



AYLESBURY VALE DISTRICT COUNCIL Democratic Services

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4 May 2017

LICENSING COMMITTEE

A meeting of the **Licensing Committee** will be held at **10.00 am** on **Monday 15 May 2017** in **The Olympic Room, Aylesbury Vale District Council, The Gateway, Gatehouse Road, Aylesbury, HP19 8FF**, when your attendance is requested.

Contact Officer for meeting arrangements: Alice Fisher; afisher@aylesburyvaledc.gov.uk;

Membership: Councillors: J Brandis (Chairman), M Hawsett (Vice-Chairman), P Cooper, A Harrison, A Huxley, S Lambert, T Mills, G Powell, S Renshell, B Russel and Sir Beville Stanier Bt (ex-Officio)

AGENDA

1. APOLOGIES

2. TEMPORARY CHANGES TO MEMBERSHIP

Any changes will be reported at the meeting.

3. MINUTES (Pages 3 - 8)

To approve as a correct record the Minutes of the meeting held on 6 March 2017.

4. DECLARATIONS OF INTEREST

Members to declare any interests.

5. EXISTING TAXI LICENSING LOOPHOLE RELATING TO POTENTIAL UNFIT DRIVERS CONTINUING TO OPERATE (Pages 9 - 12)

To consider the attached report.

Contact Officer: Peter Seal 01296 585083

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Licensing Committee

6 MARCH 2017

PRESENT: Councillor J Brandis (Chairman); Councillors A Huxley, S Lambert, T Mills, G Powell, S Renshell, B Russel, Sir Beville Stanier Bt (ex-Officio) and J Blake (In place of M Hawkett)

IN ATTENDANCE: Councillors C Poll and J Ward

APOLOGIES: Councillors P Cooper, A Harrison and M Hawkett

1. TEMPORARY CHANGES TO MEMBERSHIP

Cllr J Blake substituted for Cllr M Hawkett

2. MINUTES

RESOLVED –

That the minutes of the meeting held on 7 November 2016 be approved as a correct record.

3. REVIEW OF TAXI AND PRIVATE HIRE LICENSING POLICY

In July 2016 the Licensing Committee agreed a number of changes that they wished to be included in a future Taxi and Private Hire Licensing Policy for Aylesbury Vale. Subsequent to this a letter (attached as an appendix to the report) had been sent to all operators summarising the views of the committee.

The major area of concern for Members was the improvement of the licensed fleet and the age of the vehicles. Currently age limits had been set at 6 years for new vehicles with an upper age limit of 10 years, subject to some exemptions. A proposal of a single age limit of 7 years had been presented to the trade.

The response to the letter had been generally negative, with the majority either asking for existing age limits to continue or to increase them. Hackney carriage drivers had also responded, but it had always been envisaged that purpose built hackney carriages would be subject to an exemption.

At the same time that the consultation was taking place, Bucks County Council had introduced parking meters in Aylesbury Town Centre which had also caused disquiet amongst the hackney carriage trade. Some of the drivers had subsequently joined the GMB Union who made a representation in respect of the proposed age limits. The National Private Hire Association (NPHA) had also made a representation and copies of both were attached to the report as an appendix. However, with the exception of the response from the NPHA, none of the other responses offered any positive or credible alternative suggestions to improve the quality of the licensed fleet. Therefore a further letter was sent to all operators summarising the views of the NPHA and suggesting either a single lower age limit or a single upper age limit. The letter was also attached as an appendix to the report.

A meeting with the trade was held in December 2016. The consensus of opinion arising from that meeting was that AVDC implement a strictly applied upper age limit of 10 years subject to some exceptions. The exceptions being:-

- Purpose built Hackney Carriages
- Specialist vehicles designed for wheelchair access; and
- Executive vehicles.

It had been proposed that the above vehicles be subject to an upper age limit of 15 years. The Hackney Carriage Association had also requested that AVDC reconsider the hackney carriage specification as there was now a broader range of vehicles that met the accessibility criteria but were not European Whole Type Approved.

However, following discussions with the Chairman of the Licensing Committee, it had been felt that a compromise had not been reached and it would be likely to be unacceptable to the Members of the Licensing Committee. A further proposal had been made to the trade, endorsing the principle of an upper age limit but reducing it to a maximum of 8 years. Further representations from the Aylesbury Private Hire Association, the Aylesbury Hackney Carriage Association and the GMB Union were attached as appendices to the report.

It was acknowledged that the age of vehicles was a relatively crude measure of quality and condition of the fleet, however it did provide a standard which could be used to improve the fleet and define the boundaries of acceptability. Age limits were adopted by a number of authorities but they varied considerably. Examples from other authorities were outlined in the report. It appeared that that more authorities adopted a single or higher age limit than a dual age limit policy. The case for either lower or higher age limits was outlined more fully in the report.

