

Re: Uttlesford District Council Taxi Licensing Policy Review

You have asked me to comment on the Uttlesford District Council Taxi Licensing Review. I have now had a chance to consider the draft policy and my comments are as follows.

Committee report dated 27 November 2018

Paragraph 9 - "There are no financial implications as the implementation and operation of the taxi licensing regime operates on a cost recovery basis."

As previously discussed, this statement is incorrect because there are certain matters that cannot be recovered via hackney carriage and private hire licence fees (specifically enforcement and compliance costs relating to drivers and operators).

Paragraph 19 final sentence - "There is no intention to accredit driver training yet but this could be a possibility in the future."

It is not clear to whom this statement refers. The council are proposing to accredit driver training.

Paragraph 22 2nd sentence - "The average cost the driver of that training would be £35.00."

How is this calculated and why is it an average cost? Is this a statement of the average cost of other council schemes, or statement of what the average cost would be for the Uttlesford scheme? This needs to be made clear.

Paragraph 22 final sentence - reference to "an acceptable standard".

What will the standard be? Acceptable to whom?

Paragraph 27 final sentence - "This fee would be subject to an additional amount for the hire of a venue."

Why? The cost of any pre-application requirements should be both clear and the same for all applicants.

Paragraph 31 in its entirety and also paragraph 35 final sentence.

As mentioned above, this is unacceptable. The council needs to determine what its costs are and charge that cost to each applicant.

Paragraph 36 in its entirety.

It is not clear how long before a renewal date a driver can sit the update course. There needs to be a reasonable timescale, but it would defeat the object if the update course could be sat within a month of the initial licence being granted, leaving 2 years 11 months before renewal.

Paragraph 39 its entirety.

This seems remarkably vague when other elements appear to be finalised.

Paragraph 42 2nd sentence - This states that "the draft policy recognises the different roles that drivers, proprietors and operators have and takes this into consideration with regards to the relevance of each offence."

This is not correct. The suitability policy makes it clear that exactly the same criteria will be applied to vehicle proprietors and operators as drivers (see paragraphs 4.52 and 4.57 of appendix B to the committee report).

Paragraph 44 in its entirety.

Appendix B is the complete Institute of Licensing document, but it is clear when it is read that the suitability policy should only incorporate the Institute document from paragraph 4.18 onwards. This suggests that the Council does not fully understand that document.

Beyond that, I am sure you will appreciate that I cannot comment critically about Appendix B in its entirety as I was one of the members of the Institute of Licensing working party that produced the guidance.

Paragraph 48 final sentences - "It is suggested the decision-making under the suitability policy is delegated to officer level, Environmental Health Manager (Commercial), in consultation with the Chair of the Licensing Environmental Health Committee. In the absence of the Environmental Health Manager (Commercial) the decision could be taken by more senior officer and in the absence of the Chair it is suggested that this should sit with the Vice-Chair (or in their absence 3 members of the committee)."

This makes sense provided any member involved in such a decision-making process (including the Chair or Vice-Chair) have had appropriate training.

Paragraph 49 - reference to "a reasonable command of the English language".

This needs to be defined.

Paragraph 56 2nd sentence - "Licensed drivers that are given a prescribed number of points on their DVLA licence would be required to pass the Council approved driving test within a fixed time period or face suspension."

What is the prescribed number?

Paragraph 59 reference to "most authorities have increased the period that an applicant must have held a driving licence before they can driver licence vehicle to between 3 and 5 years."

What is the evidence for this? How many authorities have taken this approach? Which authorities? How many prescribe 3 years, how many prescribe 4 years and how many prescribe 5 years?

Paragraph 61 onwards - reference to age and emissions policy

Why have both an age and emissions limit? If a vehicle does not meet the admission requirements it will be over the age limit anyway.

There is any reference to "exceptional condition criteria" allowing exceptions to the age policy. Surely there must also be exceptions to the emissions policy?

