

Contact Officer: Jenny Bryce-Chan

KIRKLEES COUNCIL

LICENSING AND SAFETY COMMITTEE

Wednesday 5th October 2022

Present: Councillor Amanda Pinnock (Chair)
Councillor Ammar Anwar
Councillor Carole Pattison
Councillor Moses Crook
Councillor James Homewood
Councillor Jo Lawson
Councillor Mohan Sokhal
Councillor Adam Zaman
Councillor Adam Gregg
Councillor Michael Watson
Councillor Paola Antonia Davies
Councillor Andrew Marchington

In attendance: David Stickley, Senior Legal Officer
Fiona Goldsmith, Public Protection Group Leader
Martin Wood, Head of Public Protection

12 Membership of the Committee

No subs were in attendance at the meeting.

13 Minutes of Previous Meeting

The minutes of the meeting held on the 6 July 2022 be amended as follows:

- 1) In relation to item 9, the Committee is asked to note that work with the Information Governance Team is still ongoing, and an update will be provided at a future committee meeting.
- 2) In relation to agenda item 10, question 10, to replace 'all committee members voted for option 1' with, that officers develop a specific policy in relation to stretch limousines and submit it for consideration at a future meeting of the Licensing & Safety Committee.

14 Interests

No interests were declared.

15 Admission of the Public

All agenda items were considered in public session.

Licensing and Safety Committee - 5 October 2022

16 Deputations/Petitions

No deputations or petitions were received.

17 Public Question Time

No public questions were asked.

18 Hackney Carriage Fares

The Licensing & Safety Committee (Committee) considered a report which outlined the proposal to resolve a new fare card for the Hackney Carriage vehicles.

Fiona Goldsmith, Group Leader Licensing, advised the Committee that in February 2022, a request was received from the Hackney Carriage Association to carry out a review of the Hackney Carriage fare tariff. The request submitted was for all tariffs to have a £1 increase on the start price and that tariffs 2 and 4 commenced at 8pm instead of 10pm, as shown below:

The current start prices and times:

Tariff	Start Price	Times
Tariff 1	£2.50	6am – 10pm
Tariff 2	£3.00	10pm – 6am
Tariff 3	£3.00	6am – 10pm
Tariff 4	£3.50	10pm – 6am

The requested increase:

Tariff	Start Price	Times
Tariff 1	£3.50	6am – 8pm
Tariff 2	£4.00	8pm – 6am
Tariff 3	£4.00	6am – 8pm
Tariff 4	£4.50	8pm – 6am

The Licensing Service formally consulted on increasing the Hackney Carriage fares and also wrote to all Hackney Carriage proprietors and emailed Trade Representatives. The consultation ended on 31st March 2022, and 18 responses were received, which were as follows:

- 7 individuals were in favour of the fare increase.
- 10 individuals were against the fare increase and proposed alternatives.
- 1 petition signed by 92 licence holders against the fare increase, proposing an alternative.

The Committee was informed that due to the number of objections, and differing views put forward by the trade, a decision was taken under delegated authority by the Strategic Directors for Environment and Climate Change, to temporarily implement the fares consulted on, and commence an engagement exercise with the vehicle proprietors.

On the 17th June 2022, a letter was circulated to all the Hackney Carriage vehicle proprietors containing eight proposals put forward by the trade during the first formal consultation, and requested that vehicle proprietors select their favoured proposal.

Licensing and Safety Committee - 5 October 2022

The eight proposals were shown / presented to members during the committee meeting.

The Committee was further advised that the Licensing Service received 57 responses out of the 224 Hackney Carriage vehicle licenses, summarised as follows:

- 17 in favour of proposal 1
- 33 in favour of proposal 2,
- 0 in favour of proposals 3, 4, 5, 7, 8
- 1 in favour of proposal 6
- One respondent ticked both proposal 2 and 4 and one respondent ticked all the proposals.

