

**Name of meeting:** Licensing and Safety Committee  
**Date:** 18<sup>th</sup> July 2017  
**Title of report:** Intended Use Policy - Private Hire Vehicles

**Purpose of report:**

To seek approval from the committee to introduce an intended use policy and change to conditions in relation to private hire driver and vehicle licences to enable the Council to protect the safety of the travelling public

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>Not Applicable</b>
<b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a></b>	<b>Key Decision - No Private Report/Private Appendix - No</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	No
<b>Date signed off by <u>Director</u> &amp; name</b>	Naz Parkar - 05.07.17
<b>Is it also signed off by the Service Director for Finance, IT, and Transactional Services?</b>	Debbie Hogg - 06.07.17
<b>Is it also signed off by the Service Director (Legal Governance and Commissioning)?</b>	Julie Muscroft - 06.07.17
<b>Cabinet member <a href="#">portfolio</a></b>	<b>Not applicable</b>

**Electoral wards affected: All**  
**Ward councillors consulted: All**  
**Public or private: Public**

**1. Summary**

Kirklees Council, in its capacity as Licensing Authority has seen an increase in applications for a private hire/hackney carriage driver's licence from applicants who intend to predominantly and exclusively work outside of the Kirklees area. Under current procedures Licensing Officers will have a brief discussion with the applicant to confirm their intentions should a licence be granted. The applicants are suggesting that they are being directed to Kirklees to obtain a licence and being told that they can then work exclusively in other controlled districts outside of Kirklees once a licence from Kirklees is granted.

This should not be the case, and Kirklees has always informed drivers verbally that they are expected to work predominantly in Kirklees. It is not unlawful for a private hire to work remotely from its area but a Licensing Authority must be able to exercise control over all the vehicles and drivers being operated within its geographical area. Officers do not feel that they are able to properly 'police' the trade, where they work predominantly outside of Kirklees. We have also seen an increase in complaints or concerns raised by other Local Authorities about the amount of Kirklees drivers working continually in their area. This suggests a state of affairs that is unhelpful in terms of regulation, and we have decided to take appropriate action as a result.

There is evidence to suggest that new applicants are being directed to Kirklees because they believe our processes are perceived as relatively straightforward and cheap compared to other districts such as Sheffield and Leeds which operate a more stringent application process, such as the requirement to pass a geographical knowledge test which applies to all drivers.

As a result we have written to a number of drivers about this warning them that they are expected to be predominantly working within the Kirklees area. This does not affect out of town bookings. For example, A Kirklees resident is still able to book a Kirklees private hire to take them to the airport in Manchester, or to another place outside of Kirklees, similarly, a Kirklees resident can still book a Kirklees PHV to collect them from an address outside of Kirklees, and return them to their home in Kirklees. Further, Kirklees PH companies are still able to sub-contract under the De-Regulation Act 2015.

The main area for concern in relation to drivers who intend to work predominantly outside of the area for is the lack of control the authority has in controlling these drivers. Licensing is local in nature therefore enforcement powers, for the most part, relate solely to the controlled district for which that licence has been granted. It is not appropriate that Kirklees drivers are operating exclusively or predominantly in other areas where our officers cannot supervise properly, and where the officers of that locality are unable to take enforcement action. Notwithstanding the fact that the West Yorkshire Local Authorities have shared enforcement powers, this has not prevented the rise in applications, complaints received or concerns raised by other Local Authorities. This clearly has public safety implications.

Additionally, the high increase of applications from these applicants is causing problems for our existing licence holders getting appointments. We have recently introduced an extra 24 hours of appointments since moving to the Contact Centre in October 2016 but despite this the trade are finding that they are struggling to get appointments in a timely manner due to the amount of new driver applications we are receiving, mainly from people who live out of area and who do not intend to work within Kirklees. This can result in existing drivers/vehicles being unlicensed for a period meaning they cannot work until they are able to get an appointment to renew their licence.

Kirklees has worked tirelessly to improve the standards of their licensed drivers following the Casey report by introducing its convictions policy making changes to the delegated authority. This has resulted in thorough investigations taking place by officers to ensure the fitness and propriety of applicants before a licence is issued. If a driver predominantly works outside of the Kirklees area it becomes extremely difficult and nigh on impossible to check that those standards are being met. It is due to this state of affairs that the service feels it ought reasonably to act, although in doing so it is mindful of the drivers legal rights and its duty to act fairly and proportionately. The service's intention is to significantly reduce the likelihood of drivers applying to Kirklees and either exclusively or almost exclusively working out of the area. Kirklees and other authorities should act to discourage such practices. We do not feel that this will impact on the quality of service that residents of any town enjoy. Leeds drivers should, for the most part, be servicing the

needs of Leeds residents, and Kirklees drivers servicing the needs of our residents. Kirklees drivers should be accepting booking taken by their Kirklees based operator, and this should typically mean that the significant majority of their work is in and around Kirklees, transporting residents of Kirklees and visitors to Kirklees.

## **2. Information required to take a decision**

The service has explored various measures that can be taken to discourage applicants whose intention is to operate predominantly outside of the district of Kirklees. The service obtained Legal advice from Counsel on the matter to ensure that any measures put in place would be fair and lawful. It is worth noting at this point that whatever measures taken by the service should not impact adversely on our existing licensed drivers who do predominantly work inside Kirklees.

### **Geographical Knowledge Test**

This option was explored and put before the Licensing and Safety Committee in December 2016. The decision was taken to create and consult on a policy that would support a knowledge test and that it would be applied to 'out of area' drivers. The licensing service obtained further legal advice in relation to the policy and a decision was taken by the service not to pursue the implementation of the knowledge test. A number of local authorities do use knowledge tests which are applicable to all drivers rather than just 'out of area' drivers. The licensing service did not feel it was a reasonable or proportionate measure given that the issues raised by this matter don't concern the existing trade or the majority of new drivers and it would be difficult to facilitate the test on such a large scale. Accordingly, the licensing service does not believe this is a viable option.