I also suggest that there should be some further exceptions for purpose-built or converted vehicles that are designed for carrying particular passengers, or passengers with particular disabilities.

Paragraph 90 - types of vehicles that will be licensed.

There is no reference to E7 vehicles (which are not approved by TfL). The should be included.

Why are they specifying that extended wheelbase vehicles, converted vehicles or smart cars can only be private hire?

Paragraph 91 - left-hand drive vehicles.

This explanation as to why left-hand drive vehicles will not be licensed does not make sense. Exactly the same dangers apply to rear seat passengers in any vehicle. Is there any other evidence to suggest that left-hand drive vehicles are less safe than right-hand drive vehicles for use as hackney carriages and private hire vehicles?

Paragraph 94 - "Vehicles shall produce a minimum of 76 BHP/57 kW."

There is no indication how this will be assessed. I would suggest that the power output is accepted as being that specified by the manufacturer when the vehicle was new.

Paragraph 103 sub paragraph 1) - "Add the requirement to record the address where each vehicle is kept when it is not working to condition 1."

Why is this relevant?

Paragraph 103 sub paragraph 8)b) 2nd sentence - "This is entirely legal however if the vehicle is not working predominantly outside the area in which it is licensed."

This sentence does not make sense, and indeed the whole paragraph is meaningless.

Paragraph 103 sub paragraph 8)c) - entire paragraph.

Why is this necessary? The operators' records will show whether the vehicle has been subcontracted, or the booking is the result of a sub contract. It is highly unlikely that a complaint will be investigated after 3 months have elapsed.

Appendix F paragraph 2 vi) - "Shorts, other than smart tailored shorts."

The justification for amending drivers licence conditions (given in paragraph 101 of the report) is that "'smart" is subjective". This remains subjective.

Appendix F paragraph 21 - "the driver shall when hired to drive to any particular destination, subject to any direction given by the hirer, proceed to such destination by the shortest possible route."

This takes no account of road conditions. The shortest route may not be the quickest. This needs to be reconsidered.

Appendix G paragraph 2 c) - "How the booking was made (via app, telephone, in person)."

If this is intended to be an exhaustive list, it needs to include email, computer, letter.

Appendix G paragraph 2 c) - "The start point of journey and actual pickup time."

Surely should this should be a reference to the booked pickup time, rather than the actual pickup time? Whether it is necessary to record the actual pickup time as well is a matter for discussion.

Appendix G paragraph 3 2nd sentence – reference to inspection within 12 hours.

This is unreasonable, and should be at least 24 hours. As it stands, if a request is made at 4:30 PM the records would need to be made available before 4:30 AM the following day.

Appendix G paragraphs 14 & 15 in their entirety.

At present these paragraphs do not make sense. They only refer to employees, are not independent contractors or the casual staff. Paragraph 15 is also badly drafted.

I trust that this is off assistance, and please do not hesitate to contact me if I can provide any further advice.

Yours sincerely

James Button
Principal,
James Button & Co., Solicitors

RESPONSE:

Thank you for your response to the consultation documents and we would like to address each of Mr Button's points in turn.

Committee report dated 27 November 2018

Paragraph 9 – UDC is aware that not all of the costs of the regime can be recovered from licence fees. However, the statement relates to the proposals that are contained in the report rather than to the overall cost of the entire regime.

Paragraph 19 final sentence – It is agreed that this sentence could be clearer. If training is implemented then UDC would ultimately like the training to be accredited as this brings benefits to

the trade and the authority. Accredited training could be recognised by other Local Authorities allowing drivers to transfer the training if in the future they chose to apply to another Local Authority to be licensed. This would be a step towards national standards which would be beneficial to all.

Paragraph 22 2nd sentence - It is agreed that this sentence could be clearer. From research carried out this is the average cost being charged for similar training and is indicative of the likely cost to UDC licensed drivers. The cost of update course cannot be finalised until the decision has been made whether or not it will be implemented as this may appear to some to be predetermining the outcome. A suitable venue would need to be found and booked based on price/quality, the length and content of the course finalised etc. before the final cost could be calculated.

