

**LICENSING TASK GROUP held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 2.00pm on 19 MARCH 2013**

Present: Councillor D Perry – Chairman.
Councillors J Davey, R Lemon, J Loughlin and A Walters.

Officers in attendance: M Cox (Democratic Services Officer) and M Perry (Assistant Chief Executive-Legal).

Members of the Trade present: Barry Drinkwater (ULODA), Brian Bennet (E Cabs) Richard Ellis (Barnston Luxury Travel), Andy Mahoney (24x7 Ltd) and Robert Sinnott (ACME).

LTG5 APOLOGIES FOR ABSENCE

There were no apologies for absence or declarations of interest.

LTG6 MINUTES

The minutes of the meeting held on 23 January 2013 were agreed and signed by the Chairman as a correct record.

**LTG7 REVIEW OF PRACTICES AND PROCEDURES FOR THE HACKNEY
CARRIAGE AND PRIVATE HIRE TRADES**

Members considered the report of the Assistant Chief Executive - Legal setting out the responses received to the consultation exercise on the draft Licensing Policy for the Hackney Carriage and Private Hire Trades. The operators, drivers and ULODA had been invited to attend the meeting to make representations as part of the consultation process.

The Chairman opened the meeting by welcoming the operators to the meeting. He asked for them to put forward any additional comments to those which had already been submitted in writing.

The Assistant Chief Executive - Legal commented on the representations received. In the light of these a number of amendments had been made to the draft document. Other suggestions would for the Task Group to consider. On analysis of the 16 areas where changes were suggested, 4 were particularly contentious, and there was one area where the Trade's views were not clear. These areas were as follows.

- 1 A change in emphasis regarding matters which constitute an offense (para 6.6 – 6.9 of the policy).
- 2 The increase in the starting point for suspension (para 6.10 of the policy).

- 3 Criticism of changes to deemed disqualification (Appendix A – paragraph 4).
- 4 Concern at keeping and recording of records(Appendix H – para F).
- 5 Changes to the driver's Licensing standards, based on points rather than number of convictions (Appendix A – para 1)

The operators commented on these areas as follows:-

Enforcement Policy – paragraph 6.6 – 6.10

Andy Mahoney drew attention to his letter of representation which had been prepared by James Button Solicitors, who were a respected legal advisor of the Trade. He was concerned at the change in emphasis of the enforcement policy which stated that for a breach there should normally be a sanction imposed. He said that education was paramount and this should be the starting point, not sanctions. He said that his drivers were very concerned about the inference of prosecution, particularly for minor offences such as not wearing the badge.

He said that other council's used a points system, depending on the severity of an offence that would build up towards a suspension. The ~~Assistant Chief Executive – Legal~~ Chairman said that this would be too costly to administer. The Council's approach was to consider the merits and circumstances of each case and apply an appropriate sanction.

Barry Drinkwater said that the enforcement policy should place more emphasis on education and advice. This would be a more appropriate way to handle offences and achieve compliance. He felt that the Licensing Team should be guiding new license holders.

Councillor Perry explained that additional wording had been added to point 6.5 to state that council officers are always willing to give general advice and assistance upon request but reiterated that it was not the Council's role to provide detailed training. Personally he thought it would be useful to provide operators and drivers with booklet containing essential information.

In terms of education the Assistant Chief Executive – Legal said that it was not the Council's role to provide detailed training to members of the trade and that for breaches, education was not an appropriate option, nor would a negotiated compliance normally be appropriate. Drivers were expected to know their conditions and know the law and the responsibility for training and ensuring that the drivers understood the conditions on their license was the responsibility of the employer.

He said that the task group had felt that there should normally be a sanction for was a breach of the legislation or of a condition. The purpose was dual: punishment and deterrent. However it should be noted that there was a difference in the sanctions that could be applied for a breach of conditions as opposed to an offence under the legislation.

Robert Sinnott was concerned at the wording of the enforcement policy and that prosecution was the default position.

Richard Ellis said that he had hoped that the revised policy document would be more easy to use, but the wording inferred that a sanction was likely to be imposed and it would be easier to prosecute. There was great concern amongst drivers about this policy.

Councillor Perry said that the threat of prosecution had to be included in the policy as a baseline position but would not be applied in every case. Paragraphs 6.6 – 6.9 should be read in its entirety. The reference to the words prosecution did not mean that this was the norm. The Assistant Chief Executive – Legal would consider reasons for departing from this starting point and continue to use his discretion in each case.