### **Intended Use Policy**

Intended use policies have historically only been applied to Hackney Carriage vehicles. The service acknowledges that Hackney Carriage and Private Hire Vehicles are different and that the Licensing authority can restrict the number of Hackney Carriage licences if appropriate. The advice from Counsel provided alternative suggestions to address Kirklees' concerns and these have been explored in this report. The service believes an intended use policy relating only to private hire vehicles could be an effective tool to use to deter out of area drivers who intend to predominantly and exclusively operate outside of Kirklees.

The licensing authority envisages that drivers applying for a licence in Kirklees would predominantly operate in Kirklees. For the avoidance of doubt the service accepts that a driver is entitled to pick up any Kirklees resident and take them where they want them to go regardless of the destination. The service also accepts that a driver can pick up a Kirklees passenger from out of area and bring them back to Kirklees. The Service does not take issue with drivers who do not necessarily reside in Kirklees and applications would not be refused purely on this basis, however, the policy does envisage that a driver applying to Kirklees would for the most part operate in or around Kirklees and should still be plying their trade where they carry out journeys.

It also gives the authority the power to deal with drivers who predominantly work out of area based on the information based in that policy. Knowsley Council have introduced a similar policy and have found it to be effective in managing drivers who mainly work outside of their controlled district.

Kirklees has considered the policy and drafted a similar policy and is attached at Appendix A.

## **Declaration of intended use**

The Service believes that a proper driver would not operate exclusively outside of Kirklees. If this was a driver's intention, then he/she ought to be applying to that authority in which they intend to operate. That driver must only work for a Kirklees operator, and must only accept booking through that operator unless sub-contracted. As part of the application process, the service are intending to include a declaration of intended use to be completed by the applicant when applying for and renewing their hackney carriage/private hire drivers. The intention is that in the event that the driver does not follow that, he is at risk of revocation on the grounds that he has lied to the authority as part of the application process and is therefore unlikely to be considered fit and proper. Each case will be assessed on its own facts. The Service does not take the view that 'predominantly' means 51% and above as the service is mindful of the driver's ability to transfer fares outside of Kirklees. However, the service considers that a proper driver would make himself predominantly available around Kirklees for the benefit of Kirklees customers. The service would also expect an 'operator' to be predominantly servicing the local authority in the district they are based. However, the service would not be setting an arbitrary threshold setting out the amount of fares the driver is allowed but ensuring the focus should be on meeting customer demand which is necessarily unpredictable. A copy of this declaration is at appendix B for information.

## **Shared Enforcement Powers**

Currently Kirklees are working closely with the other West Yorkshire Licensing Authorities and York on harmonising and standardising working practises, conditions and policies across the area. Enforcement powers between these authorities have already been shared and the service sees shared enforcement powers as a positive development which it will continue to develop and improve. This means that we do have the authority to check vehicles and drivers licensed in any of the other authorities listed if they are found to be working in the Kirklees area. These authorities are:

Wakefield  
Calderdale  
Leeds  
Bradford  
York.

However, this does presently still prove problematic for drivers operating in other areas where there are no shared powers as any Kirklees licensed vehicles and drivers working outside of these areas cannot be monitored or regulated by Officers of the other authority.

## **Conditions**

Typically, the control of PH drivers is achieved by the imposition of conditions. The Service has considered whether if conditions alone would be sufficient and has concluded that it would not fully enable officers to control and monitor the trade in the way they ought to be able to. Drivers must be controlled at source and this is done as drivers must be fit and proper and therefore abide by the rules set by their local authority. Conditions such as the following may be used to properly control/supervise the driver.

- The licensee shall only be engaged to drive PHV's licensed by Kirklees Council
- The licensee shall only be engaged to drive for an operator licensed by Kirklees save for where the driver is subcontracted in accordance with the Deregulation Act 2015; or with the exception of subcontracted journeys booked in accordance with

the Deregulation Act 2015, this licence only enables the licensee to drive for an operator licensed by this authority

- The licensee must notify this authority, within 14 days of starting or terminating employment, as to the name and address of the operator and/or proprietor concerned, and the date that the employment either started or ended.

A copy of the draft conditions can be seen at appendix C.

Having considered a range of options as outlined above the service has - concluded the most appropriate means of discouraging drivers who predominantly wish to operate outside of Kirklees and the most effective way to manage the control of these drivers is to:

- Request that applicants for new and renewal applications state their intention of use by signing a declaration
- Attach the proposed new conditions to Hackney Carriage/Private Hire Driver licences
- Use the shared enforcement powers delegated by each authority in West Yorkshire and York to carry out enforcement on vehicles who are working outside of area
- Implement the intended use policy as detailed in this report.

The Service has concluded that the use of conditions alone is not sufficient. There has been the suggestion that the service could undertake additional checks of vehicles, and whilst we can implement more checks this would be unworkable given the number of vehicles licensed. The service has already introduced shared enforcement powers but is still receiving large numbers of driver applications who have no intention to ply their trade in Kirklees. This practice must stop, and the policy should help achieve that legitimate aim.

### **3. Implications for the Council**

#### **3.1 Early Intervention and Prevention (EIP)**

N/A

#### **3.2 Economic Resilience (ER)**

N/A

#### **3.3 Improving outcomes for Children**

Introducing this policy would reduce the number of drivers who obtain licences from Kirklees with the intention to predominantly work outside of the controlled district. This would result in better control of licensed drivers and vehicles in other areas meaning that it is less likely that children and vulnerable people will be travelling with a driver and in a vehicle that has been licensed by another authority.

### 3.4 Reducing demand of services

Reducing the amount of people who apply to us from other areas would result in the following reductions in demand of services:

- Less appointments being booked reducing the wait time for currently licensed drivers and reducing the pressure on staff who facilitate these appointments.
- Less people attending our garage facilities for the taxi compliance test freeing up time for our currently licensed vehicles and reducing wait times. This can have a financial impact on the Kirklees drivers who may not be able to operate their vehicle whilst they wait for an appointment for their compliance test.
- Less time spent by Licensing Officers who will arrange joint enforcement with other authorities to tackle drivers who are predominantly working outside of Kirklees resulting in more enforcement taking place in our own district and resources being focused in the appropriate and necessary places.

