

Council

26 January 2022

Review of the Council's Hackney Carriage and Private Hire Licensing Policy



Ordinary Decision

Report of Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change

Councillor John Shuttleworth, Cabinet Portfolio Holder for Rural Communities and Highways

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To request Council's adoption of a revised version of Durham County Council's Hackney Carriage and Private Hire Licensing Policy, more commonly referred to as the "taxi policy". The revised taxi policy is attached as Appendix 2. This policy has been produced following a 12-week public consultation that took place between June and September 2020.
- 2 The revised policy is an updated version of a draft policy that was consulted on last year and includes additional changes and proposals that resulted from the consultation process. The current policy is shown in Appendix 3. The draft version containing preliminary proposals that was consulted on is shown in Appendix 4.

Executive summary

- 3 The current Hackney Carriage and Private Hire Licensing Policy was initially adopted by the Council in April 2016. (The policy was further amended in April 2018 because of changes to immigration legislation.) The Taxi Policy provides that the Council will review it every five years and will also make such revisions to the policy, as it considers appropriate and publish it accordingly.
- 4 Consultation on the existing policy and proposed changes is integral to the overall policy review process, leading to the adoption of a revised

policy by Council. Full public consultation took place and following the consultation, the responses were collated, assessed, and considered by officers from Licensing Services and by Legal Services.

- 5 Post-consultation, several additional changes to the initial proposals were incorporated into an amended, post consultation policy considered by Members sitting as the General Licensing and Registration Committee (GLRC) on 13 September 2021. In addition to the less significant and less contentious amendments and proposed changes, several matters were identified for highlighting and more detailed consideration.
- 6 The GLRC has approved the proposed policy and recommend it to Council for adoption. The Licensing Chair and Vice Chairs have also recommended a further revision involving projecting the dates for compliance with certain vehicle emission requirements, that takes into consideration the Covid-19 related delays associated with reporting this revised policy to Committee and Council.

Recommendation(s)

- 7 Council is recommended to:
 - (a) consider this report together with the proposed revised policy;
 - (b) consider arrangements for dealing with serious matters that may require the immediate revocation of hackney carriage and private hire driver's licences;
 - (c) agree to the proposed change in the Officer Scheme of Delegation within the Constitution to delegate authority to the Head of Community Protection to immediately revoke licences; and to sanction the introduction of a Fast-Track re-application process for licence reinstatement following an officer revocation in cases where such reinstatement is appropriate;
 - (d) adopt the proposed revised taxi policy that will replace the existing policy. The revised policy to come into operation from 1st March 2022.

Background

- 8 **The Policy Review** - The existing Hackney Carriage and Private Hire Licensing Policy was adopted by the Council in April 2016. The Policy provides that the Council will review it at least every five years and will also make such revisions to the policy, as it considers appropriate and publish it accordingly. It was amended in 2018 because of changes to immigration legislation.
- 9 Following its last revision, several matters in the policy had been identified that needed to be considered as part of a revision. The initial proposed revision included several significant and potentially contentious matters associated with both licensed vehicles and their drivers including:
 - (a) the possible introduction of new vehicle age restrictions and updated engine emission standards;
 - (b) changes to the policy on the determination of suitability of applicant and licence holders for vehicle, driver and operator licences associated with the adoption of standards developed and promoted by the Institute of Licensing (IOL);
 - (c) introduction of disability awareness training and subsequent refresher training for this subject and for the existing safeguarding awareness training including child sexual exploitation (CSE) awareness;
 - (d) changes to officer delegations to enable immediate revocation of hackney carriage and private hire driver licences by senior officers subject to specific criteria and control measures;
 - (e) The incorporation of newly published statutory taxi and private hire vehicle standards;
 - (f) intelligence led and random drug and alcohol testing;
 - (g) the introduction of driver improvement schemes.
- 10 The pre- and post-consultation proposed changes to the policy are listed in the Table of Changes in Appendix 2.
- 11 As a result of the Covid-19 epidemic and the initial countrywide lockdown, the original planned date for the start of public consultation on the taxi policy proposals was postponed from June to September 2020. This delayed consultation period ended on Sunday 29 November 2020.

