

## Report of Head of Licensing and Registration

### Report to Licensing Committee

**Date: 10 June 2014**

**Subject: Review of Private Hire Operator (PHO) Conditions – draft policy and conditions proposals following consultation.**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. In licensing Private Hire Operators (PHO) the Council has a statutory obligation to ensure that the applicant and directors are 'fit and proper' persons. That requirement continues throughout the lifetime of a licence and at the point of renewal.
2. Conditions can be imposed upon a PHO licence to ensure its operating practices meet the specific requirements of the Council. The conditions have to be proportionate and relevant to that area of licensing and regulation. Conditions cannot supersede controlling primary legislation (for example planning law).
3. The current PHO conditions have not been reviewed for a considerable time and the growth of the industry, the advances in technology, the increased public safety and expectations of service requirements all indicate the need for a comprehensive review. In one particular area there is an urgent need for review ('Out of town' taxis).
4. Full public and trade consultation has taken place and individually with some PHO's. Those results, Officer views and reviewing other local Authority conditions leads to the wide range of proposals in this report.

5. Members are informed that the private hire industry in Leeds is the most significant supplier of licensed passenger transport in the district and amongst the top few industry leaders in the country. Some of the organisational aspects of their businesses are exemplary, some need significant development. Some proposals in the report are designed to extend that best service and management across the industry but without losing sight of the vital role small PHO's have in local communities. The balance between additional business costs and necessary industry improvements are recognised and can be proportionately addressed. Undoubtedly some PHO's will have to make relatively modest financial investment in technology which will be in the interest of public safety and assisting combatting illegal plying for hire.

### **Recommendations**

6. Members approve in principle the policy and conditions and direct officers to prepare a report for the consideration of the Executive to approve the policy.
7. That Members approve the lead in time scales for implementation of the policy and conditions.

## **1 Purpose of this report**

- 1.1 To present a comprehensive review of the PHO conditions and submit proportionate proposals to contribute and to uplift the service standards and compliance across the operator licensing base and meet arising public safety challenges.
- 1.2 These are significant change proposals and the report sets out the safety, service quality, compliance and complementary issues that need to be addressed. In doing so, the proposals are sensitive to imposing unnecessary financial burdens, but does balance that when highlighting the necessity for change. Timescales for service improvement that have a cost effect or potentially significant training input can be built in, but the need for increased professional standards in some areas needs to be addressed much more quickly. Members are pointed to those considerations in the body of the report.
- 1.3 The report has already had two distinct periods of consultation, the first being direct interaction with PHO's and secondly wide public and trade consultation.

## **2 Background information**

- 2.1 The private hire industry in Leeds consists of:

90 Operators

4906 PHD's

3770 PHV's

143 Licensed escorts

- 2.2 In addition to the everyday service provision, the private hire sector is the most significant supplier to the Council's Education and Social Services Contracts and this brings with it potentially high levels of access to children and vulnerable adults. In awarding a contract to a private hire operator through an approved procurement tendering process it has to be taken as read that the drivers and escorts supplied by the operator have been assessed against the convictions criteria.
- 2.3 Whilst standards of safety and accountability in other areas of Taxi & Private Hire Licensing have moved forward significantly over recent years, the private hire operator conditions which should spell out their responsibilities and accountability have not and in many areas are not in 'sync' with today's professional business and safety standards in the public transport environment.
- 2.4 Some PHO's have made significant business strides in the last decade and embraced technology, the principles of good business and employment law and worked co-operatively with the Authority. However, that is not the case across the board.

- 2.5 In setting out the proposals later in this report Members may wish to consider the remarks of Mr Justice Hickinbottom, in the High Court of Justice, Queens Bench Division, Administrative Court, Leeds on 27 September 2012.

In respect of licensing the operators of private hire vehicles, section 55(3) of the 1976 Act provides:

*“A District Council [i.e. the licensing authority] may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.*

*The wording of section 55(3) gives Licensing authorities considerable scope for setting operator conditions.*

*However, the discretion must be exercised against the background of the conferring legislation and to further the objectives of the 1976 Act. The patent intention of the Act is to impose a regulatory scheme which (i) is focused on operators and (ii) is inherently local in character, including enforcement by the relevant local licensing authority. “*

- 2.6 In addition to setting out in straightforward terms the purpose of this part of the Local Government (Miscellaneous Provisions) Act, 1976, the emphasis is on reasonableness and localism. What might not be done in other Authorities, for whatever reason, should not deter Members from considering what is proportionate and most beneficial for Leeds citizens and those who visit the city and users of the private hire industry.