### 4. Consultees and their opinions

Kirklees taxi trade representatives - no response

Kirklees licensed operators - two responses - appendix D

Kirklees elected members - five responses- appendix E

Public - Kirklees Involve - no response.

#### Responses

The majority of responses from Councillors were in support of the proposed policy. Queries raised were:

- Are there insurance implications where a driver is found to be working predominantly outside of the area?
  - Each insurance company has its own policy in relation to this matter. Some have indicated that they will not cover drivers who do the majority of their work outside their licensed area however we currently have no evidence of this being put into practice
- How are neighbouring authorities managing or intending to manage this problem?
  - The West Yorkshire and York authorities had initially taken a decision to seek Counsel Opinion on this matter. At the Chair's meeting on 18<sup>th</sup> May 2017 it was agreed that this is a costly route to take and that legal departments were advising services to manage the issue locally.
- Why are so many out of area applicants applying to Kirklees?
  - Anecdotal evidence suggests that the time it takes to process a licence application is encouraging out of area drivers to apply to the authority that has the quickest turnaround time. Cost is also a factor and Kirklees fees are relatively cheap in comparison to neighbouring authorities. The applicants have told Officers that the fact Kirklees doesn't have a geographical knowledge test and the training course that Kirklees applicants have to take is relatively simple to pass encourages them to apply here.

The responses from the two licensed operators were more detailed and raised questions about the policy with responses from these questions detailed below (some of the answers are contained in the responses above)

- Is it cheaper to obtain a licence in Kirklees?
  - Table of fees detailing each authority in West Yorkshire and York

<b>Authority</b>	<b>Licence Type</b>	<b>Cost</b>
Leeds	<b>Driver</b>	£285.00
Wakefield	<b>Driver</b>	£240.00
KIRKLEES	<b>Driver</b>	£230.47
Bradford	<b>Driver</b>	£155.50
Calderdale	<b>Driver</b>	£146.00
Wakefield	<b>Vehicle</b>	£291.00
KIRKLEES	<b>Vehicle</b>	£232.39
Calderdale	<b>Vehicle</b>	£229.00
Leeds	<b>Vehicle</b>	£210.00
Bradford	<b>Vehicle</b>	£165.00 1 – 5 years old £240.00 6 – 10 years old

- Is it easier?
  - It is perceived to be due to the knowledge tests we carry out. However this has no impact on the standard of checks we do in relation to the criminal and motoring conviction history of each applicant.
- Is it quicker?
  - An analysis of this was carried out by Uber and presented to the Licensing Chairs at the 18<sup>th</sup> May meeting. The presentation suggested that Kirklees does grant licences quicker than other authorities in the local area giving details of Leeds taking approximately 6 months and Kirklees taking approximately 3 months. The information showed that Manchester has a 10 week waiting period to submit an application for a new driver before the process begins.
- What have we done to regulate Rossendale vehicles working in Kirklees?
  - Rossendale have introduced their own intended use policy to tackle vehicles and drivers licensed by them who are predominantly working outside of the area. The effects of this policy will be gradual as it will be applied at the point of renewal. This matter relates to hackney carriage plates and private hire licences.
  - In December 2016 the Kirklees Licensing and Safety Committee agreed to implement new conditions and a policy in relation to operators.

Condition 16 refers directly to 'Out of Town' Hackney Carriages acting as private hire vehicles in the Kirklees Licensing District

## **SCHEDULE OF DRIVERS**

The Private Hire Operator, shall in writing, notify the Licensing Authority forthwith, and in any event within 72 hours of each and every Hackney Carriage driver employed or used for Private Hire bookings this will include Hackney Carriage drivers licensed by this or other Authorities.

Where a Private Hire Operator ceases to employ or use any such licensed Hackney Carriage driver, the Operator shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing.

The Private Hire Operator shall retain a copy of the Hackney Carriage driver licence granted by this or any other authority along with a copy of the driver's DVLA licence, and any other driver of that vehicle, and forward a copy of those documents to the Licensing Office forthwith, and in any event within 72 hours of registering that driver.

## **SCHEDULE OF VEHICLES**

The Private Hire Operator shall, in writing, notify the Licensing Authority forthwith, and in any event within 72 hours of each and every Hackney Carriage vehicle employed or used by the operator. This includes those Hackney Carriage vehicles licensed by this or other Authorities.

Where a Private Hire Operator ceases to employ or use any such licensed Hackney Carriage vehicle, the Operator shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing.

The Private Hire operator shall retain a copy of the Hackney Carriage vehicle licence granted by another Authority along with a copy of the MOT or Compliance Certificate and policy of insurance and vehicle registration document and forward a copy of those documents to the Licensing Office within 72 hours.

### **Consideration of alternative interventions**

As detailed in this report the Licensing Authority has considered and implemented alternative interventions to ensure the safety of the public and to support local enforcement. These are:-

- Shared enforcement powers with other authorities (as suggested in the consultation response from Uber and has already been undertaken although this still has a limited range)
- Declaration of intended use at application stage
- Geographical knowledge test (not implemented)
- Amendment to conditions for drivers and operators.



## Legality of policy

The representation suggests that the policy would be contrary to the Miscellaneous Provisions Act 1976. However the Council is entitled to introduce a policy that is reasonable and proportionate to address difficulties or challenges in its ability to properly control private hire licenses in its area. This policy seeks to address the fitness and proper element of the test just like the other parts of licensing administration do.

Therefore, introducing policy is not in the Licensing Services' view contrary to the Act. The Service is simply requiring the driver to demonstrate their intention to work predominantly in the locality and nothing more, and it does not interfere with their legal right to accept a booking through the operator that tackles them outside of Kirklees.