Consultation

- 12 Licensing Services had proposed to consult on the existing Hackney Carriage and Private Hire Licensing Policy for a period of not less than 12-weeks beginning in June 2020. As a result of the Covid-19 pandemic and a national lockdown, this consultation period was postponed and began in September ending at the end of November 2020.
- 13 The current policy together with the initially proposed changes was subject to a broad consultation involving the taxi trade, trade representatives, taxi service users and all relevant authorities and organisations.
- 14 The consultation was widely advertised and promoted and was made available to everyone on the Council's website.
- 15 At the end of the consultation period, responses were collated and appraised leading to the production of a revised draft policy for presentation and reporting to the GLRC, following SMT and CMT approval.
- 16 Proposed amendments to the policy resulting from the consultation and review/reporting process are presented in this report. Following consideration, decision making and its agreement, the GLRC agreed with policy proposals and made several decisions based on available options. GLRC made a recommendation for the adoption of the revised (amended) policy to Full Council.
- 17 The delay in consultation coupled with on-going Covid-related work delayed the receipt, collation, assessment and reporting of the findings of the consultation to senior and corporate management prior to the Christmas period. This meant that original target dates for reporting this matter to the General Licensing and Registration Committee and then Full Council for adoption could not be met.
- 18 It was anticipated that the revised policy would be adopted by Council by the end of April 2021, however, with the permission and acceptance of CMT, the operation of this non-statutory policy was extended to allow for later/delayed reporting to senior and corporate management, GLRC and Council on dates to be rescheduled during 2021.
- 19 The consultation responses were received via an on-line, web-based survey and by emails sent to the Licensing Services general inbox. The Taxi Licensing Survey/Consultation Questionnaire is shown in Appendix 5 along with the background consultation information provided to the public and specified consultees. A list of all consultees is also shown in Appendix 5.

20 The results of the consultation including statistical data and information, survey responses, associated officer commentary, detailed responses and discussion is provided in Appendix 6.

21 A summary of survey information taken from the on-line survey hosted by the Council's website is as follows:

- The Taxi Licensing Survey 2020 yielded 65 on-line responses, of which 48 (74%) had some background in employment or ownership within the taxi industry;
- Just over a third of respondents found the draft policy difficult to understand, two thirds did not;
- Nine in ten thought the draft policy provided enough protection for children and vulnerable adults;
- Just over a third thought the draft policy included everything they thought should be in such a policy, whilst just over a quarter disagreed;
- Around half thought one or more of the requirements of the new national standards for taxi and private hire licensing should be left out of the new policy;
- Over half strongly disagreed with the proposals on vehicle emissions and the age of licensed vehicles. However, this was the overriding opinion of the taxi industry; the public agreed with the proposal;
- Over half agreed with the proposals in respect of previous convictions and offences as developed by the Institute of Licensing;
- Nearly two thirds agreed with the proposed intelligence led and random drug and alcohol testing;
- Over half agreed with the proposal for drivers to do refresher training on the prevention of child sexual exploitation every three years. However, the taxi industry was equally for and against the proposal;
- Nearly two thirds agreed with that all drivers should be trained in disability awareness;
- Over half agreed that all taxis and private hire vehicles should have internal CCTV fitted as standard;