- 2.7 The report sets out not only proposals for a safer and more accountable transport management system but pushes forward the view that if a licence is granted by this Authority the business should be run in accordance with all of those other Acts of Parliament that reduce the risk of money laundering, tax and benefit avoidance issues that Members might want to consider. It also tackles the ‘out of town’ licensing issues where significant challenges are presented to the Authority.

### **3 Main issues**

- 3.1 There has been wide public and trade consultation and an invitation to all PHO’s to work more closely with the Taxi & Private Hire Licensing staff and to work through some of the issues raised in this report or areas of potential development to the existing PHO conditions which are attached at **Appendix 1**.

### **Policy**

- 3.2 The existing policy deals with the administrative processes which must be met by a PHO applicant prior to the grant of a licence. Members will recall that a range of issues were raised as desirable by the trades but not all of these were within the remit of the licensing Authority and were the subject of primary legislation elsewhere or just good business practices and not regulatory. Some issues although having some merit were too bureaucratic and beyond reasonable management.

3.3 That said there are still important issues to the Council, customers and employees of the PHO. Reference will be made to them in the new policy guidance. Conditions on the operating licence might not be the most appropriate way to deal with such issues, but breach of the primary legislation could still have significant consequences on the operating licence. Officers will continue to update advice and best practice guidance within the policy document as it develops.

3.4 The proposed further regulatory PHO conditions are set out below and there are significant changes proposed which are directed at the following areas:

- Professionalising further parts of the industry to increase public safety
- Regulatory measures to reduce unlawfully plying for hire and ensuring PHO's are more accountable for recording booking and despatch details.

3.5 To accommodate the introduction of training and technical and development measures, lead-in periods are proposed to allow the existing trade to consider what adjustments they might need and take stock of the technical or financial issues resulting from these proposals. It is recognised there are many business talents in the existing Private Hire industry with wide experience of the trade. However, it is important that they should all be aware of the new policy and conditions and should personally attend a briefing session which would have a standard training cost.

## **Regulatory**

### **3.6 Operator training**

Generally this was considered to be important to the trade during consultation but a thread of concern ran through the consultation briefings in respect of how it would affect those currently licensed. Building upon the thoughts of the existing PHO's there are undoubtedly significant business improvement and public safety benefits to be gained with the training indicated by the PHO consultees.

There is stability and a lot of experience within the current licensed PHO's and Officers feel that appropriate training, when necessary, could be more beneficial than demanding a CPC qualification. If at the point of entry the PHO applicant holds an appropriate industry related qualification the briefing exercise module would be sufficient and there would not be the need to undertake the training and testing module unless there was considered to be a clear lack of relevant knowledge.

#### **Change proposal**

- At the point of entry to the trade there should be a PHO, PHD, PHV knowledge test and equality training as is the case with PHD's, with a licence not being granted until the appropriate training and tests have been passed.

- Existing licensed operators would remain unaffected by this Condition unless there is a substantiated concern about breaches of conditions or associated poor practice. Such a training requirement exists in respect of PHD's and that was introduced on the basis that all new applicants should undertake it and as outlined in bullet point one above. The condition on PHD's could be mirrored in respect of PHO's.
- That those who manage distinct areas of the operating business under the control of the operator undertake training in PHO, PHD, PHV conditions and equality issues.

### **Change proposal.**

- At the point of entry to the trade there should be a PHO knowledge test which incorporates all of PHD and PHV legislation and conditions and the newly approved PHO conditions.

Implementation:- With immediate effect.

- Where an existing PHO breaches their PHO conditions that they should be required to undertake such a test within a 3 month timescale. This mirrors the requirement of Private Hire drivers.

#### **TRAINING TO EXPECTED STANDARDS OF SERVICE AND SAFETY**

- (a) During the lifetime of a PHO licence, an Authorised Officer of the Council may require a licence holder to undertake reasonable and appropriate training to meet these expectations and requirements. Such a requirement would be in writing. A reasonable time scale of up to 3 months will be set for the training to be successfully undertaken at a place designated by the Council. If there is a refusal or failure to attend, or the licensed PHO does not meaningfully participate in the training or attain the training accreditation the licence may be suspended and consideration given to its revocation. The cost of such training will be borne by the licence holder.

Implementation:- With immediate effect.

- That all existing PHOs attend at their own expense a formal briefing sessions at a standard training fee.

Implementation:- With immediate effect in a rolling program.

### **3.7 Absence from business and communications with PHOs**

This is a concern of Officers who frequently cannot contact the Operator or on some occasions determine who is managing the company in his absence. It is not intended to restrict the PHO practice but to ensure that the business is conducted properly, with appropriate accountability and reasonable access to a responsible manager(s) in that period of absence. This is an issue which has been recognised by way of Condition in some other local Authority areas.