## Negative impact of an intended use policy on both drivers and passengers

The Service does not accept that it will have a negative impact as passengers can still rely upon a Kirklees operator, driver and vehicle to get them to and from where they need to be. Similarly, a Leeds resident ought to be able to rely on the many drivers in that locality to transport them to and from Leeds.

The proposed policy will not have an impact on drivers who regularly take journeys outside of the Kirklees area. For example we have many operators who only take bookings for airport journeys; this policy would not affect them. It would also not affect any drivers or operators who do subcontract their bookings in line with the 2015 Deregulation Act. The policy states clearly that it would be applied to drivers found to be **predominantly** working outside of the area.

## 5. Next steps

The policy and conditions will be introduced with immediate effect for all new driver applications and renewal applications. The policy will be applied where it is found that drivers are predominantly working outside of this controlled district. Operator records and any other supporting evidence will be sought to support any decision made.

## 6. Officer recommendations and reasons

The officer recommends that the policy be introduced as a tool to support it in its primary function of public safety.

## 7. Cabinet portfolio holder's recommendations

## 8. Contact officer

Victoria Thomson, Senior Licensing Officer  
Tel: 01484 221000  
Email: victoria.thomson@kirklees.gov.uk

## **9. Background Papers and History of Decisions**

Intended Use Policy - Appendix A

Declaration of Intended Use - Appendix B

Amended Driver Conditions - Appendix C

Response to consultation from Operators - Appendix D

## **10. Service Director responsible**

Joanne Bartholomew, Service Director – Commercial, Regulatory and Operational Services

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## **THE INTENDED USE OF PRIVATE HIRE AND HACKNEY CARRIAGE DRIVER LICENCES IN KIRKLEES**

### **1. New Private Hire Driver Applications**

- This document has been produced as guidance to private hire and hackney carriage driver applicants in order to assist them in deciding whether to submit an application to Kirklees Council for a drivers licence.
- Applicants for the grant of a new private hire drivers licence will be expected to demonstrate a bona fide intention to predominantly carry out private hire work via their chosen Kirklees licensed private hire operator within the controlled district, or as permitted by section 55A of the Local Government (Miscellaneous Provisions) 1976.
- To assist applicants in making a decision if they should make an application to Kirklees they should consider the following principles;
  - (i) A private hire vehicle, driver and operator **must** all be licensed within the same area.
  - (ii) Operators can only invite and accept bookings within that licensing area (the same goes for smart app operators).
  - (iii) Any licence issued by the authority is a permission only and does not belong to the driver.
  - (iv) The Council must be able to exercise control over all the vehicles and drivers being operated within its geographical area. This control is of paramount importance for public safety reasons which is the main consideration for the Council when dealing with taxi and private hire regulation.
  - (v) In order to ensure that the Council has control of the vehicles and drivers it has licensed the Council reserves the right to consider imposing conditions to those licenses when it sees fit to do so.
  - (vi) If an applicant obtains a licence in Kirklees, they must operate predominantly in Kirklees; otherwise their licence may be refused or revoked.
- With the above in mind there will be a presumption that applicants who do not intend to work predominantly within the prescribed area, or

cannot demonstrate an ability to work predominantly within the prescribed area, will not be granted a private hire or hackney carriage drivers licence.

- Information provided by an applicant goes directly to their credibility, fitness and propriety when determining an application received by the Licensing Authority. Any applicant deliberately providing false or misleading information to the Licensing Authority will have this considered by the Licensing Authority when determining the application received.
- Each application will be decided on its merits.

## **2. Renewals**

- Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to carry out private hire work via their chosen Kirklees licensed private hire operator within the prescribed area.
- There will be a presumption that applicants who do not intend to predominantly carry out private hire work within the prescribed area will not have their private hire drivers licence renewed. For information Section 60 (vehicles) and Section 61 (1) (b) (drivers) of Local Government Miscellaneous Provisions Act 1976 gives the Council a broad discretion to refuse to renew a licence for any reasonable cause.
- To assist those renewing driver licences they should consider the following principles;
  - (i) A private hire vehicle / driver and operator must all be licensed within the same area.
  - (ii) Operators can only invite and accept bookings within that licensing area (the same goes for smart app operators).
  - (iii) Any licence issued by the authority is a permission only and does not belong to the driver.
  - (iv) The Council must be able to exercise control over all the vehicles and drivers being operated within its geographical area. This control is of paramount importance for public safety reasons which are the main consideration for the Council when dealing with taxi and private hire regulation.
  - (v) In order to ensure that the Council has control of the vehicles and drivers it has licensed the Council reserves the right to consider imposing conditions upon those licenses when it considers such conditions reasonable and necessary.

(vi) If a driver obtains a licence in Kirklees, he must operate predominantly in Kirklees; otherwise his licence may be refused or revoked.

- Even where the applicant intends to carry out private hire work to a material extent in the prescribed area, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.
- Information provided by an applicant goes directly to their credibility, fitness and propriety when determining an application received by the Licensing Authority. Any applicant deliberately providing false or misleading information to the Licensing Authority will have this considered by the Licensing Authority when determining the application received.
- Each application will be decided on its merits.

### **3. Revocation of licence**

- Where a licence has been granted under the terms that the applicant has a bona fide intention to predominantly carry out private hire work via their chosen Kirklees licensed private hire operator within the prescribed area but is subsequently found to be working predominantly in another authority's area, outside of the prescribed area boundary (and it appears that the purpose of the legislation and public safety will be frustrated) there will be a presumption that the licence will be revoked.

### **4. Exceptional circumstances**

- Each application will be decided on its merits. However the presumptions that the applicant has a bona fide intention to predominantly carry out private hire work via their chosen Kirklees licensed private hire operator within the prescribed area will be rebuttable only in exceptional circumstances.
- Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed or if it were not suspended or revoked as the case may be.

