

HAVANT BOROUGH COUNCIL

LICENSING COMMITTEE

16 August 2023

HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY REVIEW

FOR RECOMMENDATION FOR ADOPTION

Portfolio Holder: Councillor Elizabeth Lloyd

Key Decision: No

Report number: HBC/030/2023

1. Purpose

- a. This report outlines the responses received during the consultation period for the proposed changes to the Council's current policy on the licensing of hackney carriage and private hire drivers, vehicles and private hire operators, and proposed changes to licence conditions.

2. Recommendation

- a. Members are requested to:
 - i. Review comments received during the consultation, approve any amendments to the policy required as a result of the consultation responses, and recommend the policy for adoption by Full Council.

3. Executive Summary

- a. The Council is reviewing its Hackney Carriage and Private Hire Licensing Policy to adopt relevant recommendations made in the Department for Transport's 'statutory taxi and private hire vehicle standards.' The aim is to update the policy to be consistent with national best practice and achieve common core minimum standards across the taxi and private hire sector.

- b. The proposed changes include, but are not limited to: enhanced DBS checks for drivers every six months; annual DBS checks for vehicle proprietors and private hire operators; requirement to disclose relevant information within 48 hours and on application; requirements for the licensing authority to participate in the National Register of Taxi and Private Hire Vehicle Revocations, Refusals and Suspensions (NR3S); mandatory safeguarding training for all licensed drivers and private hire operators; and requiring private hire operators to maintain specific records, including a register of all staff that take bookings or dispatch vehicles.
- c. Following a Licensing Committee meeting held on 12 June 2023, the Council sought the views of representatives of the taxi trade, the general public, and other licensing authorities during a four-week consultation. Responses were invited either via an online survey, or in writing to the Licensing Department. The consultation period ended on 16 July 2023.

4. Additional Budgetary Implications

- a. There are no additional budgetary implications as a result of this report. The previous report to the Licensing Committee on 12 June 2023 detailed procurement of a third-party company to manage DBS Update Service checks.

5. Background and relationship to Corporate Strategy and supporting strategies and policies

- a. Wellbeing: The taxi and private hire trade provides an invaluable service to many different customers, including children and vulnerable persons. A robust policy on the regulation of the taxi and private hire trade is needed to ensure that the safety of the public is maintained and at the forefront of all licensing decisions. Furthermore, a safe and suitable taxi and private hire service benefits members of our community with disabilities or other additional needs, who may find it

challenging to travel without the provision of a variety of public transport options.

- b. Pride in Place:** the taxi and private hire licensing regime prioritises the safety of the public, and by regularly reviewing its policy the Council can ensure that it is working proactively to ensure the safety of taxi and private hire vehicle users, including children and vulnerable people. Furthermore, supporting the taxi and private hire trade with transparent and efficient processes enables them to continue providing a safe and professional service for residents, visitors and tourists.

The revised policy further seeks to encourage the licensing of hybrid and electric vehicles, to positively contribute to the Council's Climate Change Environmental Action Plan, by relaxing the age limit from 5 years to 8 years from the date of first registration.

- c. Growth:** A thriving taxi and private hire trade contributes positively to the local economy, both through the licensing of small businesses as private hire operators and providing a valuable service to business commuters and customers of the night-time economy.

6. Options considered

- a.** The Council has considered the responses received during the consultation period. Where adverse comments have been received, the Council has sought to either amend the proposed policy in response or disregard the comments in favour of adopting the Department for Transport's recommendations.

- b. Safeguarding training for drivers**

In response to the proposal to introduce mandatory safeguarding training for hackney carriage and private hire drivers, a number of adverse comments were received during the consultation. Comments included concerns about the cost and relevance of any training mandated.

The Council has worked with the Procurement Team to source an affordable training course, at £25 per person, which complies with the recommendations made by the Department for Transport regarding course content. The Council is content that the course is reasonably affordable, and that a period of two years to complete training is sufficient for drivers to effectively budget for this additional expense. Members may seek to increase the time period that drivers are given to complete the training, if they deem this necessary.

The Council has amended the proposed policy to add that drivers with alternative safeguarding certificates (other than those obtained from the Council's approved supplier) may be accepted. It has also removed the requirement for ongoing refresher training until it can properly consider the ongoing cost to drivers.

c. Certificate of good character

In response to the proposal to require a Certificate of Good Character from any applicant or driver who has spent six or more continuous months overseas, a number of adverse comments were received during the consultation. Comments included concerns about the process for obtaining this document, and whether there would be difficulties for drivers with refugee status.

