

I write in response to a number of very serious concerns which you have raised arising out of Uttlesford District Council's proposal to review what are referred to as their Taxi Licensing Policies though, in truth, they would seem far more likely to impinge on the operation of Private Hire Vehicles and their drivers within the district.

First and foremost I believe, is the fact that any changes introduced at this time are, in the light of the November 2018 Task and Finish Group report on Taxi and Private Hire Vehicle Licensing, Steps Towards a Safer and More Robust System, premature and surely should await Government action on that report and its recommendations some of which, I believe, are clearly in conflict with Uttlesford's proposals.

It must follow that if there is to be national guidance (as well as possible changes in the relevant Law) to introduce the District proposals which would then have to be changed to fall into line with national guidelines is clearly a premature exercise and waste of Council Tax payers money. As a minimum also, Uttlesford should, at least, consider their proposals in the light of the Task and Finish Proposals, decide whether they accept those that are in conflict with their present ideas, and then consult with the trade as to its views. For those reasons alone I believe and advise that the proposals should not be implemented at this time. Your remedy if they decide so to do would, I confirm, be an application for Judicial review of that decision.

You have asked me to advise on the introduction by Uttlesford (which you instruct they are not willing to do) of Restricted Private Hire Drivers Licences. I understand that the principle of having such an entity has already been accepted in Uttlesford because mechanics, who road test PHVs, have been granted such. The LG(MP) Act 1976, Section 51 empowers a District Council to attach such conditions as they may consider reasonable. I have not been able to find any authority in law, on either side, where the concept of a Restricted Licence has been considered.

Research on the internet reveals that a relatively large number of Councils have introduced, without any challenge it would seem, the concept of a restricted Licence; the wording across the spectrum restricts the driver from doing any work other than "contracted school runs or Education Transport Contracts" indeed, in Swindon, the restriction is even more onerous in that they insist that the driver can only drive for a named Operator. I cannot see, in those circumstances, why Uttlesford are reticent about introducing a similar Restricted Licence scheme if the trade has no objection to such. Indeed, as I understand it, the trade would very much welcome such as would the drivers to whom it would apply?.

I understand that Uttlesford are intending to introduce a Knowledge Test and a driving test. I do not believe this is necessary in the case of any Restricted Licence Holder or person who already has a PSV Licence (D1 or D) nor would it be held to be reasonable.

I understand that Uttlesford are intending to introduce an age condition so that no driver under 21 would be permitted to drive PH Vehicles. I believe that this condition would not be held to be reasonable pursuant to Section 51 of the above quoted Act. The clear obligation under the section is to grant a licence to everyone who applies for such and who does not come within the 2 exclusions in Section 51 (1) (a) and (b). To introduce a further restriction

by trying to call it a “reasonable condition”, I believe, is clearly contrary to the clear and unambiguous language of the section of the Act and would therefore be ultra vires and void, and any action to refuse a licence, on that ground, would also be open to clear and obvious Judicial Review

You have asked me for any advice I am able to give on the matter of Uttlesford (apparently already) having exclusively retained Watford Borough Council to provide a required training course at their expense for all new drivers and all drivers before they can renew their licences. Your inquiry raises a large number of questions not least the quality of the course, which I understand to be very much in question; the monopoly situation purportedly introduced by Uttlesford; their clear failure to put the course out to Tender; and their failure to permit anyone to go to any course provided by anyone else.

I understand that Uttlesford’s view is that the contract, which would otherwise clearly qualify, did not have to go to tender because they say, the contract would be between the driver and the course provider. Whether Watford will be able to provide the number of courses in addition to their present workload has not been explained. I am taking Counsel’s opinion on all these matters and will come back to you as soon as it is to hand. At present I would be very surprised if we are advised that Uttlesford are not in breach of the Public Contracts Regulations 2015. If so, proceedings can, of course, be issued, to require them to comply with the law.

If there are any other matters I have not addressed, and which concern you, please do come back to me. I consent to your forwarding this email as part of your representations in respect of your response to the Uttlesford proposals.

With kind regards.

Roland Pelly.

RESPONSE:

Dear Mr Pelly

Firstly thank you for your considered response to the consultation, UDC welcomes your input into the process. We have not had sight of the enquiry that Mr Sinnott sent you so in some cases the point you are addressing is not clear. However, we will address your points in the order they appear in your email which was forwarded to us.