## 5. Reasons for Policy

- The Council wishes to ensure that applications for the grant of private hire and hackney carriage driver licences are determined in accordance with;
  - (i) The Town Police Clauses Acts 1847-1889 and Part II of the Local Government (Miscellaneous Provisions) Act of 1976 as amended by the Deregulation Act 2015 and;
  - (ii) The guidance given by the High Court in its judgment, and the Declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008] in respect of hackney carriage drivers fulfilling private hire bookings in another district.
- It is noted that the Deregulation Act 2015 permits private hire operators to sub-contract bookings to operators licensed in any district and nothing in this intended use policy is intended to frustrate the permissions provided within that Act. This policy has been adopted as at the heart of hackney carriage and private hire licensing is the need to protect the travelling public and that local licensing should prevail. With this in mind if drivers and vehicles licensed by Kirklees are found to be working predominantly in another authority's area for a substantial amount of time then this means the vehicle cannot be effectively monitored to ensure that the vehicle is safe for the public.

The principle of local control is important and the issue of remote working poses a problem for both Kirklees Council where the vehicle is licensed and the local authority where the vehicle is operating. Licensing Enforcement Officers are normally only authorised to carry out checks on vehicles licensed in Kirklees. If vehicles are predominantly operating outside of the Kirklees area then they are not available to be spot checked by Kirklees Councils Enforcement Officers.

## **APPENDIX B**

### **DECLARATION OF INTENDED USE**

*I hereby declare that it is my intention that the licence issued to me will be used to work predominantly in the district of Kirklees and I understand that should this not be the case either at the date hereof or at any time thereafter the council may revoke or refuse to renew the licence under Section 60(1)(c) Local Government (Miscellaneous Provisions) Act 1976.*

*I understand that each case will be decided on its merits*

**APPENDIX C**

**KIRKLEES METROPOLITAN COUNCIL**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

**PART 11 – LICENSING OF HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES**

**STANDARD CONDITIONS ATTACHED TO THE ISSUE OF A HACKNEY  
CARRIAGE/PRIVATE HIRE DRIVER LICENCE**

1. The Driver shall not assign or in any way part with the benefit of the Licence, which is personal to the Driver.
2. The Driver shall not while driving or in charge of a Private Hire Vehicle:-
  - (a) tout or solicit on a road or other public place any person to hire or be carried for hire in any Private Hire Vehicle
  - (b) cause or procure any other person to tout or solicit on a road or other public place any on to hire or be carried for hire in any Private Hire Vehicle
  - (c) offer that vehicle for immediate hire while the Driver or that vehicle is on a road or other public place
  - (d) accept an offer for immediate hire of that vehicle while the Driver or that vehicle is on a road or other public place except where such an offer is first communicated to the Driver by telephone or by apparatus for wireless telegraphy fitted to that vehicle

In this Condition

“road” means any highway and any other road to which the public has access, and includes bridges over which a road passes.

3. The Driver shall not carry more passengers than allowed by his private hire or hackney vehicle licence.
4. The Driver shall at all times when driving or acting in accordance with the Driver's licence granted to him wear the Driver's badge issued to the Driver by the Council in such position and manner as to be plainly and distinctly visible.
5. The Driver's badge referred to in the foregoing Condition shall remain the property of the Council, and if the Driver's licence is not renewed, such badge shall be returned by the Driver to the Council within 7 days of a notice by the Licensing Manager or Senior Licensing Officer requesting the Driver to do so or immediately in the case of a suspension or revocation.
6. A failure to renew a Drivers licence by its expiry date will (unless there are exception circumstances supported by documentary evidence for the delay) result in the Drivers badge lapsing and a driver having to make a fresh application for a new Drivers badge.



7. The Driver shall at any time or at such intervals as the Council may reasonably require, produce a certificate in the form required by the Council, signed by the drivers own general practitioner or doctor with access to the drivers medical records to the effect that he is or continues to be physically fit to be the driver of a Hackney Carriage or Private Hire Vehicle; whether or not such certificate is produced, the person shall, if required by the Council at any time, undergo a medical examination by a registered medical practitioner to be selected by the Council.
8. The Driver shall at any time or at such intervals as the Council may reasonably require be required to pass a driving test carried out by an authorised officer of the Council or other body approved by the Council.
9. The Driver shall at all times be clean and respectable in his dress and person, behave in a civil and orderly manner and afford all reasonable assistance with passengers' luggage and comply with all reasonable requirements of any person hiring or being conveyed in the vehicle.
10. The Driver shall, within 7 days, disclose to the Council in writing, details of any arrest whether charged or not, or any police investigation into his/her conduct. The Driver will also disclose to the Council in writing details of any conviction or caution imposed on him during the period of the Licence.
11. The Driver shall, within 7 days, notify the Council in writing of any change in his/her name address or phone number taking place during the period of the Licence.
12. The Driver shall not without the consent of the Hirer convey or permit to be conveyed any other person in that vehicle.
13. The driver shall take all reasonable steps to ensure the safety of passengers entering or leaving the vehicle
14. The driver of a wheelchair accessible vehicle must ensure that any equipment associated with the carriage of wheelchair users must be in good order and ready for immediate use and that he is able to use such equipment in the correct manner.
15. The driver of a licensed vehicle shall, at the request of an authorised officer, stop the vehicle to enable a check to be made for the purpose of preventing or detecting any contravention of any statutory requirements, or of the conditions, applicable to the vehicle and its use as a licensed vehicle whether or not passengers are carried at the time. It shall not proceed until the authorised officer is satisfied that all such requirements or conditions are being observed and complied with.
16. The driver shall if required provide a written receipt for the fare paid.
17. The driver shall declare to the Council any penalty points endorsed on his licence or any courses attended in relation to driving offences.
18. The driver must carry any assistance dog or guide dog with no extra charge that is accompanying a passenger unless he is in possession of an exemption certificate.
19. The driver shall ensure that at all times when driving a licensed vehicle for hire or reward that such a vehicle is kept in a clean and roadworthy condition.