- Over half disagreed that applicants with 6 points on their DVLA driving licences should be required to undertake a driver improvement scheme. However, this was the overriding opinion of the taxi industry, the public agreed with the proposal.
- 22 Following the consultation, the responses were considered by officers from Licensing Services and by Legal Services. Of the relevant, policy-related responses received, some were discounted as being erroneous in some respect. For example, some proposals could not be considered for legal reasons. Some responses related to non-policy matters such as procedural, legal, administrative or enforcement issues.
- 23 Matters that were not of a policy nature or which concerned subjects outside the remit of Council policy also could not be taken forward for further consideration. However, where such administrative proposals had merit, changes to current procedures, systems and processes were considered and some administrative changes have resulted. Responses that could not be taken forward for consideration in terms of future policy development are recorded in Appendix 6.
- 24 Relevant responses which sat within the remit of taxi licensing policy that were compelling, persuasive, or convincing and which offered a reasonable alternative or addition to that which had been initially proposed lead to further changes to the draft policy. *See post-consultation revised draft policy in Appendix 2 and Assessment of Taxi Policy Survey Responses in Appendix 6.*
- 25 In the 'Assessment of Taxi Survey Responses' (Appendix 6), some text is shown in purple. The purple text represents changes to policy proposed following the consultation resulting from officer appraisal of the consultation responses. Some of the text is in red. This red text includes matters that were put forward for more specific, in-depth consideration by Members at GLRC.
- 15 For example, over half of all respondents strongly disagreed with the proposals on vehicle emissions and the age of licensed vehicles. However, this was the overriding opinion of the taxi industry with 74% of all responses coming from the licensed trade. This subject elicited many comments and several alternative proposals. Further assessment of this matter has taken place and alternative options were put forward for GLRC consideration. *See 4.0 Vehicle Emissions and Manufacture Criteria Pages 7 and 8 of the draft policy and Vehicle Age and Emissions Policy Options in Appendix 7.*
- 16 **Implications for decision-making** – (*See 7.0 Delegations and Committee Referrals and Officer Revocations pages the revised policy*). In connection with licensing enforcement matters, currently DCC

operates a process whereby full separation between *investigator and decision-maker* is achieved via the committee referral process. Licensing Officers currently do not have the delegated authority to revoke licences although, officers can issue suspension notices. The Council operates a system where only committees may revoke, so that if officers consider that a driver poses an imminent risk to public safety, they can only suspend the licence and then refer the suspended individual to Members for further consideration. This process inevitably takes time to progress and does not readily or effectively cater for the immediate revocation of a licence.

- 17 The new DfT National Guidance advises that before any decision is made, the licensing authority must consider the available evidence and the driver should be given the opportunity to state his or her case. Of significant importance in relation to current DCC systems and processes is that if a period of suspension is imposed, it cannot be extended or changed to revocation later.
- 18 Although this existing system does achieve separation of roles and having a sub-committee panel dealing with referrals and operating due process avoids allegations of malice on appeal, there are problems associated with such a process:
 - Legal opinion from recent case law indicates that decisions taken should be final, in that a referral process to a committee for further decision making (to revoke or not) may be unlawful. Again, the new national standards make it clear that if a period of suspension is imposed, it cannot be extended or changed to revocation later;
 - During busy periods and with increasing workloads for members and officers, feeding work through to sub-committees can lead to lengthy, undue delays thereby failing to provide for the immediate revocation of licences.
- 19 The new Department of Transport Statutory Taxi & Private Hire Vehicle Standards July 2020 which Councils must have regard to, require that all licensing authorities must consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. The Standards recommend that this is delegated to a senior officer with responsibility for the licensing service.
- 20 The standards also recommend:
 - Member referral for contentious matters;
 - Officers make decisions for “less contentious matters” via a “transparent scheme of delegation”.

Regardless of which approach is adopted, all authorities should plan for dealing with serious matters that may require the immediate revocation of a licence. Similarly, regardless of the approach objective should remain the same – to separate the investigation of licensing concerns and the management of the licence process.