## **Change proposal.**

- PHOs should notify the Council and nominate a responsible person to take responsibility on an interim basis if they are absent and supply contact detail of the manager to the local Authority.

Implementation:- With immediate effect.

- At all times the PHO will ensure that the local Authority has his most up to date contact detail including a mobile telephone number and email addresses. There should be a generic email address for the company and a confidential email address so that sensitive information can be properly handled and held confidentially by the Operator.

Implementation:- With immediate effect.

### **3.8 Public complaints about a PHO service**

PHOs confirm it seems to fall into three distinct categories:

- Unjustified complaints about service
- Poor service to the customer
- Potentially serious or criminal matters

There was a lukewarm attitude generally to reporting matters to the Authority but there have been some very good examples of clear integrity by some operators. There were mixed feelings about having to keep more records although there was an understanding of the importance of reporting some matters.

Complaints of poor service or allegations against drivers is an area frequently dealt with by Enforcement Officers who try to distinguish between a poor business service (low level complaints), which are referred to the operator to finalise directly with the customer and the other more serious matters which should be referred directly to the Authority (allegations of theft, indecency, equality breaches etc).

What appears to be clear is that even taking in to account the low level of some complaints they can build up a business profile that can be indicative of a professional development need, or in the worst case the concealing of some potential significant offending or allegations.

These concerns could be dealt with by a requirement to maintain a 'register of complaints' and outcomes for inspection by the Authority for a set period, along with a reporting requirement for some more serious matters, for example complaints or allegations of sexual misconduct, racist behaviour, violence, dishonesty, breaches of equality; in straight forward terms, allegations of criminal behaviour.

### **Change proposal.**

- PHO's maintain a register of public complaints in a format approved by the Council (computerised or hard copy).

Implementation:- With immediate effect.

- A duty to report immediately when the licensing office is open and in any other event within 72 hours.

Implementation:- With immediate effect.

### **3.9 Wheelchair Accessible Vehicles - driver training**

This is an issue already accommodated in PHV conditions. Currently the responsibility for ensuring a PHD has appropriate specific training for dealing with wheel chair users as passengers rests with the PHD by condition upon a PHV licence. This can be difficult to manage and enforce by Officers and it is felt appropriate that this safety requirement is now also placed firmly with PHO's when allocating bookings. This requirement will beneficially impact not only on the general travelling public but also those who use the Councils transport services contract.

### **Change proposal.**

- To place a condition upon the PHO licence to the effect that a wheelchair accessible vehicle may only be used for the transport of wheelchair users by a PHD who has attended the appropriate Council training course or an accredited trainings scheme approved in writing by the Council.

Implementation:- With immediate effect.

### **3.10 'Out of Town' Hackney Carriages acting as PHV's in this licensing District**

Generally PHO's could not understand why somebody would want to use drivers or vehicles not licensed by this Authority and thought that to do so could cause risks to customers or the good name of their company. The proposals in this report received some strong support.

This issue is raised as a serious public safety concern by Officers, some of the PH trade and some of the HC trade. In essence it has become a means for people who may not wish to undertake the knowledge and safety tests set by this Council or other Council's and who are beyond the control of LCC Enforcement Officers.

A recent High Court case examined the legal standing of HCV's licensed by one Authority acting as a PHV in another licensing District where no PHD or PHV licence had been granted to the driver or vehicle. HCV's have always been able to undertake Private Hire bookings from outside of their licensing District; for example collecting a regular customer from an airport or event outside of their licensing District.



The case(s) in question raised both concerns and possible solutions but in essence gave a green light to HCV's licensed by other Authorities to work as PHV's in areas where they have not been granted a licence.

This raises significant difficulties for a local Authority such as Leeds for example:

- HCV's not carrying the livery of this local Authority causes confusion with customers.
- The drivers and vehicles are not subject to reasonable enforcement capability by Leeds City Council.
- The drivers may not have undertaken any of the training that Leeds PHD's or HCDs do.
- In the event of a complaint against the driver or vehicle, Officers have difficulty in identifying the driver and have no powers to demand information or an interview with the driver.
- This Authority is reliant on a sanction or training requirement on the driver being carried out by another Authority and if that Authority does not have such a condition there may be difficulties in enforcing the issue or even accepting the need for such a condition or sanction.
- The fees for those drivers and vehicles licensed in this Authority may have to increase if the trend increases in volume.
- Leeds City Council are powerless to determine 'on the spot' if such a driver or vehicle is properly licensed at any time while conducting enforcement activity on the streets.
- The risk to the public is significantly increased by drivers who would not meet the standards of this Authority or who have had their licence revoked or refused by this Authority.