20. The driver must ensure that his ability to drive is not impaired by working excessive hours. Guidance can be sought from the Road Transport (Working Time) Regulations 2005.
21. The licensee shall only be engaged to drive PHV's licensed by Kirklees;
22. The licensee shall only be engaged to drive for an operator licensed by Kirklees save for where the driver is subcontracted in accordance with the Deregulation Act 2015; or with the exception of subcontracted journeys booked in accordance with the Deregulation Act 2015, this licence only enables the licensee to drive for an operator licensed by Kirklees Council.
23. The licensee must notify this Authority, within 14 days of starting or terminating employment, as to the name and address of the operator and/or proprietor concerned, and the date that the employment either started or ended.

Catherine Walter  
Licensing Manager  
Flint Street  
Fartown  
Huddersfield  
HD1 6LG

Revised May 2017

**APPENDIX D**

**From:** Cllr Eric Firth

**Sent:** 23 May 2017 11:09

**To:** Karen Rukin

**Subject:** Re: Consultation on the proposed policy and conditions for Private Hire Vehicles

I appreciate it's a difficult situation but before we do anything we must I think have the support of all west yorks authorities and they must do the same.....Eric

Delivered to you with Kirklees Mobile Email solution.

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**APPENDIX D**

**From:** Cllr Lisa Holmes  
**Sent:** 25 May 2017 08:42  
**To:** Karen Rukin  
**Cc:** Cllr David Hall; Cllr JohnJ Taylor; Cllr Nigel Patrick; Cllr Donna Bellamy  
**Subject:** Re: Consultation on the proposed policy and conditions for Private Hire Vehicles

Karen I appreciate that you have recalled the message below but one question.

What is bringing so many applicants to Kirklees ?  
Given I've been told so many times that we've tightened up our licensing checks, what is attracting so many from other areas to us ?

Why are applicants choosing us over Bradford, Leeds etc ?

There must be a good reason but I'm not getting that from the below information.

Kind Regards

Cllr Lisa Holmes  
Conservative Councillor for Liversedge & Gomersal

## APPENDIX D

**From:** Cllr Christine Iredale  
**Sent:** 23 May 2017 20:41  
**To:** Licensing  
**Subject:**

Hello Karen

Thank you for the consultations documents I am uneasy about this and I would really like to have more information for example what about insurance if a driver is working out of the district of his licence will he be properly insured should any problems occurs.

I would really like a full licensing committee to make the decision

What do our neighbouring authorities think do they similar issues

Hope that you will be able to answer these concerns

Cheers Christine

Delivered to you with Kirklees Mobile Email solution.

**APPENDIX D**

**From:** Cllr Hilary Richards

**Sent:** 23 May 2017 11:09

**To:** Councillor EnquiriesPlace

**Subject:** RE: Consultation on the proposed policy and conditions for Private Hire Vehicles

The conditions could *eminently sensible* and have my support

Many thanks

Hilary.

## APPENDIX D

**From:** Cllr Julie Stewart-Turner

**Sent:** 23 May 2017 11:22

**To:** Licensing

**Subject:** Consultation on the proposed policy and conditions for PHV

I'm not sure if there are any specific questions to answer as part of your consultation. I am personally in favour of the Intended Use Policy. I have on occasions been picked up by taxi drivers from out of area, and they rely on the passengers to give them directions, which I don't think they should. I also think that the high standards set following the Casey Review should be maintained, and encouraged across neighbouring authorities.

Regards

Julie



01 JUN 2017

Kirklees Council  
Licensing Service  
Flint Street Depot  
Fartown  
Huddersfield  
HD1 6LG  
FAO Victoria Thomson

24 May 2017

## CONSULTATION – INTENDED USE

Dear Ms Thomson

Your letter dated 19 May refers. The question you should really be asking is why people living outside of Kirklees apply for a Kirklees Licence?

1. Is it cheaper? I doubt it.
2. Is it easier? I very much doubt that too. I have little confidence in your operations but the thoroughness you take in obtaining DBS, Medical, Driving Test and Customer Awareness courses are commendable.
3. Is it quicker? The minimum time is 3 months – with luck – so that is not the reason.
4. Is it more profitable? Most people will know Leeds or Manchester are the real power bases in this area and therefore realise the higher income streams are there.

So you really need to be looking for the answer instead of chasing after the event. Did anyone in your office watch 3 girls on the BBC last week? There was a list of Councils Areas where people had been prosecuted for grooming. I'll let you guess which one was missing.

You already have legislation in place which requires Operators to be able to provide information as to who has been allocated bookings, when and by whom and a whole plethora of information to be able to check on operators, drivers and vehicles. In 34 years your Council has NEVER been to inspect my records and, given your dereliction to prosecute me, will assume I am not alone there.

What about the drivers from Rossendale who, legally, operate in Kirklees. Have you done anything to keep a check on them? Have you followed with recent legislation enacted against Uber regarding Minimum Wages? I doubt it because your School Transport Section is complicit in allowing drivers to be paid below the Minimum Wage.

To use the reason that existing Licence holders cannot obtain appointments is a misnomer. Your department is not allowed to make a profit and therefore if there are extra licence



applications then this should allow the cost of licences to decrease to everyone. But as that has not happened one can only assume you are not fit for purpose given it is two years since your last increase should have led to you covering your costs.

Finally how many of these new licence holders exist? Thousands? Hundreds? Dozens? Yet you allow hundreds of people to contravene ROUT versus Swallow Hotel Ltd 1993 allowing hundreds of people throughout Kirklees to be conveyed dangerously and illegally.

I am afraid the Licensing Department is not fit for purpose.

Yours sincerely

John Beaumont

## Uber Response to Kirklees Council Consultation on [‘The Intended Use of Private Hire and Hackney Carriage Driver Licences in Kirklees’](#)

Thank you for the opportunity to respond to Kirklees Council’s consultation on the possible introduction of an intended use policy for private hire and hackney carriage drivers licensed by Kirklees Council.