The Council is satisfied that the requirement for a Certificate of Good Character is proportionate and will ensure to provide applicants and drivers with the relevant Government guidance on how to obtain their certificates. Any individual unable to obtain a certificate due to extenuating circumstances (i.e. national or international conflict) will be advised to speak to the Licensing Department and an alternative method for determining the individual's fitness and propriety will be discussed.

d. Notification of arrest and release, charge and conviction

In response to the proposal to require drivers to disclose information about certain offences within 48 hours, a number of adverse comments were received during the consultation. Comments included reservations about providing the Council with details of fixed penalty notices, motoring offences, or offences for which they have not been found guilty. Further concerns were raised regarding the short time period for reporting, suggesting that a period of 7 days may be more appropriate.

The Council understands that it may consider any conduct relating to an applicant or driver's character when determining whether they are fit and proper to hold a licence. Whilst one minor motoring offence may not be significant enough to raise concerns, a number of minor motoring offences committed in a short period of time may raise concerns regarding the individual's fitness and propriety. Drivers are licensed for a period of three years, during which time a number of offences could be alleged or committed.

The Council is content that the 48-hour notification period is reasonably achievable by drivers, but will take into consideration any extenuating circumstances (i.e. where a driver has been detained or remanded, and therefore been unable to notify the Council within the period defined).

e. Maximum of 7 DVLA points

In response to the proposal to consider refusing or revoking a licence where the driver has 7 or more DVLA points, a number of adverse comments were received during the consultation. Comments primarily related to the fact that the Council's proposal did not mirror the DVLA's points system (i.e. a maximum of 12 points).

The Council has spoken at length with GMB Union and other licensing authorities to understand the concerns raised regarding this proposal. It

is understood that the Institute of Licensing is currently reviewing its guidance that initially recommended a maximum of 7 DVLA points, and therefore the Council has decided to remove this proposal from the policy until it can review any updated guidance issued.

f. Basic DBS certificates for vehicle proprietors

In response to the proposal to require an annual basic DBS certificate for vehicle proprietors, a number of comments were received that queried the purpose for introducing such a requirement, and queried whether existing drivers and operators would be required to obtain an additional DBS certificate if they wanted to license a vehicle.

The Council has made it clear in the proposed policy that the requirement for a basic DBS certificate for vehicle proprietors would not apply, where that individual is already a driver or operator licensed with Havant Borough Council. The Council does not seek to unnecessarily duplicate DBS checks.

The Department for Transport's recommendation is that the 'fit and proper' test be applied to vehicle proprietors. The simplest and most efficient means of assessing a vehicle proprietor's fitness and propriety is to require a basic DBS certificate, which in most cases will not be required. The Council is satisfied that this is a proportionate and effective measure to introduce.

g. Alternative age limit for hybrid/electric vehicles

In response to the proposal to increase the maximum age limit for hybrid and electric vehicles prior to licensing, a number of adverse comments were received during the consultation. Comments primarily related to hybrid/electric vehicles not being particularly environmentally friendly, and that a robust testing regime for all vehicles would be more beneficial than encouraging hybrid/electric vehicles.

The Council acknowledges that the comparison between electric vehicles and conventionally fuelled vehicles can be complex, and that they depend on the size of the vehicle, how emissions are calculated, and how the electricity is generated. The Government's Net Zero Strategy proposes to ban the sale of petrol- and diesel-powered vehicles by 2030, and unless this is reviewed it is necessary for the Council to continue working towards the national strategy, as well as its own local strategy. As the Council can offer no financial incentive for drivers to purchase a hybrid or electric vehicle, permitting them to license hybrid or electric vehicles aged up to eight years old at the time of licensing may enable them to purchase a more affordable, used hybrid or electric vehicle. Increasing the age limit is not detrimental to any applicant or driver.

h. Removal of the Council's pre-approved list of vehicles

In response to the proposal to remove the Council's list of pre-approved vehicles (that is, vehicles that do not require inspection prior to licensing), a number of adverse comments were received during the consultation. Comments primarily related to the cost incurred by drivers purchasing unsuitable vehicles, and the length of time required for an inspection.

The Council proposes to remove the list of pre-approved vehicles, primarily because small variances between different years of manufacture may render one model suitable, and another manufactured only six months later unsuitable.