It was acknowledged that AVDC's current requirement that hackney carriages be European Whole Type Approved was problematical to the trade and AVDC. It was therefore proposed that a new specification should be drawn up to allow for the licensing of purpose built taxis that would meet all accessibility requirements.

It was recognised that there was a need for rigorous enforcement. Vehicle inspections at Pembroke Road were effective in ensuring hackney carriage and private hire vehicles were mechanically sound. However, enforcement operations often revealed that vehicles were not necessarily compliant with the full conditions of their licence, and often resulted in penalty points for the driver. It was also noted that failures during testing at Pembroke Road were very rare, however almost every vehicle received an 'advisory'. The majority of these 'advisories' amounted to a breach of conditions of licence.

Therefore it was proposed that annual inspections be carried out in two stages. The vehicle would be subject to a full mechanical test and a further condition check be carried out by a member of the taxi licensing team. Any breach would result in a short notice period, 2 – 4 weeks, to resolve any issues, after which the vehicle would be suspended if the issues were not resolved. It was hoped that ultimately this would result in an improvement to the quality of the licensed fleet. The increased inspection would also apply to specialist vehicles.

The licensing team would continue to carry out kerbside inspections along with partners such as Thames Valley Police, Bucks County Council and VOSA.

One local Member, J Ward, several members of the trade and a representative of GMB read out statements to the committee.

Members sought clarification on a number of points including:-

- Ages of the current fleet of vehicles
- Ages of specialist cars i.e. those used for weddings, chauffeur work etc.;

- The need for vehicles to be presentable as well as road worthy;
- The number of vehicles receiving advisory notes;
- The number of diesel vehicles in use;
- Drivers moving towards “green” i.e. hybrid vehicles;
- Capacity problems at Pembroke Road, and whether another MOT station could be used as well, or extending the hours which Pembroke Road was open; and
- The use of enhanced inspections and temporary suspension notices;

Although exact figures couldn't be given at the meeting regarding a number of the above points, it was confirmed that AVDC currently licensed over 1000 vehicles. Of these, over half were under 6 years of age.

RESOLVED –

1. That the age limit for private hire vehicles be set at 10 years
2. That the age limit for all other vehicles; Hackney Carriages, Wheel Chair Accessible Vehicles and Executive vehicles be set at 15 years.
3. That additional licensing checks be introduced at the Council's vehicle inspection centre at Pembroke Road in line with the proposals as set out in the report;
4. That the Licensing Manager prepare and agree with the Chairman of the Licensing Committee a Hackney Carriage specification which would replace the requirements for Hackney Carriages to be European Whole Type Approved; and
5. That the Licensing Manager in consultation with the Chairman of the Licensing Committee prepare an implementation plan with transitional arrangements.

4. REPORT ON THE IMPACT OF THE DE-REGULATION ACT ON AVDC

The Deregulation Act 2015 had introduced an amendment to the Local Government (Miscellaneous Provisions) Act 1976 which effectively changed the rules in relation to sub-contracting work outside of the controlled district, for example AVDC. Previously operators could only sub-contract bookings within the controlled district. The Deregulation Act now allowed operators to sub-contract bookings to licensed operators outside of the controlled district. The change in legislation was designed to permit operators to grow beyond the boundaries of their respective licensing authority.

The change in the law had had significant impact on the licensing services at AVDC and had resulted in a large increase in driver applications from people who did not reside in the Vale. It appeared that some operators were taking advantage of the change to legislation to circumnavigate obtaining licences in neighbouring authorities. Some had been refused a licence in their 'home authority' on the basis of failing a local knowledge or English language test. As AVDC did not at present have these pre-requisites for a licence, some individual applicants had obtained a licence from AVDC and were allegedly now working in their home authority.

The Law required the sub-contracted booking to be accepted in the area that the sub-contractor was licensed within. With the use of smart phones, Apps and virtual offices, this was not always easily verifiable. The fastest growing private hire provider in the UK, Uber was given as an example where customers used an App to hire a vehicle. Further details on how Uber worked had been given in the report and reported at the meeting.

With the ongoing use of new technology, the strict legal position had become ambiguous and would be subject to various interpretations until such time as the Courts decide. In the meantime some other operators were making use of the technology to take bookings and payments. This could help to provide better records for licensing authorities and operators to better manage their drivers.

