Timeline Appendix 3 – Proposed Penalty Points Table Appendix 4 – Proposed Consultation Scheme

IMPLICATIONS

Financial and Value for Money

- 1.1 A review of any additional funding requirements that may be required to meet the finalised proposals will need to be carried out at a later date.

Legal

- 2.1 None other than as set out within the report.

Personnel

- 3.1 A review of any additional staffing resources that may be required to meet the finalised proposals will need to be carried out at a later date.

IT

- 4.1 A review of any additional IT resources that may be required to meet the finalised proposals will need to be carried out at a later date.

Equalities Impact

- 5.1 The proposals will need to be supported by an equality impact assessment at the point at which they go out to consultation, the outcome of which would need to be considered by Council prior to a final decision in November.

Health and Safety

- 6.1 None.

Environmental Sustainability

- 7.1 None.

Property and Asset Management

- 8.1 None.

Risk Management

- 9.1 There would be significant reputational risk to Council in devising and/or approving

an ineffectual scheme.

Corporate objectives and priorities for change

10.1 The proposals set out in this report address the corporate objectives of:

- protecting vulnerable children, young people, adults and older people
- promoting health and well-being
- being more commercial
- delivering our services differently

10.2 The proposals also meet the Council's core vision of being 'safe, strong and ambitious', and the aim to be a 'modern, flexible and resilient Council'.

Proposed Implementation Timeline

	Activity	Target Date
1.	Report published in Council agenda	10 May 2016
2.	Council approves change (and potentially sets date for implementation)	18 May 2016
3.	Officers develop scheme	18 May 2016 – 5 July 2016
4.	Draft scheme published in Licensing Committee agenda	6 July 2016
5.	Licensing Committee considers draft scheme	14 July 2016
6.	Report published for Cabinet Member	Week commencing Monday, 18 July 2016
7.	Cabinet Member approves consultation arrangements	25 July 2016
8.	Consultation commences	1 August 2016
9.	Consultation ends (12 weeks)	24 October 2016
10.	Officers finalise changes following consultation	24 October 2016 – 1 November 2016
11.	Final report published for Licensing Committee	2 November 2016
12.	Report considered/approved by Licensing Committee	10 November 2016
13.	Final report published for Council	15 November 2016
14.	Report considered/approved by Council	23 November 2016
15.	Implementation	28 November 2016