The Licensing department formally consulted a second time in relation to proposal 2, which was supported by the majority of those consulted. The proposal was as follows:

Tariff	Start Price	10p	Waiting Time	Times
Tariff 1	£3.50	105 yards	10p per 24 seconds	6am – 8pm
Tariff 2	£4.00	80 yards	10p per 24 seconds	8pm – 6am
Tariff 3	£5.50	70 yards	10p per 24 seconds	6am – 8pm
Tariff 4	£6.00	60 yards	10p per 24 seconds	8pm – 6am

The second consultation ended on 18th August 2022 and four representations were received, as follows:

Objection 1 - that the temporary measures in place were ok, and that the Committee consider this a delicate situation regarding the balance of keeping customers happy and earning a decent wage. The objector was not happy with tariff 3 and 4 and made no reference in relation to the reduction in yardage.

Objection 2 - that the proposal to increase fares would affect the trade in relation to the cost of living and losing customers.

Objection 3 - also referred to the cost of living and the unfairness of adding additional burdens onto customers, and that the interim fare should be kept.

Support 1 - voted for the increased proposal and agreed with the reduction in yardage and with the adjusted timings.

Fiona Goldsmith further advised the Committee that agreement had been sought with the Trade Representatives, and a review of the fares would be a set agenda item each year at the Hackney Carriage Trade Association meeting.

Licensing and Safety Committee - 5 October 2022

The Committee noted the cost of inflation to drivers, and suggested it would be useful to understand in more detail the balance between making a living, and the cost to customers, particularly in relation to the impact on the cost of journeys, increased fuel costs and data on earnings.

Representatives of the trade advised the Committee that the temporary structure was working well for both drivers and customers, and that it was important not to burden customers to a point where they were unable to afford taxis, which could result in a loss of trade and jobs.

RESOLVED:

- a) that the fares remain as they are currently set.
- b) that further information be provided at the next review in relation to cost implications to the trade.
- c) that a review of the fares be a standard agenda item annually for the Hackney Carriage Trade Association meetings, with an option for the trade to call a review sooner should circumstances change significantly.

19 Driver Training Policy

The Licensing and Safety Committee (Committee) was asked to consider a report containing a temporary change to the existing driver training policy which introduced a fast-track application process for new applicants.

Fiona Goldsmith advised the Committee that the driver training policy was adopted on the 1st August 2019, however, due to the pandemic, new driver applications were ceased.

The service re-opened to new driver applications in October 2021, and one of the requirements of the policy was that all new driver applicants were required to pass an English for Speakers of Other Languages (ESOL) entry level 3 English test, in speaking, reading, and listening. In January 2022, the Licensing Service saw an increase in the number of applications being received and noted there were a number of new applicants who had an existing qualification equal to entry level 3 or above.

The Committee was informed that applicants who already had existing qualifications were finding it difficult to book onto an ESOL course which caused delays and bottlenecks to occur. As a result, a decision was taken under delegated authority by the Strategic Director for Environment and Climate Change to make a temporary change to the existing policy and the requirement to pass the English test.

The temporary change implemented was that if an applicant produced evidence of an entry level 3 qualification or above, in the form of a certificate, and that the qualification had been achieved in the UK, then they were permitted to progress to the next stage of the application process which was a theory and knowledge test. This would enable applicants to pass through the application process much quicker and saved them financially, whilst maintaining an efficient and flexible approach for drivers.

Licensing and Safety Committee - 5 October 2022

The Committee was also informed, that in addition to the new fast-track application process, the service was also looking to recruit a dedicated training officer, to deliver the training in house, with an option for one-to-one sessions.

RESOLVED:

- 1) that the report be noted.
- 2) that the temporary change in policy, “that if an applicant produces evidence that they had undertaken a qualification at Entry 3 level or above, in the form of a certificate, and that the qualification has been achieved in the UK then they are permitted to progress to the next stage of the application process which is the theory and knowledge training and test”, be made permanent.
- 3) that the fast-track application process for new applicants be adopted and that officers bring back further details of the fast-track system for consideration at a future meeting of the Licensing and Safety Committee.

20 **Review of Hackney Carriage and Private Hire Statement of Fitness and Suitability Policy**

The Licensing and Safety Committee (Committee) considered a report seeking approval to commence a consultation following a three-year review of the Hackney Carriage and Private Hire Statement of Fitness and Suitability policy.