- 21 There is no legal harm in having revocations, decided by officers. But having a senior, independent officer dealing with it, and operating due process, would avoid allegations of malice on appeal. Many councils already operate such a decision-making process which is supported by relevant case law. See Table 1. *Arrangements for immediate licence revocations by Councils in the Northeast Region* in Appendix 8.
- 22 A change to the Council's constitutional arrangements and delegations of authority is needed to enable the revocation of taxi driver licences by officers.
- 23 A decision to revoke a licence does not however prevent the issuing of a new licence should further information be received that alters the balance of probability of a decision previously made. A decision to suspend or revoke is based on the evidence available at the time the determination was made. New evidence may, of course, become available later.
- 24 If, for example, the allegations against a licence holder were, on the balance of probability, considered to be unfounded, or their fitness to drive was proven satisfactory, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process will be used. We would implement and operate a Fast-Track re-application process for licence reinstatement following an officer revocation in such cases.
- 25 A fast-track application process has been developed and agreed by senior management which is ready for use following the adoption of the revised policy.
- 26 Appendix 9 '*Comparison of Assessment of Previous Convictions in the National Standards with Policy Proposals*' compares matters contained in National Standards with the revised Policy Proposals (see *Taxi and PH Vehicle Standards*; Annex, '*Assessment of Previous Convictions*').
- 27 Appendix 10 - shows the recommendations set out by the Department for Transport Statutory Taxi and Private Hire Vehicle Standards (July 2020) and where these are referenced within the proposed Durham County Council Hackney Carriage and Private Hire Licensing Policy.

Highlighted proposals that were considered by Members of GLRC

- 28 In addition to the more general and arguably, less contentious proposals contained within the pre- and post-consultation revised policies, several matters of importance were identified during and after the consultation process.
- 29 The following matters were specifically highlighted and drawn to the attention of Members. The GLRC was asked to make decisions on their appropriateness for inclusion in the final draft that, following GLRC acceptance, will be recommended to and put before Council.
- (a) Vehicle Emissions and Manufacture Criteria – whether to accept and recommend the original proposals which included an age policy or to extend and update our existing policy based purely on manufactures emission standards. An alternative proposal for consideration is offered in the revised post consultation policy and in Appendix 6. The original proposal did not receive strong support from the taxi trade during the consultation process. Regionally, despite differences in Council policies, there is a drive for authorities to include this form of policy to reduce emissions and improve air quality. GLRC recommend a revised policy based solely on Euro vehicle emission standards in line with current policy;
 - (b) Locality tests – whether to keep locality (topographical) testing and a requirement for both hackney carriage and private hire drivers; or to discontinue its application for both or either type of licenced driver. GLRC recommends removal of the requirement for prospective private hire drivers to undergo topographical/locality testing;
 - (c) Removal of the policy requirements to carry fire extinguishers and first aid kits in licensed vehicles– whether licensed vehicles should have to carry these items. GLRC recommend maintaining these requirements for licensed vehicles;
 - (d) Zero or reduced fee charges for electric vehicles, balanced out with higher fees for more polluting vehicles or by subsidy – whether changes to licence fees would be appropriate taking into consideration funding arrangements for taxi licensing and Licensing Services. GLRC recommends maintaining current fee setting arrangements in-line with existing financial management processes;
 - (e) Adoption of a new policy on offences – whether to adopt the IOL policy standards in full or in part. We have simplified and clarified

the current policy in relation to convictions etc. and consider that the proposed level of detail will provide enough detail for all policy users including Members, officers, and the public. We have considered the alternatives suggested by respondents and have concluded that no compelling reasons for departure from our proposed policy has been put forward. Our proposals do not mirror the IOL standards in all respects, but the proposed policy is in line with the new Statutory Taxi and Private Hire Vehicle Standards. We are however proposing to highlight the complete set of IOL standards as an additional source of reference. We have proposed to incorporate the IOL standards in part but not in relation to the section on minor motoring offences or motoring offences involving disqualification. GLRC recommends the proposals as incorporated in the revised policy;

- (f) Safeguarding including child sexual exploitation (CSE) and disability awareness and refresher training to be included in the proposed policy and if so, at what frequency – currently disability awareness training is not part of the application process. It is proposed that for new applications, all prospective drivers to have undergone disability awareness training and for existing licensed drivers, e.g. From 31st March 2022, all licensed drivers must undergo disability awareness refresher training before their licence is renewed, if they have not already received disability awareness training (or disability awareness refresher training) within the previous 3 years. GLRC recommends the proposals as incorporated in the revised policy for Safeguarding (CSE) and DA training and periodic refresher training;
- (g) CCTV in taxis - Taking into consideration all responses and arguments relating to the question about whether all taxis and private hire vehicles should have internal CCTV fitted as standard, we propose to keep the existing policy in relation to the fitting of CCTV in licensed vehicles as it is and not to mandate its installation as standard in all licensed vehicles – GLRC recommends no change to existing policy requirements and do not propose its inclusion as a mandatory feature of taxi licensing;
- (h) Contract exemption for displaying decals etc. – although we propose no change to policy, Members may wish to consider reducing the number of days required to be considered for an exemption. GLRC recommends relaxation of the current rules with arrangements to be made at application on a case by case basis in conjunction with the Chair and Vice Chairs of GLRC.