The Government’s response to the Task and Finish Group report on Taxi and Private Hire Vehicle Licensing has now been published. As you will be aware this response does not qualify any immediate action to fulfil the short comes in the taxi licensing regime.

Whilst the response is encouraging there is no firm commitment to action or time lines and many of the responses are covered by the caveat ‘when time allows’. This has come as no surprise and is part of the reason why UDC has proposed changes that we believe support the wish to take ‘Steps Towards a Safer and More Robust System’ at least locally for now.

You have raised a point regarding the issuing of a restricted private hire drivers licence. This has not formed a part of the proposals but has been raised by trade representatives in relation to drivers carrying out school contracts only. You comment that you cannot find any authority in law regarding this point so the legality of issuing such a licence for carrying the public remains untested. Similar points have been raised by James Button on behalf of 24X7 limited and our response to him is below as it addresses this point:

In Mr Button's response he, as you and others have, raises the point that UDC already issues a limited licence. This licence is very different to what you have requested as it does not allow the person to drive passenger for hire and reward or licence their own vehicle. The numbers of these licences issued are low (18), for a specific purpose and are localised to the Uttlesford District. This is not a precedent but was a decision based on the risk to public safety of issuing such a licence.

The fundamental consideration is the safety of the public. UDC considers that issuing a restricted school contract only licence has the potential to risk public safety. As an example if UDC issued a restricted vehicle and driver licence the person driving that vehicle may live a considerable distance from UDC and their operator. This driver then has access to a licensed vehicle 24 hours a day and should they choose to use it to carry paying passengers then there would be little that could be done to identify this given the number of licences that would be issued and some of the distances involved...

As people in the taxi industry are aware the travelling public simply see a licensed vehicle and it is rare that they know the difference between a Hackney Carriage or Private Hire vehicle/driver. Simply issuing a different colour/style badge and plate with this restricted licence will not address that risk.

Mr Button states that for the issue of the current restricted licence only a DVLA mandate is required rather than the other checks which are required for unrestricted licences. We would refer you back to the point that these licences do not allow the carrying of passengers for hire and reward and that those that hold them do not have access to their own licensed vehicle.

Although it was not part of the consultation UDC has considered the option of issuing a limited/restricted private hire licence as raised by the licensed trade. However it has decided that the authority will not issue such a licence on the grounds of public safety and it's as yet unchallenged legality.

Part of the proposals is to introduce training, knowledge tests and a driving proficiency test for new applicants for either type of drivers licence. UDC will not be issuing a restricted private hire licence and there is no proposal to exempt the holder of a PSV licence from any part of the application requirements and you have not provided the reasoning for why you consider they should be.

UDC has considered a number of submissions in relation to the minimum age proposed for new applicants and has decided to remove it from the proposals.

At this time UDC has not entered into any form of contract or agreement with Watford Borough Council to provide training exclusively. If the requirement for training is approved then a bespoke course fulfilling UDC's requirements will be implemented. Questioning the quality of such training before it has been commissioned is disappointing. If the proposal regarding training is approved then UDC will comply with all the legal requirements when selecting a training course provider.

SECOND SUBMISSION:

Dear Mr Cobden

I would like the following points noted as a separate response and in addition to that of the ULODA submitted response on which I am a named party.

I do believe that the importance of Task and finishing committee report "Taxi and Private Hire Vehicle Licensing. Steps towards a safer and more robust system" necessitates the delay in any action the council are proposing.

The report apart from having conflicting views on certain items to that of Uttlesford, clearly recommends that in the interim, Government should urgently update its best practice guidance which raises the very real spectre that time, money and resource spent on the Uttlesford changes will be both a waste to the tax payer and an unnecessary burden on the service providers (who are also tax payers).

The Licensing Committee chair only last night, reaffirmed that the actions of Uttlesford must be fair to both the one man operator and the large operator. To persist with the current Uttlesford proposals will be grossly unfair to the small one man operation who can little afford the time or expense away from his business. I also believe that there is a huge over estimation of the capacity of larger operators to divert finance and resource to respond to such large and fundamental proposals especially in such condensed windows of consultation, and in the case of the last two consultations where they have run if not in tandem then back to back.