Fiona Goldsmith, Group Leader Licensing, reminded the Committee that at the Licensing and Safety Committee meeting held on the 6th July 2022, officers presented a report outlining concerns in relation to the Council’s statement of fitness and suitability policy relating to the licensing of Private Hire and Hackney Carriage drivers. The Committee resolved that officers be instructed to look at the concerns being raised and review the Private Hire and Hackney Statement of Fitness and Suitability Policy.

Fiona Goldsmith directed the Committee to appendix 1 of the report, which highlighted the proposed revisions to the policy, drawing the Committee’s attention to the main change to the policy, which was in relation to minor traffic convictions, as detailed below:

Minor traffic or vehicle offences do not include offences involving: -

- Loss of life
- Driving whilst under the influence of drink or drugs
- Driving whilst using a handheld telephone or device
- No insurance
- Offences which have resulted in injury to any person or damage to any property (including vehicles)

- 1) A licence will not normally be granted for new applicants where the minor motoring offences have resulted in 9 or more points being endorsed on their DVLA driving licence. Where an applicant has 7 or 8 current points on their DVLA driving licence, in exceptional circumstances, an application may be granted subject to the applicant completing an additional driver safety assessment as deemed appropriate by the Licensing Authority.

Licensing and Safety Committee - 5 October 2022

- 2) For existing licensed drivers where the minor motoring offence(s) has resulted in 6 or less penalty points being endorsed on their DVLA driving licence and fail to notify the licensing authority a warning and advise letter will be issued.
- 3) Where, as a result of minor traffic or vehicle offences, an existing driver has 7 or 8 penalty points endorsed on their DVLA driving licence they will be required to pass a practical 'hackney carriage / private hire' driving test using one of the Council's approved testers and at their own cost. The driver will be given 3 opportunities to pass the test, failure to pass on the third attempt will result in a review of their hackney carriage / private hire drivers licence and it is likely that they will no longer be considered a 'fit and proper' person to hold a licence.
- 4) Where, as a result of minor traffic or vehicle offences, an existing driver obtains 9 or more penalty points on their DVLA driving licence, and has (this list is not exhaustive): -
 - Previously been required to attend and pass a 'hackney carriage / private hire' practical driving test, or
 - There are other compounding factors such as failure to declare any of the minor traffic convictions in question, in accordance with the conditions attached to the licence, or
 - Has received a warning for minor motoring convictions, or
 - Any other convictions, or
 - Any other detrimental information recorded against them, i.e. complaints from members of the public about their standard or driving or attitude, etc.

The Committee was advised that consideration will be given to the revocation of a licence unless there are any exceptional circumstances as to why revocation should not take place, however, each case will be considered on its own merits.

In all other cases where a driver obtains 9 or more penalty points on their DVLA driving licence, and none of the above applies, consideration will be given to send the driver on a 'hackney carriage / private hire' practical driving test. This test will be at the cost of the driver, and they will receive a final written warning that will remain on their file. Failure to pass the test first time, will normally result in the licence being revoked.

MS90 Offences – Offences under Section 172 of the Road Traffic Act 1988 – Failure to give information as to the identity of a driver, will be classed as a minor traffic offence, unless on the balance of probabilities, there is evidence to show the failure to give information was an intentional act to evade points being endorsed on the licence. Where such evidence exists, the offence will be classed as a major traffic offence.

When making the decision on the suitability of a driver who has committed an MS90 offence, the licensing authority will also take into account the underlying offence for which the MS90 was triggered.

Licensing and Safety Committee - 5 October 2022

In response to the information presented, the Committee asked a number of questions, including the following:

- What percentage of drivers have convictions?
- What was the number of drivers within Kirklees who have 12 points or more?
- Why a 7-point review threshold?
- Why was the onus on drivers to notify the Service of any conviction?

A representative of GMB advised of a system that would notify the Licensing Service directly of any convictions received by licence holders and commented that as the licence was held for a 3-year term, this provided a loophole for dishonest drivers.

In response, Fiona Goldsmith acknowledged that the 3-year license could be a loophole for dishonest drivers, however, the policy would strengthen the decision making around licenses.

The Committee acknowledged that the aim of the policy was to reinforce the standards in Kirklees.

RESOLVED:

- 1) that officers commence a three-month consultation on the proposed changes as outlined in the appended report.