Paragraph 22 final sentence – The acceptable standard will be set by UDC at a level it believes will ensure the safety of the public having taken into account all the relevant factors.

Paragraph 27 final sentence – The cost will be clear and the same for all applicants but the final figure cannot be stipulated before the implementation of training is or is not approved. The venue cost can only be estimated as until the UDC is in a position to book a venue, if training is approved, this figure is variable.

Paragraph 31 in its entirety and also paragraph 35 final sentence – Again costs can only be determined if training is approved.

Paragraph 39 – This refers to how and which venues will be booked and other logistical matters which cannot be determined until a decision regarding training has been taken.

Paragraph 42 2nd sentence – Agreed. Although there are different application criteria the way in which offences will be viewed is the same for drivers, operators and vehicle proprietors.

Paragraph 44 in its entirety – UDC welcomed the Institute of Licensing Guidance on deciding suitability of applicants and feels that the move towards uniform standards by all Local Authorities is long overdue. The entirety of the document was included in the consultation as it was felt that the parts before 4.19 gave a very insightful background to the reasoning behind the document. If it is believed by the trade that the document will be clearer and more succinct if the policy starts at paragraph 4.19 then UDC are happy to make that change. The information that is being excluded from the wording of the policy will be referenced on the website as background to the new policy as UDC may wish to reference it if an appeal is made of a decision to refuse or revoke on the grounds of suitability.

Paragraph 48 final sentences – UDC are aware of the need to have decision makers appropriately trained.

Paragraph 49 – It is difficult to define this term without imposing a test which measures a person's ability to a set standard. Reasonable command of the English language in this reference means that UDC has an expectation that people seeking to be licensed to drive the public are able to hold a conversation in English, for example to clarify a destination, and can write in English, so are able to write a receipt if requested. This reflects the draft DfT Guidance which is currently being consulted on and the definition from the Guidance will be used once it is approved.

Paragraph 56 2nd sentence – As detailed in the policy the prescribed number of DVLA points will be 9 or more.

Paragraph 59 - The majority of Essex and Hertfordshire Local Authorities prescribe 3 years and above. This information was given as benchmarking information rather than the reason for making the change. The relevance of how many Local Authorities prescribe 3, 4 or 5 years is therefore not clear with regards to the proposal as this proposal has not been objected to.

Paragraph 61 onwards – The point regarding the lack of necessity for both age and emissions criteria has been made during the trade consultation. UDC has taken the trade comments on board and is therefore proposing to remove the age criteria from the policy and keep the emissions criteria.

As this is a policy the UDC still have to consider applications to licence vehicles which are outside of the policy and each case will be considered on its own merits. As such an application can be made for any vehicle (including converted vehicles) and UDC will depart from the emissions policy and make an exception if it demonstrated that there are good reasons to do so. Vehicles can be converted in numerous individual ways to suit individual needs so it is not possible to construct an exhaustive list.

Paragraph 90 – UDC agree and will add E7 vehicles to the list of vehicles which will be licensed.

Extended wheel base vehicles such as limousines are not considered suitable for use as Hackney Carriages. In particular these vehicles would take up considerable space on the Districts ranks meaning that the likelihood over ranking would be increased which could have public safety issues. Converted vehicles may not be suitable to carry ordinary members of the public and this could potentially cause issues if the vehicle could be hailed in the street and may not be able to take a fair once at the front of a rank. Similarly if a Smart Car were a Hackney Carriage it would have to refuse a job at the front of the rank if there were two passengers or even one but with substantial luggage. My limiting these vehicles to private hire it is easier for the public to know that the vehicle they are booking is suitable for the job.

As detailed above, this policy does not preclude applications from being made for Hackney Carriage licences for these types of vehicles. Each application will be considered on their own merits.

