

## Summary Sheet

### Council Report

Licensing Board 30<sup>th</sup> October 2017

### Title

Amendments to Conditions that are attached to Hackney Carriage and Private Hire Licences.

### Is this a Key Decision and has it been included on the Forward Plan?

This is not a key decision.

### Director Approving Submission of the Report

Karen Hanson – Assistant Director of Community Safety and Street Scene

### Report author(s):

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### Ward(s) Affected

All wards

### Executive Summary

As a result of the recent Transport for London Decision in relation to Uber London Ltd's Private Hire Operators Licence, the Council has reviewed the standard conditions that are attached to Private Hire Operator licences in Rotherham. This review was undertaken during the consideration of Uber's Rotherham Private Hire application on 16<sup>th</sup> October 2017, and saw the introduction of conditions relating to the notification of complaints and use of software or other devices to impede regulatory activity. It is proposed that these additional conditions are attached to all Private Hire Operator licences issued by the Council at the point of grant / renewal.

In addition, the service is currently developing an "enforcement penalty points" scheme that can be used to deal with less serious matters involving licence holder breaches of condition. The development of this scheme has identified a disparity between the Council's policy and the standard conditions attached to driver licences,

and this report seeks an amendment to the driver licence conditions to bring them into line with the Council's policy requirements.

### **Recommendations**

- That the Licensing Board approves amendments to the standard Private Hire Operator Licence Conditions as detailed in Appendix 1 to this report.
- That the Licensing Board approves amendments to the standard Hackney Carriage / Private Hire Driver Licence Conditions as detailed in Appendix 2 to this report.

### **List of Appendices Included**

- None

### **Background Papers**

- Rotherham MBC Hackney Carriage and Private Hire Licensing Policy

### **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

Not applicable.

### **Council Approval Required**

No.

### **Exempt from the Press and Public**

Not exempt.

## **Amendments to Conditions that are attached to Hackney Carriage and Private Hire Licences.**

### **1. Recommendations**

- 1.1 That the Licensing Board approves amendments to the standard Private Hire Operator Licence Conditions as detailed in Appendix 1 to this report.
- 1.2 That the Licensing Board approves amendments to the standard Hackney Carriage / Private Hire Driver Licence Conditions as detailed in Appendix 2 to this report.

### **2. Background**

- 2.1 The Council's Hackney Carriage and Private Hire Licensing Policy came into effect in July 2015.
- 2.2 This policy included the introduction of a series of standard conditions that are routinely attached to Hackney Carriage and Private Hire licences issued by the Council.
- 2.3 As a result of two recent pieces of work, it has been identified that it would be appropriate to amend the standard conditions in relation to operators and drivers, the amendments relate to the following matters:
  - 2.3.1 The requirement for operators to notify the Council in relation to complaints and potential offences committed by drivers working under the terms of their operator licence.
  - 2.3.2 The requirement for drivers to notify the council in relation to the receipt of fixed penalty notices.
- 2.4 Further detail on these matters is provided below.

### **3. Key Issues**

- 3.1 Private Hire Operator Conditions.
  - 3.1.1 During the recent consideration of Uber's Rotherham Private Hire Operator Licence renewal application, the Licensing Board Sub-Committee determined to attach additional conditions to the renewed licence.
  - 3.1.2 The additional conditions were intended to address the concerns raised by Transport for London in their decision to refuse Uber's Private Hire Operator Licence renewal application, and related to the reporting of complaints and the use of software / devices to impede regulatory activity.

3.1.3 The Licensing Board Sub-Committee considered that it would be appropriate for these conditions to be added to all Private Hire Operator Licences issued subsequent to the Uber decision.

3.1.4 The Private Hire Operator standard conditions are detailed in Appendix Q to the Council's Hackney Carriage and private Hire Licensing Policy, and it is proposed that the following conditions are added to these standard conditions.

3.1.5 In relation to the reporting of complaints / offences to the Council:

Additional Condition 1:

*"The operator must notify the Council within five working days if any driver is subject to the operators internal disciplinary processes or any other action that results in the driver being permanently or temporarily removed from the operator's system of allocating work to the driver"*

Additional Condition 2:

*"Any passenger that makes a complaint to the operator regarding the conduct of a driver that they operate (or operated at the time of the conduct) must be informed that they should also make the Council, and if appropriate the police, aware of their complaint."*

Additional Condition 3:

*"The Operator must notify the council without delay if the operator receives a complaint about a driver operated by them if the complaint relates to any of the following – allegations of sexual impropriety (including the use of sexualised language), violence (including verbal aggression), theft and any other serious misconduct (including motoring related matters)."*

3.1.6 In relation to the use of software or other devices to impede enforcement activity:

*"Operators must not use, or facilitate the use of, any software, technology or other device that is capable of impeding the lawful activities of enforcement agencies or the regulatory activity of the Council. Such software would include Greyball and similar technologies."*

3.1.7 In addition to the above, it is also proposed that the Licensing Board take the opportunity to reformat the order and wording of the standard Private Hire Operator conditions. This amendment will not detract from the requirements of the conditions.