21

Decision Making - Hackney Carriage and Private Hire Licensing

The Committee considered a report which outlined the result of the consultation undertaken for the Department for Transport Statutory (DfT) Standards, specifically relating to decision making for the Hackney Carriage and Private Hire Service.

Fiona Goldsmith reminded the Committee that at the Licensing and Safety Committee meeting held on the 6th July 2022, the Committee instructed officers to investigate possible options relating to decision making and the implications of those options, and present a more detailed report to the Committee.

The Committee was advised that currently, decision making for Hackney Carriage and Private Hire licensing is delegated to the Group Leader, Licensing. The guidance issued by the Department for Transport recommends that decision making should be the responsibility of a panel of suitably trained elected members. If the Committee chooses to deviate from the guidance, they are required to provide a clear reason for doing so.

Fiona Goldsmith, advised that the results of the consultation showed that many respondents agreed that decision making should not be the sole responsibility of one person, and a number of options had been identified from the consultation responses received, which were as follows:

- 1) A Members Panel
- 2) An Officer Panel
- 3) Decision to remain with the Group Leader for Licensing.

Licensing and Safety Committee - 5 October 2022

The Committee was referred to appendix 1 of the report, Fiona Goldsmith outlined each process and the risks and benefits associated, as detailed below:

Option 1 - Members Panel

Benefits	Risks
Level of Impartiality	Delays in decision making in particular around existing licence holders
Addresses concerns raised as part of the consultation on DfT standards	Increased cost (to be borne by licence holder / applicant)
Complies with DfT Standards	Lobbying of Members by licence holders and applicants
	Increased resources required – Licensing, Legal, Governance, meeting room
	Out of step with other WY authorities

Option 2 - Officer Panel

Benefits	Risks
Impartiality	Delays in decision making in particular around existing licence holders
Addresses some, but not all of the issues raised as a result of the consultation on DfT standards	Cost (to be borne by licence holder / applicant)
	Does not comply with DfT Standards
	Out of step with other WY authorities
	Licensing, Legal, meeting room

Option 3 - Decisions stay at Group Leader Level

Benefits	Risks
Impartiality	Perception of impartiality – although there is impartiality in the decision making the perception is that it isn't impartial
Decision made in a timely manner	Does not address the concerns raised as a result of the consultation on DfT standards.
Reduced cost	
In line with other WY authorities	

Licensing and Safety Committee - 5 October 2022

Fiona Goldsmith further advised that if options 1 or 2 was to be agreed by the Committee, the process would take effect from April 2023, to allow for processes and procedures to be put in place. If option 3 was to be agreed, there would be a full review of the current process to ensure the applicant was provided with an opportunity to address the decision maker before the decision is made.

In response to the information presented, the Committee made comments and asked a number of questions, including the following:

- What is the process across other West Yorkshire Councils?
- If DfT guidelines are not adopted, what are the consequences?
- If the decision-making stays with the Group Leader, is there an option for an appeal to be heard before members before appealing to the magistrates?
- How many decisions have gone to appeal?
- If a member panel was decided, what training would be provided?
- The current process is working, and the quality of decisions are still of a high quality. If a licence holder thinks the decision is wrong, they can go before the courts.
- Would it be sensible to have the Chair of the Panel involved in the decision making?
- There were issues previously with some of the decisions made by Member Panels, which is currently not the case, which would indicate the current system is working.
- An alternative option that could be considered is a decision-making panel consisting of officers and members, have officers explored this option?

Councillor Homewood put forward a proposal that officers investigate alternative options including having decision making panels which incorporates both members and officers. This proposal was seconded by Councillor Sokhal.

The committee members voted as follows:

Option 1 - A Members Panel – 1

Option 2 - An Officer Panel – 0

Option 3 - Decisions to remain with the Group Leader for Licensing - 4

Option 4 - That officers investigate and explore different options relating to how Members can be involved in the decision-making process - 7

RESOLVED:

- 1) that decisions remain with the Group Leader for Licensing, and for officers to undertake further work to investigate other possible options that would incorporate members in the decision making and bring this back for consideration at a future meeting of the Licensing and Safety Committee.