Paragraph 91 - It is agreed that this paragraph could be clearer. This point does carry merit as it could affect public safety. Passengers in the rear of a vehicle have the option to exit the vehicle from either side but this does not apply to the front seat passenger in a left hand drive vehicle who must always leave the vehicle from the offside. Equally important but not originally detailed in the paragraph is the safety implications for a left hand drive vehicle pulling away or overtaking. The driver is not seated in the best position to ensure that these manoeuvres are carried out safely so they have public safety implications.

Again as this is a policy so applications for left hand drive vehicles would be accepted and would be considered on their own merits. UDC has amended the wording in an attempt to make the reasons for the policy clearer.

Paragraph 94 – In trade discussions it has been highlighted that engine capacity had previously been removed as a vehicle criteria by the Licensing & Environmental Health Committee. Having given the

matter due consideration UDC have removed the proposal for a minimum power output for vehicles from the proposals.

Paragraph 103 sub paragraph 1) – UDC recognises that a significant proportion of the vehicles that it licences are not kept and do not work within the District. From a safeguarding perspective it is important that UDC knows where these vehicles are kept when they are not working. For example should the police contact the authority trying to find a particular vehicle that has been involved in an alleged crime it is important that the authority knows where that vehicle is so the information can be passed on. If the authority does not have this detail then enquiries would need to be made with the operator that licences the vehicle. In this instance there is a possibility, however unlikely, that an individual will be tipped off that the police are enquiring about a vehicle and potential evidence could be lost. UDC believes that it is important to hold the information regarding the location of vehicles so that public safety can be better ensured.

Paragraph 103 sub paragraph 8)b) – This first point is agreed. The sentence should read ‘ This is entirely legal unless a Hackney Carriage is working predominantly outside of the area in which it is licensed’. Following consideration of all the response to the consultation UDC has decided to remove condition 11 from the proposed operator conditions:

11. On a quarterly basis each year (10th April, 10th July, 10th October, 10th January or the next working day if that date falls on a weekend) operators are required to provide the details of any Hackney Carriages that have carried out Private Hire work for the operator:
 - a) Registration number, licence number and issuing authority of the Hackney Carriage vehicle; and
 - b) The number of jobs each Hackney Carriage has fulfilled in that quarter.

Paragraph 103 sub paragraph 8)c) – Following consideration of all the response to the consultation UDC has decided to remove condition 12 from the proposed operator conditions:

12. On a quarterly basis each year (10th April, 10th July, 10th October, 10th January or the next working day if that date falls on a weekend) operators are required to provide the details of other operators to whom they have subcontracted work:
 - a) Operators Name and address; and
 - b) Licence number and issuing authority.

Appendix F paragraph 2 vi – It is agreed that this point is subjective so it is suggested that the wording is amended by removing the reference to shorts.

Appendix F paragraph 21 – the sentence will be amended as follows so that its purpose is clearer:

“The driver shall when hired to drive to any particular destination proceed to such destination by the shortest possible route unless otherwise agreed by the customer.”

Appendix G paragraph 2 c) – This point is agreed and the list was not meant to be exhaustive. The wording will be amended to read “How the booking is made (for example, via App, Telephone, Email, etc.)”.

Appendix G paragraph 2 d) (Not point c as detailed in the response) - This point is agreed and the point will be changed to read "The start point of the journey and the agreed pick up time".

Appendix G paragraph 3 2nd sentence – UDC are willing to amend this to 24 hours.

Appendix G paragraphs 14 & 15 – The first point is valid and the wording of point 14 will be changed to read:

"The operator is required to ensure that all persons that have access to their records, bookings and contracts have:"

Point 15 will be reworded to read:

"Persons with access to operator's records, bookings and contracts, whether directly employed or otherwise, must satisfy the suitability standards that the authority applies to applicants for Private Hire Operator's licences. The operator is record to keep records of such checks.

I hope that this clarifies the points raised and the reasoning behind them. UDC is very grateful for your continued engagement with this process and for the responses you have submitted.