However, at the moment this was proving problematical for AVDC and the neighbouring authorities. AVDC's main concern was whether a driver was a fit and proper person to hold a licence. All applicants had to follow the same process regardless of where they lived and assessed in accordance with AVDC's policy on criminal conduct and unacceptable behaviour. Additionally any applicant living outside the Vale was subject to a further check with their home authority to determine whether they have held a licence or been subject to any regulatory sanction. As a consequence applications from potential drivers from outside the Vale were taking a considerable time to process as neighbouring authorities were not always able to respond speedily with the information required.

The abundance of applications from outside the Vale had highlighted the need for a National database. There had been discussions with neighbouring authorities on setting up a regional database, and Members would be kept informed.

It was also suggested that Members introduce an English Language test. An example was attached as an appendix to the report. Members were also asked to consider whether a local knowledge test be introduced for applicants who lived outside the Vale. It was confirmed that a geographical knowledge test was already undertaken by all Hackney Carriage applicants, and new Private Hire applicants had to understand AVDC's terms and conditions as part of obtaining their licence.

Officers were continuing to work with neighbouring authorities in establishing joint warranting arrangements and enforcement protocols, to ensure enforcement outside the Vale.

RESOLVED –

1. Members noted the impact of the Deregulation Act 2015 on the Council's Licensing Services.
2. Members endorsed the requirement in respect of applicants who resided outside of AVDC to obtain a satisfactory check from their home authority.
3. To introduce a functional English language test for all applicants for a Private Hire and Hackney Carriage Driver Licences.
4. For officers to explore the introduction of a Local Knowledge Test for all applicants of a Private Hire and Hackney Carriage Driver Licences, and to bring a report back to Committee at a later date.

5. REPORT ON CREATING A RURAL HACKNEY CARRIAGE TARIFF

Members were reminded that the Rural Hackney Carriage Association had requested a change to the current tariff and the introduction of a new rural tariff, which had been discussed by the Licensing Committee at its meeting in November 2016.

However, following discussions with the rural trade, it appeared that an error had been made in the initial report which had stated that the start time for tariff 2 would commence at 11 pm. The Trade had requested that the start time be 10 pm. This start time would provide the rural trade with a longer window with which to earn during unsociable hours.

It was not considered that the start time of 10 pm was unreasonable as a number of other authorities commenced a later tariff from 8 pm.

The tariffs would be calibrated on to the taxi meter, which would automatically calculate the fare. The Rural Hackney Association had requested that this be changed to a non-calendar controlled meter, so that the driver could make the changes from GMT to BST, and vice-versa, and because of the difficulty in obtaining a company that could amend the times accordingly. However, following further discussions, it appeared that a 6 monthly change was not necessary and a local company had been found who could provide all meter calibration services.

It was confirmed that because of the error, the fares for Hackney Carriages would need to be re-advertised.

RESOLVED –

1. The Licensing Committee re-considered the proposed changes to the tariffs for Hackney Carriages in accordance with Section 65 of the Local Government Act (Miscellaneous Provisions) Act, 1976.
2. The Licensing Committee authorised the Licensing Manager to advertise the revised tariff in a local newspaper, and if no objections were received, that the Licensing Manager be authorised to adopt the new tariff for the rural zone, and for the meters to be 'calendar controlled'.
3. If any objections were received and not withdrawn, they be reported to the Licensing Committee for further consideration.

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REPORT ON AN EXISTING TAXI LICENSING LOOPHOLE RELATING TO POTENTIAL UNFIT DRIVERS CONTINUING TO OPERATE

1 Purpose

- 1.1 For Licensing Committee to introduce a condition to existing and new Private Hire Operator licences to close a taxi licensing loophole that potentially allows unfit drivers continuing to operate.

2 Recommendations/for decision

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| 2.1 That the condition set out in paragraph 3.5 is introduced as a standard condition attached to Private Hire Operator licences. |
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3 Supporting information

- 3.1 A Private Hire Vehicle is defined as a vehicle constructed or adapted to seat, other than a hackney carriage or 'public service vehicle', which is provided for hire with the services of a driver for the purpose of carrying passengers. A public service vehicle licence is required to operate a vehicle for hire or reward that can carry 9 or more passengers and is licensed via the Driver and Vehicle Standards Agency. Members will appreciate that hackney carriages and private hire vehicles, operators and drivers are licensed by local authorities.
- 3.2 The licensing regimes are different, presumably reflecting the relative potential risk that each poses to the public. Namely that public service vehicles are expected to carry a number of people, whereas private hire vehicles and hackney carriages routinely carry lone individuals.
- 3.3 Many private hire operators also operate public service vehicles legitimately and in accordance with the spirit of the various controls. However there is anecdotal evidence that drivers refused a taxi or private hire vehicle licence or whose licence has been revoked can obtain a Public Carriage Vehicle licence and continue to operate in the same area.
- 3.4 Attached as Appendix 1 is an extract taken from a letter written by Andrew Jones MP, to the Chair of the Local Government Association's Safer Stronger Communities Board, Councillor Simon Blackburn on the 28 February 2017. The letter was in response to concerns raised around this existing taxi licensing loophole. The letter proposes that licensing authorities impose an additional condition to private hire operators licences as set out in the following paragraph.
- 3.5 **Except in circumstances described below, bookings received by the licence holder must be fulfilled by using a private hire vehicle licensed driver and a licensed private hire vehicle.**