The Council publishes its vehicle specification, which has been amended for clarity during this policy review, on its website. Vehicle proprietors are encouraged to review the specification prior to purchasing a vehicle, rather than relying only on an Authorised Officer's inspection to deem it suitable. The Council always recommends that vehicle proprietors bring their vehicle to the Council on a test drive or similar, prior to purchase, to avoid the expense of

purchasing an unsuitable vehicle. The Council may also review images or online listings of vehicles and give an indication (but not a guarantee) of whether the vehicle is likely to meet its specifications.

The Council will, of course, take a pragmatic approach to inspecting vehicles. If a vehicle proprietor purchases several identical vehicles, it may only be necessary to inspect one of these to ensure suitability. It is the Council's intention to ensure that vehicles are suitable for licensing, and not to implement overly burdensome or repetitive practices.

i. Removal of 3-month grace period for renewal of vehicle licences

In response to the proposal to remove the Council's 3-month grace period for renewing a vehicle licence, a number of adverse comments were received during the consultation. Comments raised concerns around extenuating circumstances, such as travel or family bereavement, and the length of time that it can take for vehicles to be repaired.

The Council seeks to remove the 3-month grace period to align the renewal process with that of its driver and operator licences, which are not subject to any grace period.

Vehicle proprietors are aware of the expiry date of their licence; this is printed on their vehicle plate, window signs and the licence itself. The Council issues renewal reminders, as a courtesy, two months in advance of the vehicle licence's expiry. This is intended to give vehicle proprietors sufficient notice to book their MOT and mechanical inspection, renew their insurance and ensure that their vehicle is in suitable cosmetic condition. The Council is content to amend its process for renewal reminders to give three months' notice of expiry, thus giving drivers another month to make necessary arrangements.

Furthermore, the Council will always take into consideration extenuating circumstances when enforcing its own policy. Should a

driver notify the Council of exceptional and compelling reasons why their vehicle cannot be renewed by the expiry date, the Team Leader will review this and determine whether it warrants departure from the terms of the policy.

j. Basic DBS certificates for vehicle proprietors

In response to the proposal to require an annual basic DBS certificate for private hire operators, a number of adverse comments were received during the consultation. Comments primarily related to the cost incurred, and queried whether those who also hold a hackney carriage and private hire driver's licence would need to obtain an additional DBS certificate.

The Council recognises that whilst operators are not transporting members of the public, they do have access to sensitive information such as passengers' addresses, schedules and holiday plans. It is essential that operators are subject to a 'fit and proper' test, as drivers are, to protect the public.

The Council will not require existing hackney carriage and private hire drivers to obtain an additional basic DBS certificate for their operator's licence. However, where offences are disclosed on an enhanced DBS certificate obtained for a driver, the Council may only take into consideration offences that would be disclosed on a basic DBS certificate when considering the application for an operator's licence.

k. Safeguarding training for operators

In response to the proposal to require private hire operators to undertake mandatory safeguarding training, a number of adverse comments were received during the consultation. Comments primarily related to the relevancy of such training to the role of an operator.

The Council recognises that whilst operators are not transporting members of the public, they do have access to sensitive information

such as passengers' addresses, schedules and holiday plans. It is essential that operators are subject to a 'fit and proper' test, as drivers are, to protect the public.

Operators also have a unique insight into the lives of their customers, and with effective safeguarding training they will be able to identify and raise concerns relating to child exploitation, County Lines and domestic abuse.

The Council has worked with the Procurement Team to source an affordable training course, at £25 per person, which complies with the recommendations made by the Department for Transport regarding course content. The Council is content that the course is reasonably affordable, and that a period of two years to complete training is sufficient for operators to effectively budget for this additional expense. Members may seek to increase the time period that operators are given to complete the training, if they deem this necessary.

The Council has amended the proposed policy to add that operators with alternative safeguarding certificates (other than those obtained from the Council's approved supplier) may be accepted. It has also removed the requirement for ongoing refresher training until it can properly consider the ongoing cost to operators.

I. Operators required to have an address within the Borough

In response to the proposal to require private hire operators to have an address within the Borough, a number of adverse comments were received during the consultation. Comments primarily related to how this would impact smaller operators.

The requirement to have an address within the Borough is a matter that the Council already requires and enforces. This has been added to the policy for absolute clarity, and ultimately private hire operators should see no change in how they are expected to operate. Operators may

utilise either their home address or a dedicated business address for this purpose, provided that an Authorised Officer can visit this address, by appointment, to inspect their records.

m. Operators required to maintain a register of staff

In response to the proposal to require private hire operators maintain a register of staff members responsible for taking bookings or dispatching vehicles, a number of adverse comments were received during the consultation. Comments included questions about whether the requirement would be imposed on operators who use technology to automatically dispatch vehicles.