Main implications

- 30 A failure to review, revise and update the Council's taxi licensing policy would result in the expiry of the existing policy with no replacement. Without any extension, this would result in the Council's inability to properly administer, manage, and regulate the taxi licensing process. This would lead to unacceptable deficiencies in safeguarding and would expose the public to serious risks. Public safety would be compromised. The Council would be open to charges of maladministration and to legal challenges.

Conclusion

- 31 GLRC has made recommendations in relation to future taxi policy that will, if agreed and adopted by Council, enable the updated, revised policy to come into operation at the start of March 2022, in accordance with the previously adopted five-yearly, revision plan and agreed extension period.

Background papers

- Durham County Council's existing Hackney Carriage and Private Hire Licensing Policy
- Post-consultation Taxi Policy Briefing Note

Other useful documents

- Durham University Hackney Carriage and Private Hire Licensing Policy Review: Preparatory Report - May 2020
- DCC Taxi trade consultation letter
- Department of Transport Taxi and Private Hire Vehicle Licensing: Best Practice Guidance (2010)
- Department of Transport Statutory Taxi & Private Hire Vehicle Standards July 2020
- Durham Taxi Emissions Assessment AECOM Limited 2019

Authors

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Appendix 1: Implications

Legal

Possible challenges to any legal actions taken under taxi legislation resulting from actions taken in accordance with the policy; and possible legal action that could be taken against the policy itself, such as a judicial review of the new policy.

Finance

None.

Consultation

A full public consultation process has been undertaken in respect of the review of this policy.

Equality and Diversity / Public Sector Equality Duty

The existing Hackney Carriage and Private Hire Licensing Policy has gone through a full Equality and Diversity Impact Assessment. The draft (revised) policy has also been subject to a screening assessment prior to reporting to Committee which is included as Appendix 11.

Human Rights

None.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

A failure to review, revise and update the Council's taxi licensing policy would result in the expiry of the existing policy with no replacement. This would result in the Council's inability to properly administer, manage and regulate the taxi licensing process. This would result in unacceptable deficiencies in safeguarding and would expose the public to serious risks. Public safety

would be compromised. The Council would be open to charges of maladministration and to legal challenges.

The final revised policy once adopted may be subject to challenge and complaint.

Procurement

None.

Appendix 2: Post-Consultation, Revised Hackney Carriage and Private Hire Licensing Policy

Attached as separate documents.

**Appendix 3: Current Hackney Carriage and Private Hire
Licensing Policy (revised April 2016/18)**

Attached as separate document.

Appendix 4: Pre-Consultation Draft Hackney Carriage and Private Hire Licensing Policy

Attached as separate document.

Appendix 5: Public Consultation Information: The Taxi Licensing Survey/Consultation Questionnaire; background consultation information provided to the public and specified consultees; and a list of all consultees.

Attached as separate documents.

Appendix 6: The Results of the Consultation: including statistical data and information, survey responses, assessment and associated and discussion

Attached as separate documents.

Appendix 7: Vehicle Age and Emissions Policy Options Appraisal

Attached as separate document.

Appendix 8: Arrangements for Immediate Licence Revocations by Councils in the Northeast Region

Attached as separate document.

Appendix 9: Comparison of Assessment of Previous Convictions in National Standards with Policy

Attached as separate document.

**Appendix 10: DFT Statutory Taxi and PH Vehicle Standards with
Proposed/Revised DCC Test**

Attached as separate document.

Appendix 11: Equality and Diversity Impact Screening Assessment

Attached as separate document.