3.1.8 The proposed standard Private Hire Operator Conditions are attached to this report as Appendix 1.

### 3.2 Hackney Carriage / Private Hire Driver Licence Conditions.

3.2.1 During the development of the Council's "Enforcement Penalty Points" Scheme, it has become evident that there is a disparity between the requirements of Appendix C and to the Council's Policy and the standard conditions that are attached to driver licenses in Rotherham.

3.2.2 Section 4.4 of Appendix C of the Council's policy states:

*"Existing holders of driver's licences are required to notify the council in writing within five working days of receiving a driving licence endorsement, fixed penalty notice, warning, reprimand, police caution, criminal conviction or other criminal proceedings (including their acquittal as part of a criminal case). In addition, licence holders must inform the council within 3 working days of their arrest for any matter (whether subsequently charged or not). To fail to do so, will raise serious questions for the Council as to the honesty of the licence holder and will be taken into account as part of any subsequent renewal applications."*

3.2.3 However, Condition 8 of the standard conditions that are attached to driver licences states (in relation to fixed penalty notices):

*"The driver must notify the Council in writing of any fixed penalty notice within 35 days of the receipt of such a notice. The driver must subsequently produce his/her driving licence to the Council, immediately following its endorsement, or in any case within 49 days of the date of the original offence."*

*This includes all motoring offences – whether endorsable or not and requirements to attend a Speed Awareness Course. This means that licence holders are required to notify the council if they opt to attend a speed awareness course rather than have their licence endorsed."*

3.2.4 It is proposed to amend the conditions that are attached to Hackney Carriage / Private Hire Licences to bring them in line with the requirements outlined in Appendix C (i.e. a requirement to notify of the acceptance of a fixed penalty endorsement within five working days). The requirement to notify the Council in relation to attendance on a Speed Awareness Course will be removed (in reality this is element of the condition is unenforceable and is an unnecessary administrative process).

3.2.5 In addition to the above, it is also proposed that the Licensing Board take the opportunity to reformat the order and wording of the standard Private Hire Operator conditions. This amendment will not detract from the requirements of the conditions.

3.2.6 The proposed standard Hackney Carriage / Private Hire Driver Conditions are attached to this report as Appendix 2.

#### **4. Options considered and recommended proposal**

4.1 The recommendations detailed above are the only options that have been considered and are the recommended proposal.

#### **5. Consultation**

5.1 There is no requirement for statutory consultation in relation to these proposals, however they will be brought to the attention of the licensed trade representatives for their information and comment.

5.2 Any comments received will be assessed and if necessary brought back to the Licensing Board for consideration (this will be undertaken in agreement with the Chair and Vice Chair of the Licensing Board).

#### **6. Timetable and Accountability for Implementing this Decision**

6.1 If agreed, these proposals will be introduced with immediate effect.

#### **7. Financial and Procurement Implications**

7.1 There are no financial or procurement implications directly associated with this report.

#### **8. Legal Implications**

8.1 Failure of the licensing service to effectively implement and administer the requirements of the council's policy may result in a legal challenge being made against the council.

8.2 A successful legal challenge will have a financial and reputational impact on the council – it is therefore essential that the policy is implemented effectively and administered appropriately.

8.3 The Council must be able to demonstrate effectiveness of the policy and provide confidence and reassurance regarding its implementation.

#### **9. Human Resources Implication**

9.1 There are no Human Resources implications introduced by the report.

## **10. Implications for Children and Young People and Vulnerable Adults**

10.1 Both the Jay report into Child Sexual Exploitation (CSE) in Rotherham and the subsequent Corporate Governance Inspection led by Louise Casey CB identified issues, amongst which was the importance of having an effective taxi licensing service.

10.2 In order to ensure the Council's Licensing Service is effective, fit for purpose, and has addressed the concerns raised in Louise Casey's report; a number of outcomes must be demonstrated. The outcomes include:

- All licence holders are "fit and proper" to hold licences.
- The licensing team must consistently provide high quality, timely processing of licensing applications.
- The Council's Private Hire and Hackney Carriage Licensing Policy will be effectively implemented.

10.3 It is considered that the proposals detailed within this report support the above outcomes.

## **11. Equalities and Human Rights Implications**

11.1 In undertaking its licensing function, the Council comply with relevant legislative requirements including the Human Rights Act 1998.

11.2 The policy (along with the council's General Enforcement Policy) will ensure the consistent and fair determination of licences – recognising that every individual is entitled to dignity and respect.

11.3 When making licensing decisions the Council and its officers aim to ensure there is no discrimination on the grounds of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

11.4 Adherence to these requirements are assured by means of officer awareness, observation, case reviews and both customer satisfaction and complaints received into the service. In addition, those affected by licensing decisions have the legal right to challenge that decision in the Magistrates Court.

## **12. Implications for Partners and Other Directorates**

12.1 There are no specific implications for partners and other directorates introduced by this report.

### **13. Risks and Mitigation**

13.1 Failure of the Council to effectively discharge its licensing function may compromise public safety.

13.2 It is considered that the proposals referred to in this report will facilitate the effective discharge of the Council's licensing function and support the effective application of the Hackney Carriage and Private Hire Licensing Policy.

### **14. Accountable Officer(s)**

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