The Council has amended its proposed policy to clarify that operators utilising automatic-dispatch software or similar would not be subject to this requirement.

n. Basic DBS checks required for staff

In response to the proposal to require private hire operators to obtain a DBS certificate for any staff member that takes bookings or dispatches vehicles, a number of adverse comments were received during the consultation. Comments primarily related to the costs involved and the view that this requirement was overly bureaucratic.

The Council recognises that whilst operators' staff are not transporting members of the public, they do have access to sensitive information such as passengers' addresses, schedules and holiday plans. It is essential that staff working on behalf of operators are suitable for the role. The Department for Transport supports this approach.

The policy has no requirement for regular basic DBS certificates to be obtained for staff members; rather, it requires one to be obtained prior to employment. It is up to the operator to conduct further checks at reasonable intervals (i.e. every 3 years) should they consider this

necessary. It is expected that their approach to this is reflected in their policy on employing ex-offenders.

o. Requirement for a policy on employing ex-offenders

In response to the proposal to require private hire operators to produce a policy on employing ex-offenders, a number of adverse comments were received during the consultation. Comments primarily queried the relevance of the requirement.

The Council recognises that whilst operators' staff are not transporting members of the public, they do have access to sensitive information such as passengers' addresses, schedules and holiday plans. It is essential that staff working on behalf of operators are suitable for the role. The Department for Transport supports this approach.

Any policy produced on employing ex-offenders must be reflective of the operator's own practices. Each operator will have different views on employing individuals with criminal convictions. The policy need only relate to staff members employed for the purpose of taking bookings or dispatching vehicles, and would not be required for operators who do not employ staff for this purpose. The Council will produce guidance on drafting such a policy to assist operators in doing so.

p. Review of penalty points system

In response to the proposal to review the Council's penalty points system, enabling up to 12 points to be awarded for breaches of conditions, a number of adverse comments were received during the consultation. Comments related to penalty points systems being too rigid, and queried the appeal process for any penalty points imposed.

Following the consultation period, the Council has carefully considered whether a penalty points system is the best mechanism for enforcing its policy and conditions. Following discussions with GMB Union and

neighbouring licensing authorities, the Council has decided to remove the penalty points system in its entirety from the policy.

The Council's alternative enforcement powers are clearly outlined in the policy, which requires enforcement action to be appropriate and proportionate to the issue at hand.

7. Resource implications

a. Financial implications

- a. The proposed changes to the policy include procuring a contract with an approved provider to conduct six-monthly checks of drivers' DBS Update Service status. This proposal has been reviewed by the Section 151 Officer and agreed.

Section 151 Officer comments

The recommendations have a small financial impact. However, the expected costs are significantly cheaper than the available alternatives. The costs proposed appear to be the most cost-effective way to meet the legal requirements of the service and the Council. Therefore, I support the report's recommendations in full.

Steven Pink – S151

b. Human resources implications

- i. It is proposed that the revised Hackney Carriage and Private Hire Licensing Policy will be implemented using the department's current resources.
- ii. It should be noted that any subsequent project undertaken to review the Council's policy on CCTV in licensed vehicles would require additional resources, but this is not proposed as part of this review.

c. Information governance implications

- i. The Licensing Team will continue to engage with the Council's Data Protection Officer on all information governance and data protection matters.
- ii. There is no proposal to collect and/or process any additional data relating to taxi and private hire licences as a result of this policy review. However, the revised policy does provide clarity to applicants and licensees on how their data is processed and shared.
- iii. A comprehensive data protection impact assessment in relation to the N3RS database has been undertaken by the Council, and has been signed off by the Information Governance Manager and DPO.

d. Climate and environment implications

- i. To support the Council's Strategy, the review of the Policy proposes to encourage the licensing of hybrid and electric vehicles by relaxing the age limit for vehicles at the point they are first licensed with Havant Borough Council.
- ii. The Licensing and Animal Welfare Team Leader is part of the Council's Climate Change Special Interest Group and will take advice on whether there are additional measures that could be introduced in the future to improve environmental sustainability.

e. Other resources implications

- i. There are no other resource implications as a result of this report.