This response sets out Uber’s strong concerns about Kirklees’ proposal to introduce an intended use policy for private hire drivers. In summary:

1. We are concerned by the Council’s **lack of consideration of alternative, more proportionate interventions** to achieve their stated objective of protecting the public and maintaining control over licensed vehicles and drivers.
2. We have serious **concerns regarding the legality of Kirklees Council’s proposed intended use policy**. It is our view that there is no sound legal basis for the Council to introduce an intended use policy for private hire - as borne out by case law. We also note that the wording used in the proposed intended use policy is lifted directly from Knowsley Metropolitan Borough Council’s newly introduced intended use policy. The Council may already be aware that Knowsley Metropolitan Borough Council’s intended use policy is likely to be subject to a legal challenge.
3. Lastly, it is also clear to us that the proposed policy will have a **negative impact on both drivers and passengers**. The unforeseen consequence of an intended use policy would mean that passengers would be unable to rely on Kirklees licensed operators, drivers and vehicles to get them to and from where they need to be in neighbouring jurisdictions, to and from the airport or to and from work in nearby towns and cities like Bradford, Leeds or Halifax. This is not only a poor customer experience, but is also likely to have a serious impact on Kirklees’ licensed private hire drivers and operators, as consumers will use other businesses for their private hire needs which are able to provide a reliable service across their local area.

Our concerns are set out below, in greater detail.

### **1. Consideration given to alternative interventions to achieve Council’s stated objectives.**

We acknowledge the Council’s core stated objectives of having greater control over all Kirklees licensed private hire drivers in order to protect the safety of the travelling public. The Council’s licensing function is important in ensuring that the taxi and private hire industry is trusted and meets the needs of the local community. However, we believe there are other, more proportionate means of achieving the Council’s stated objective.

As a general comment, best regulatory practice requires an assessment of whether any interventions are justified by specific and legitimate policy objectives. Once an objective has

been established, an assessment should consider the proportionality of each proposal against the objective, including whether the benefits outweigh the costs or impacts. This cost / benefit analysis has to consider not only the immediate impact of the regulation on customers and firms, but also any impact on the ability of the market to efficiently meet varied customer demand.

In this regard it is not clear to what extent the Council has considered a range of options to deliver the stated objective, nor considered the full cost / benefit impact of the proposed policy. This is significant as if - as stated - the Council's objective is to enable effective monitoring and safety checks of vehicles and drivers it has licensed, we believe there are more effective and proportionate ways of achieving this goal.

Firstly, there is a necessary assumption that all vehicles and drivers licensed by Kirklees Council are properly inspected or tested and deemed safe and fit and proper to transport passengers as part of the Council's licensing process. That being the case, the Council's concern would therefore appear to be whether the driver and/or vehicle continue to remain sufficiently safe and/or fit and proper for the subsequent period up to renewal of that licence.

We understand that the Council is concerned that it is not able to conduct regular spot checks on vehicles driving outside of the prescribed area. However, there are other options to conduct effective checks to ensure the continued safety of licensed vehicles and drivers. For instance, in the case of Kirklees licensed private hire drivers that predominantly drive outside of the prescribed area, the Council could seek to attach additional conditions to the relevant private hire driver or vehicle licence requiring them to attend regular inspections at the Council (e.g. quarterly). Such action would be more relevant - and more proportionate - to the Council's stated aim of improving vehicle safety standards for the travelling public.

Secondly, the proposed policy states that the principle of local control is important both to Kirklees Council as the licensing authority and to the local authority where the vehicle is operating. Given this, the Council should consider sharing enforcement powers and providing authorised officer status to concerned local authorities. We understand the six authorities of Kirklees, Bradford, Leeds, Calderdale, Wakefield and York are already exploring the delegation of powers to allow local licensing officials to take enforcement action across neighboring jurisdictions.<sup>1</sup> We believe there is merit in pursuing such efforts, for the benefit of local consumers and drivers, rather than placing limits on where drivers can and can't drive.

Such measures would be a more proportionate intervention to achieve the Council's stated objective than the current proposed policy.

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<sup>1</sup> See this [report](#) from Bradford City Council, and press coverage [here](#).

## **2. Concerns regarding the legality of proposed intended use policy.**

Beyond the question of proportionality, we also have significant concerns regarding the legality of the proposed policy and the extent to which it goes against the will of the De-Regulation Act 2015.

### **A. Legality of the proposed policy**

Contrary to the assertions made within the proposed policy, there is no sound legal basis for the Council to introduce an intended use policy for private hire - as borne out by case law.

The proposal cites the guidance given by the High Court in its judgement and the Declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008]. This was - however - only in respect of hackney carriage drivers fulfilling private hire bookings in another district and it is not appropriate to rely on this case in support of an intended use case for private hire drivers.

Hackney carriages and private hire vehicles must be distinguished for these purposes and the Berwick case observes that *"the right to ply for hire is limited, by the licence, to the immediate locality and no right to ply for hire is given for any wider area"*. No such limitations are placed on a private hire licence, and a Council does not have the power to restrict the number of such licences.

The difference between taxis (hackney carriages) and private hire vehicles on this issue is articulated in the The Law Commission's Report on Reforming Taxi and Private Hire Services, which states at 7.53:

*"It is important to recognise that the cross-border issue is different as between taxis and private hire vehicles: in the case of taxis, the licensing area determines where they can ply for hire, whilst private hire vehicles can pursue their trade (always limited to pre-booked journeys) without any geographical restriction. Any change to the law on how cross-border services may be booked does not therefore change the fundamental feature that operators are, and will continue to be, allowed to offer their services to customers being picked up and dropped off outside the operator's licensing area."*

This is clearly common sense in circumstances where a hackney driver can choose where to pick up passengers, but where private hire drivers are reliant on bookings being dispatched to them by a private hire operator. The proposed policy therefore fails on any common sense basis - an operator cannot refuse a booking or deprive a driver of the ability to carry out a booking simply on the basis that the particular driver has already picked up a certain percentage of his or her bookings in Halifax or in Leeds city centre in the past day/week/month/year. The operator is neither obliged nor (we expect) able to monitor a driver's activity in this way.

