

Committee: Licensing and Environmental Health Committee

Agenda Item

Date: 27 March 2013

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Title: The Review of Practices and Procedures for the Hackney Carriage and Private Hire Trades

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Item for decision

Summary

1. This report is to inform members of the work undertaken by the Licensing Task Group and to seek members' approval to revisions of the Council's standards and conditions and the adoption of the Licensing Policy for the Hackney Carriage and Private Hire Trades.

Recommendations

2. That members adopt the policy and its various appendices with or without amendment as the Council's policy for the Hackney Carriage and Private Hire Trades.

Financial Implications

3. None arising from this report.

Background Papers

4. The following papers were referred to by the authors in the preparation of this report and are available for inspection on the Council's website.

Report to the Licensing Task Group 19 March 2013

Impact

- 5.

Communication/Consultation	There has been wide consultation with regard to the documents
Community Safety	Safety of the community is one of the main aims of the legislation regulating the trades
Equalities	An equalities impact assessment is attached to this report
Health and Safety	None

Human Rights/Legal Implications	Local Authorities are entitled to have policies regarding licensing issues but must be prepared to depart from those policies in appropriate cases. Any policies should make this clear. In the event of an appeal against a decision of the authority the Court must apply the Council's policies and can only depart from them if it considers that there are reasons to make an exception, not because the Court considers the policy to be unsound. The only way to challenge a policy itself is by Judicial Review.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. At its meeting on 24 October 2012 the Committee appointed the Task Group to carry out a review of the practices and procedures for the Hackney Carriage and Private Hires Trades. The Task Group has since met on three occasions.
7. The first meeting on 3 December 2012 was effectively a scoping meeting. The Task Group agreed that licensing standards and conditions should be reviewed and the Council should have a policy for the Hackney Carriage and Private Hire Trades. In particular the Task Group felt that:-
 - i. The length of time for which conditional discharges should be considered be relevant should be reduced. The current requirement is five years. Members felt that this should be reduced to one year or when the conditional discharge is spent whichever is the later (conditional discharges are spent when the period of the discharge has elapsed). However, cautions should also be referred to in the policy and the standards should state that a driver should not have been a subject of a formal caution within the last 12 months.
 - ii. The standards should make it clear that drivers are expected to meet group 2 medical standards.
 - iii. Current standards refer to 'minor' and 'serious' motoring offences. The former are defined where 5 points or less are endorsed on a licence for a single offence, the latter where 6 points or more are endorsed for a single offence. The Task Group considered this to be misleading and felt it would be preferable to switch to a points based system. The recommendation was therefore that a driver should be considered to be fit and proper if he has no more than 9 points on his licence, with no more than 6 points being awarded for one single offence.

- iv. The Task Group also considered that it would be appropriate to introduce a concept of 'deemed disqualification' to cover circumstances where a driver has accumulated 12 points on his licence within a three year period but is not disqualified by the Magistrates. At present a driver who is disqualified from driving under the totting up provisions may not apply for a licence until three years has elapsed after the disqualification has come to an end. However, a driver who is fortunate enough to escape disqualification with 12 points on his licence and whose licence is revoked because he no longer meets licensing standards would on the face of it meet the Council's licensing standards as soon as the first endorsement was more than three years old. This could be a very short time after the revocation of the licence. The concept of a deemed disqualification referred to in the draft standards addresses this anomaly.
- v. The Task Group determined it would not ask for details of conditional discharges from licensed operators as it is not possible to obtain an enhanced DBS check for licensed operators hence the Council would not know of these matters.
- vi. As a matter of general approach the Task Group felt that the conditions of licence should not seek to replicate the legislation. The policy document, however, should give details of relevant items of legislation and what the Council's approach to breaches of that legislation would be.
- vii. With regard to Hackney Carriages members did not see the need for calibration of meters to be checked by the Council. The requirement should therefore be for meters to be calibrated by an approved company.
- viii. As a matter of approach the Task Group felt that where a driver has committed an offence a prosecution should normally follow rather than a suspension
- ix. Where there has been a breach of condition the Task Group took a view that a suspension was an appropriate sanction. The Task Group were however concerned at the number of drivers breaching their conditions and in particular failing to notify the Council of relevant matters in accordance with the conditions on the licence. It is the view of the Task Group that whilst every case needs to be determined upon its merits, without prejudice of the general discretion of the Assistant Chief Execution – Legal not to suspend or to suspend for a shorter or longer period than five days, that the starting point for a suspension should be five days. In view of this suggested change of policy the Task Group recommend that there should be a general amnesty for a period of, say, one month. Letters should be sent to every licence holder reminding them of the obligations contained in the licensing conditions to notify various matters to the Council and stating that if such matters were to be reported within the period of the amnesty then (unless as a result thereof the driver ceased to meet licensing standards) no action would be taken.

- x. The Task Group asked the Assistant Chief Executive – Legal to compile a suite of documents for consideration by the Task Group before proceeding to consultation.
8. The Task Group met again on the 23 January when it received a draft Licensing Policy incorporating revised standards and conditions for drivers, operators and vehicles and the Council's existing protocol on dealing with the suspension and revocation of licences. The Task Group approved these documents with some amendments as a basis for consultation with the trade.
 9. Following that meeting the documents were posted upon the Council's website. Letters were sent to every driver, operator and vehicle proprietor licensed by this District drawing attention to the draft documentation and requesting comments thereon. In addition details of the consultation were published on the Council's website and a press release was issued and published in local newspapers.
 10. A number of comments have been made to the documentation. The Task Groups final meeting with on 19 March 2013. Although not a public meeting members of the trade were invited to attend. The minutes of that meeting will be circulated prior to this meeting of the Committee.
 11. The Assistant Chief Executive – Legal had drafted some amendments to the draft policy documents in response to comments made during consultation. These are shown highlighted in the documents presented to the Task Group on 19 March 2013 and were adopted by the Task Group.
 12. In addition to those amendments the Task Group agreed:-
 - a. In the light of modern day technology a limit on engine sizes for vehicles was no longer appropriate and should be removed from licensing standards
 - b. There was no useful purpose to be served in requiring vehicles to carry fire extinguishers and first aid kits and these requirements should be deleted
 - c. The provision that private hire vehicles should not resemble hackney carriages repeated the legislation and was therefore unnecessary
 - d. The conditions regarding classic cars were out of date. As the Council did not licence any such vehicles at present these provisions should be omitted from the conditions. The Committee would consider any application to licence such vehicles in the future on its merits and determine at that stage what conditions may be appropriate.
 13. A final version of the draft policy as recommended by the Task Group is attached as an Appendix to this report.

Risk Analysis

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Risk	Likelihood	Impact	Mitigating actions
The council does not have a licensing policy	1 – members have already indicated an intention to adopt a policy	2 – the council has licensing standards, conditions and a protocol for the revocation and suspension of licences which may be termed policy documents but the absence of a comprehensive policy may weaken the council's position when defending appeals	Members adopt an appropriate policy and keep the same under review.
The policy is unsound	1 – there has been widespread consultation on the draft documents and members have had regard to the responses	3 – there may be a challenge to the policy by way of judicial review	Where members do not accept suggestions received from consultees they give sound reasons for doing so.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.