8. Legal implications

- a. The relevant legislation that governs the licensing of hackney carriage and private hire drivers, vehicles and operator does not directly require the Council to prepare and publish a policy. However, the Regulator's

Code, which has statutory effect by virtue of section 22 of the Legislative and Regulatory Reform Act 2006, means the Council must have regard to the requirements of the Code. The development and regular review of a Policy will ensure that the Council satisfies its legal responsibilities with respect to specific elements of the Regulators' Code and will assist the council to demonstrate that it has had due regard to the Code in relation to this particular area of law.

- b. It is good practice for the Council to consult on any changes made to the Policy. A four-week public consultation has been undertaken, receiving a total of 95 responses.
- c. The Policy creates transparency for all stakeholders providing the manner in which the Council intends to undertake its hackney carriage and private hire licensing responsibilities. Additionally, the Policy provides the Council with a basis for a robust defence to any challenges that may be encountered in respect of decisions made and enforcement action taken.

Monitoring Officer comments

S.22 of the Legislative and Regulatory Reform Act 2006 provides authority for the Regulator's Code. In determining its own policies in relation to the management and operation of Taxi's the Council must have regard to the requirements of the Code. The development and regular review of a Policy will ensure that the Council satisfies its legal responsibilities with respect to specific elements of the Regulators' Code and will assist the council to demonstrate that it has had due regard to the Code. The proposals set out in the report are considered necessary and proportionate having regard to the provisions of the Human Rights Act 1998, s.17 of the Crime & Disorder Act 1998 and the Equalities Act 2010.

- Sarita Riley, Solicitor

Head of Legal Partnerships

Southampton, Fareham & Havant Legal Partnership

9. Risks and mitigations

- a. Exposure to challenge: the Policy and associated conditions could be challenged by Judicial Review, but as an open and fair consultation will have taken place and the Council's decision-making process is considered lawful, a successful challenge is considered unlikely.
- b. Reputation: the Policy and associated conditions set out the expectations of applicants and licensees, balancing their ability to work and generate income and the Council's responsibility to ensure public safety. By demonstrating that the Council is aligning its Policy with Government guidance, and has made reasonable adjustments to the Policy following the consultation, the overall profile and reputation of the Council's Licensing Team is improved.
- c. Achievement of outcome: the Department for Transport advised in its 2020 publication that it 'expects all licensing authorities to implement these recommendations unless there are compelling local reasons not to.' The Council has ensured that all recommendations are included in its revised Policy to demonstrate its commitment to achieving the Department for Transport's objectives. The Council has carefully reviewed all consultation responses and outlined any changes that it has made to the Policy as a result.

10. Consultation

- a. A four-week public consultation has been undertaken, ending on 16 July 2023. The consultation involved writing to all licensed drivers, vehicle proprietors and operators, key stakeholders and unions, and bodies representing children and vulnerable persons.
- b. An online survey was developed with the Council's Customer Insight Team, outlining the key proposed changes to the policy and asking respondents to confirm whether they agreed or disagreed with the proposals. Respondents were given the opportunity to provide the reasons for their answers.

- c. A total of 95 responses were received during the consultation; 93 of these were in response to the Council's online survey, and two were written submissions direct to the Licensing Team.
- d. The Council also utilised the online survey to collect responses from the general public, to better understand which safety measures may make them feel safer travelling in a hackney carriage or private hire vehicle. This data supports the proposals in the revised Policy.
- e. The responses received during the consultation are shown in full at Appendix A.

11. Communications

- a. The Licensing Team will contact all licensed drivers, vehicle proprietors and operators following adoption of the Policy, outlining the key changes and providing guidance on compliance with these changes.

12. Appendices

- Appendix A – Consultation Responses
- Appendix B – Revised Hackney Carriage and Private Hire Licensing Policy

13. Background papers

- a. Licensing Committee – Monday 12 June 2023 17:00, Item 4:
Hackney Carriage and Private Hire Licensing Policy Review
- b. Licensing Committee – Wednesday 13 January 2016 17:00, Item 29:
Proposed Changes to the Current Policy and Vehicle Specification for Hackney Carriages and Private Hire Vehicles

Agreed and signed off by:

Portfolio Holder: Cllr Elizabeth Lloyd 08/08/2023

Executive Head: c/o David Fitzgerald 08/08/2023

Monitoring Officer: c/o Sarita Riley, 08/08/2023

Section 151 Officer: Steven Pink 04/08/2023

Contact officer:

Name: Briony Appletree

Job title: Licensing & Animal Welfare Team Leader

Phone number: 02392 446660

Email: licensing@havant.gov.uk