We are particularly concerned regarding the legitimacy and legality of the Council's application of the proposed policy. The Council states that it wishes to ensure that applications for the grant of private hire driver licences are determined in accordance with the Local Government (Miscellaneous Provisions) Act 1976, and we therefore draw your attention to section 51 of the 1976 Act which prescribes that:

*"(1) Subject to the provisions of this Part of this Act, a district council **shall**, on the receipt of an application from **any person** for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence (a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence.."* [emphasis added].

There is no ability for a Council to refuse to grant a licence to a person based on, for example, where they live, where they carry out journeys etc, provided they are a fit and proper person. The 1976 Act imposes a positive licensing obligation on Councils, which can be contrasted with the hackney licensing regime that permits Councils to restrict the issuing of hackney carriage licences according to the needs of the local area.

Accordingly the proposed policy for private hire drivers is contrary to the 1976 Act, and is not supported by any case law.

Given the above, we fail to see how there can be any legal basis to the introduction of an intended use policy for private hire which would not be open to legal challenge.

*B. The decision to implement the Policy fails to take into account the nature of private hire bookings.*

The proposed changes to the Standard Conditions attached to the issue of a Private Hire Driver Licence fail to take into account for the nature of private hire bookings. The 1976 Act provides that, as long as a booking is made with a licensed operator and carried out by a driver and vehicle licensed by the same council, the journey can be carried out anywhere in the UK.

However, the imposition of the Policy would result in drivers potentially facing enforcement action depending on what bookings are allocated to a driver by the relevant operator.

This move to restrict private hire drivers to pick ups within the Kirklees boundary therefore directly contradicts the 1976 Act and case law. The Council states that applicants will be required to "demonstrate a bona fide intention to predominantly carry out private hire work via their chosen Kirklees licensed private hire operator within the controlled district". It appears that the Council's intention is to require private hire drivers to only pick up passengers within the Kirklees boundary, thereby excluding Leeds, Bradford, Halifax and other surrounding cities and towns. Clearly, any driver licensed by Kirklees must, by law, carry out work via a Kirklees

operator. The Council is therefore requiring a driver to demonstrate that his operator will allocate him bookings that take place predominantly within Kirklees, which a driver is simply unable to do. A driver has no control over what booking requests are accepted by an operator or where those journeys take place.

### C. Deregulation Act 2015

We also note that the proposed policy appears to be contrary to the will of central Government in terms of the Deregulation Act introduced in 2015. The Government's rationale for introducing the Deregulation Act included the following:

*"We want to work with private hire operators to help businesses to flourish and grow; we want to make life easier for passengers; and we certainly want to ensure that safety is at the forefront of all that is being done."*

*"Private hire operators have said that the existing restriction on sub-contracting such that people can subcontract only to operators based in the same district is frustrating for many of them and artificial. It means that often they have to tell passengers that they cannot take their booking."*

Stephen Hammond MP, Parliamentary Under Secretary for Transport, stated at the time:

*"Allowing private hire operators to subcontract to operators licensed in a different district is a simple change. It will have a huge impact on the ability of operators to meet passenger needs and to grow their businesses, and it should help to make the passenger's experience much more convenient. In short, it is a liberating measure. It will allow the private hire trade to operate in the way that it sees fit, not just in the way that the current legislation dictates."*

The proposed policy put forward by the Council goes very much against the intention of the Deregulation Act and thus circumvents the will of central Government.

### **3. Concerns regarding the negative impact of an intended use policy on both drivers and passengers.**

It is also clear that the proposed policy will have a negative impact on both drivers and passengers. The unintended consequence of an intended use policy would mean that passengers would be unable to rely on Kirklees licensed operators, drivers and vehicles to get them to and from where they need to be in neighbouring jurisdictions, be that the airport or to and from work in nearby towns and cities like Bradford, Leeds or Halifax. This is not only a poor customer experience, but is also likely to have a serious impact on Kirklees' licensed private hire drivers and operators.

The proposed intended use policy would have a real and significant impact on the business of private hire operators and private hire drivers, in that operators would either be unable to accept bookings with a pick up location outside of the controlled district, or drivers would miss out on

the opportunity to make money because they were not able to carry out a booking depending on where it was and how many other bookings it had carried out the day/week/month. In turn, that would likely cause consumer harm, by way of fare increases and/or an unreliable service.

Indeed, the Law Commission's Consultation Paper on Reforming Taxi and Private Hire Services references makes this observation about potential consumer harm. A recommendation from the House of Commons Transport Committee (12 July 2011) that a condition of licence should require a vehicle to be principally operated in the licensing district. As stated at 10.75 within the Consultation Paper:

*"The Department of Transport was not in favour of this, as it would have restricted the ability of drivers and operators to work in a way which is both lawful and efficient. The Department noted potentially damaging environmental effects, and stated that such conditions would "confuse and unfairly penalise passengers who would be unable to use the operator of their choice". Finally, it would be difficult and costly to enforce".*

It is difficult to see how the Council will be able to set arbitrary thresholds on trips in certain areas that can be deemed proportionate to the objective being sought without negatively impacting upon drivers and customers. Focus should be on meeting customer demand, which is unpredictable and likely to shift week on week.

## **Conclusion**

To conclude, we have serious concerns regarding the legality and proportionality of the proposed policy, the negative impact it will have upon operators, drivers and passengers, and its circumvention of the intent of the Deregulation Act 2015. We believe there are far more effective and proportionate means to achieve the Council's objective, including the introduction of additional inspection conditions on the private hire vehicle licence and sharing of enforcement powers with other local authorities. We would be happy to discuss both of these options in greater detail with the Council.

Regards

Uber