Enforcement Policy – Paragraph 6.10

Barry Drinkwater questioned the reasoning behind the starting point for suspension being increased from 3 to 5 days. He referred to a spread sheet which showed how cases had been dealt with under delegated powers. Of the 48 drivers interviewed there were 10 cases where no action had been taken. 21% were cases of failure to notify of an accident or a fixed penalty notice, which showed that education, was required. As action was taken on a very small percentage of cases, he was concerned that this had been the basis for the increase from 3 -5 days.

Councillor Perry said the current sanction of 3 days was not proving to be an effective deterrent and needed to be increased.

The Assistant Chief Executive – Legal said that in terms of a fixed penalty notice the severity of the sanction would be affected by how early the offence was reported.

Licensing Standards -Drivers Appendix A Paragraph 4 -

The Assistant Chief Executive – Legal said that the object of the provision in paragraph 4, for a driver not to have been disqualified for 3 years, was to enable the driver to show a period of safe driving. This amended was suggested so that the provision would apply equally to those who were disqualified and those who escape disqualification by the exercise of the magistrate's discretion. This is the practice currently employed by the Committee.

The Operator's had no objection to the change of wording.

Conditions of License – Private Hire Operators Appendix H – para 8

The operators commented on the requirement to notifying the Assistant Chief Executive –Legal of any complaints received. It was noted that the

timescale for doing so had increased to 2 working days, where previously the requirement had been to notify immediately.

Andy Mahoney said that as a large operator he received a number of complaints, many of which he considered to be trivial or clearly commercial, and which he could be dealt with himself. In terms of the school contacts, the ECC timetable was often difficult to adhere to, which inevitably led to complaints about lateness etc. He said that if operators wanted to hide a complaint they would continue to do so, but the reporting mechanism put too much of a burden on responsible operators.

Robert Sinnott was concerned at the requirement to notify all complaints. He explained that when an operator ran repeat journeys and people got used to their pick up time, a new driver who arrived a little late could trigger a complaint. He said his vehicles moved around 1000 children a day so he did receive some minor complaints, but most were operational and as they were not concerned with the fit and proper test they could be dealt with internally.

Brian Bennet considered that it was his job to tell drivers if they had done something wrong. To report every incident would be a waste of time.

The Assistant Chief Executive – Legal said that all complaints should be reported so that he could take a view on whether they related to the fit and proper test. He agreed that most cases would not be investigated but it was not up to the operator to decide which complaints to report. He said there had been a recent case where a serious offence had gone unreported for some time and he was concerned that operators might be breaching this condition. The timescale for reporting had been relaxed, which should help the operators.

Licensing Standards -Drivers Appendix A – Paragraph 1

The Assistant Chief Executive – Legal explained that the standards would now refer to a points based system, rather than the number of convictions as previously. This would be more appropriate for the fit and proper test.

The trade had no comment to make on this proposed amendment

Protocol for dealing with the suspension, revocation and non- renewal of Drivers' Licenses Appendix I

Barry Drinkwater asked if it would be useful to produce a similar protocol for operators in the District. He was advised that such a document would probably be of little relevance as there was limited action that could be taken in respect of operators.

Conclusion

The operators summed up their concerns. It was felt that the amendments to the policy had not helped the relationship with the Council. The main concern was the reference to prosecutions and the perception that this was to be used as the main tool for offences, even those of a minor nature. A number of representations had been made from various sources and the representatives asked if it was possible to change the words in the policy to address these concerns.

The Chairman said that the problem appeared to be around the interpretation of the words in the policy. The option for prosecution had to be included but 'usually' meant that this was the starting point. The sanction imposed would depend upon the circumstances of the case and discretion would be applied. Figures provided by ULODA confirmed that this had been the position over the past year and he asked the operators to reassure the drivers about this approach. He also confirmed that the Licensing and Environment Committee would continue to closely monitor the enforcement action taken under delegated powers.

The Chairman thanked everyone for attending the meeting.

Recommendation

The Task Group AGREED to recommend the following to the Licensing and Environmental Health Committee

1. To agree the proposed amendments to the draft policy
2. To agree the following additional amendments:
 - i) Remove the exemption in relation to classic cars
 - ii) Delete paragraph 2 appendix D
 - iii) Remove the provision for a limit on engine capacity.

The meeting ended at 4.00pm.