The counter argument to the perceived benefits of the Uttlesford proposals I believe have not been adequately explored either. Namely if with the fee increases and barriers to company recruitment and retention are detrimental to the operation and viability of Uttlesford operators there are very real risks of :

Lack of supply of contract providers within Uttlesford. Supply will have to be sought from outside the district and therefore the district will lose all control of the transportation of the young residents of Uttlesford.

Lack of general supply particularly at peak/night times when the young and or vulnerable adults of Uttlesford look to avail themselves of such services. Instead they will potentially revert to getting behind the wheel themselves or using apps to book fares at heavily inflated prices due to time and lack of supply in the area. Is this really best serving the primary users of these services in Uttlesford?

The final large user group is the elderly. Without the income from the any one of the user groups the capacity of the trade will be diminished such that, again, these users will be

unable to avail themselves of the transport they desire and thus remain put with the risk of them becoming isolated, or using service providers outside of the district to which Uttlesford have no controls.

I believe that the strong demand for private hire services generated by Stansted Airport to a contracted concession and the excellent and effective work by niche operators in the schools sector give the impression of a strong and thriving industry in Uttlesford; the general trade (taxis and private hire) is fundamentally struggling after 10 years of recession, austerity spending cuts and now Brexit uncertainty. Public safety in Uttlesford will not be benefited by driving businesses out of the district or out of business; so it is that I ask the committee to review these proposals with greater caution than they perhaps have initially done so.

RESPONSE:

Thank you for your response to the consultation and forwarding the email from Roland Pelly.

Both the Governments Response to the Task and Finish Group and the draft revised DfT guidance have now been published and have been reviewed.

Your concern regarding the necessity to delay has been noted. However in the Governments response it gave no indication of when any of the recommendations might be actioned. UDC does not believe that delaying making this process for an unspecified period of time in the hope of new primary legislation is justified. Public safety is of paramount important as both the Governments response and the DfT draft guidance highlight.

In your response you state that UDC's proposals conflict with those in the Task and Finish Group report. Please highlight which areas you believe are conflicting so that these points can be addressed directly.

We understand your concerns about the consultations but we believe that these are sufficient for all parties to make their views known and for responses to be considered. If as part of the consultation there are proposed implementation dates that the trade believe are unreasonable then they are free to suggest a more appropriate time line. As the regulator UDC's views and that of the trade may not always align on a particular matter but where possible concerns will be accommodated.

You mention fee increases which we assume refers to the recent proposal for a fee increase in 2019/20. The Uttlesford licensed trade have found themselves in a largely unique position over the last few years in that all licence fees have been subsidised by a previous surplus. This was an unsustainable situation and as such fees needed to increase to cover the cost of the regime (as much as is legally allowed) as the surplus is now gone. This is a wholly separate issue that is not part of this consultation.

In relation to barriers to the trade, UDC has consulted on the proposals that it considers address concerns over public safety. It is in no way intended to block entry to the trade.

Lack of supply of contract providers within Uttlesford. As you will be aware schools contracts are awarded by Local Education Authorities and unless prohibited, can be awarded to a provider based outside of the area. Each education authority has its own standards that people fulfilling contracts must meet regardless of where the driver/vehicle is licensed and this will not change. UDC has no control over who is awarded these contracts so the measures proposed will not lesson the control of the transportation of young Uttlesford residents.

Lack of general supply particularly at peak/night times. The impact of the proposals on the supply of licensed vehicles within the district has been considered. The bulk of the new drivers that the authority licences each year do not work in the District so have little or no impact on the supply and demand within Uttlesford. The majority of the proposals relate to new applicants rather than the existing trade existing trade so the impact on these individuals should be lessened. We have listened to the trade and amended proposals, where possible, so that the impact is on the trade is mitigated as much as possible whilst still achieving the aims. For example it was proposed that the new Vehicle Age & Emissions Policy would come into effect on the 1st April 2019 but this has been moved back to 1st April 2020.

We appreciate the point in relation to all the user groups you mention but this must be balanced against the authority's primary responsibility under the taxi licensing regime to ensure public safety.

In formulating the proposals for consultation UDC has considered all sectors of the licensed trade and not just the needs of particular parts. As you will be aware your responses will go before the Licensing & Environmental Health Committee who you can be assured will give all the proposals and consultation responses careful consideration.