Where private hire vehicle operators also hold a public service vehicle operator's licence, public service vehicles should not be used to fulfil bookings except with the informed consent of the hirer. For example, if a member of the public contacts a private hire vehicle operator and seeks a booking for a party of fewer than nine passengers it cannot be

reasonable to assume that the public service vehicle is required unless there are other factors e.g. a large amount of baggage, or a need for a wheelchair accessible vehicle which would not otherwise be available. If there is good reason to use a public service vehicle for a booking for fewer than nine passengers, the difference in licensing requirements should be explained and explicit consent obtained.

- 3.5 The extract from the letter written by Andrew Jones, MP was circulated to all licensed operators in March 2017 and any comments invited. Only one response was received and this did not address the introduction of the proposed condition.

4 Options considered

- 4.1 None

5 Reasons for Recommendation

- 5.1 To close a current loophole relating to potentially unfit drivers continuing to operate.

6 Resource implications

- 6.1 None

Contact Officer	Peter Seal 01296 585083
Background Documents	None

Consultation – Private Hire Bookings in PSV vehicles

In recent months national press have brought to the attention of Government the loophole in law which means that anyone can drive PSV vehicles without having to go through the stringent checks that Private Hire and Hackney Carriage Drivers are subject to. This means that someone that is refused or revoked from having a Private Hire or Hackney Carriage Driver Licence can drive a PSV vehicle potentially carrying vulnerable passengers without the safeguarding checks being carried out. This could potentially leave passengers at risk.

Below is an extract of a letter written by Andrew Jones MP who mentions licensing authorities could impose a condition on Private Hire Operators which may assist with safeguarding.

Aylesbury Vale District Council would like to add this to the Conditions of Licence for Private Hire Operators. Please read the information below. The new condition is in **bold** type. All consultation responses must be received in writing by 21 April 2017.

“The extract below is taken from a letter written by Andrew Jones MP, to the Chair of the LGAs Safer Stronger Communities Board, Cllr Simon Blackburn, on 28 February 2017. The letter was in response to concerns raised around an existing taxi licensing loophole which means that drivers refused a taxi or PHV licence, or whose licence has been revoked, can obtain a Public Carriage Vehicle (PCV) licence and continuing to operate in the same area.

The Government attaches the utmost priority to passenger safety in the licensed taxi and private hire vehicle trade. However, the licensing regime for any transport mode must be proportionate. The resulting difference on the ‘fit and proper’ test for taxi and PHV drivers and their commercial counterparts driving a bus or minibus is a reflection of the relative potential risk they might pose to the travelling public.

The distinction is appropriate in the vast majority of cases but – as you pointed out – is open to abuse where a public service vehicle (PSV) driven by a passenger carrying vehicle (PCV) license-holder is used to fulfil a PHV booking. I agree that it cannot be right in principle that the PHV licensing regime may be evaded through the use of PHV bookings of drivers and vehicles which are not licensed for PHV purposes. However, the Department’s view is that licensing authorities already has the power to close this loophole, quickly and effectively.

*It is open to all licensing authorities to impose as a condition of a PHV operator’s licence that, **except in circumstances described below, bookings received by that licence-holder must be fulfilled by using a PHV licensed driver and a PHV licensed vehicle. Authorities may then take appropriate steps to monitor and enforce compliance with the licence condition.***

Where PHV operators also hold a PSV operator’s licence, PSVs should not be used to fulfil bookings except with the informed consent of the hirer. For example, if a member of the public contacts a PHV operator and seeks a booking for a party of fewer than nine passengers it cannot be reasonable to assume that the PSV is required unless there are other factors e.g. a large amount of baggage, or a need for a wheelchair accessible vehicle which would not otherwise be available. If there is a good reason to use a PSV for a booking for fewer than nine passengers, the difference in licensing requirements should be explained and explicit consent obtained.

The department is currently considering whether to include these issues as a requirement in the statutory (under section 177 of the Policing and Crime Act 2017) and best practice guidance on taxi and PHV licensing on which we intend to consult later this year.”

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