Significant changes are proposed in light of relatively recent case law to ensure that appropriate measures are in place in respect of public safety and enabling this Authority to be able to conduct its enforcement activity efficiently and effectively.

The proposals for increasing public safety in respect of the issues identified above are addressed in the following paragraphs at 3.11 to 3.16 inclusive which are in addition to existing PHO conditions.

## **Change proposal**

### **Schedule of Drivers**

The PHO shall notify the Licensing Authority shall forthwith, and in any event within 72 hours of each and every Hackney carriage driver employed or used for Private Hire bookings by the PHO on his Operator Driver Schedule (Form OPDS) will include Hackney carriage drivers licensed by this or other Authorities.

Implementation:- With immediate effect.

Where a PHO ceases to employ or use any such licensed Hackney carriage driver, the operator PHO shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing and present the form OPDS to the Licensing Authority for amendment by an Authorised Officer.

Implementation:- With immediate effect.

The PHO shall retain a copy of the Hackney carriage driver licence granted by this or other authority along with a copy of the driver's DVLA licence and of any driver of that vehicle and forward a copy of those documents to the Leeds City Council Licensing Office shall forthwith, and in any event within 72 hours of registering that driver on the form (OPDS).

## **Change proposal.**

### **Schedule of vehicles**

The PHO shall notify the Licensing Authority shall forthwith, and in any event within 72 hours of each and every Hackney carriage vehicle employed or used by the PHO on his Operator Vehicle Schedule (Form OPVS) this includes those Hackney carriage vehicles licensed by other Authorities.

Implementation:- With immediate effect.

Where a PHO ceases to employ or use any such licensed Hackney carriage vehicle, the PHO shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing and present the form OPVS to the Licensing Authority for amendment by an Authorised Officer.

Implementation:- With immediate effect.

The PHO shall retain a copy of the HCV licence granted by another Authority along with MOT certificate, certificate and policy of insurance; vehicle registration document and forward a copy of those documents to the Leeds City Council Licensing Office within 72 hours.

Implementation:- With immediate effect.

## **Advertising on vehicles**

In addition to retaining the existing PHO and PHV condition it is proposed:-

### **Change proposal.**

Where a vehicle is licensed by another Authority, such a HCD or HCV is expressly prohibited from using any literature, any documentation, any advertising or displaying any signage associated to that PHO or Leeds City Council which suggests or might lead to a misunderstanding that the vehicle is licensed by this Authority.

## **3.11 Telephone bookings**

It is not unreasonable that when a Leeds area resident books a journey through a Leeds licensed PHO that they have an expectation their journey will be conducted with a driver who has attained all of the training and safety checks carried out by this Authority. The proposals do not restrict trading opportunities for PHOs but seek to ensure that there is clear information available for the public to consider and make their own decision and for enforcement officers to be able to carry out regulatory checks with ready access to the same information that they have for drivers licensed by this Authority.

### **Change proposals**

Advance bookings for HCV's licensed by another Authority must be maintained in a completely separate register of bookings. If a computerised booking system is in place those booking records must be kept in a completely separate and distinct area of the systems hard drive to enable easy inspection by the Council.

Implementation:- With immediate effect.

A separate telephone line and telephone number must be installed and used for 'out of town' booking requests. This message must be contained as a pre-recorded intercept message on the unique booking telephone line.

The caller should then be reminded of the PHO main operator number and given the option to be redirected to "a Leeds City Council licensed driver and vehicle".

In any advertising literature or web information, a form of words must be used which clearly states to prospective customers the following:

*"The driver and vehicle you are about to book are not licensed by Leeds City Council and the Council is not empowered to take licensing action against them in the event of a complaint."*

Implementation: - within 3 months of adoption of policy and conditions.

### 3.12 Record of bookings

To many PHO's this was not an issue but some complained that not everybody wanted to give their mobile telephone number and that it is difficult to get all of that information when you are busy. The first thing to realise is that this is a very basic requirement to differentiate between taxis and private hire vehicles to demonstrate a pre-booking. The obtaining of a telephone number serves two main purposes:

- 1) to validate the caller in later enquiries and discourage false entries
- 2) it can enable call or text back from the PHO to confirm the vehicle which has been despatched or that the vehicle has arrived at the booking place.

To bring the relevant condition up to date to assist in detecting plying for hire it is proposed that:-

#### **Change proposal.**

- The records required to be kept by the operator, under section 56(2) of the Local Government (Miscellaneous Provisions) act 1976, shall be kept in a suitable bound book, the pages of which shall be consecutively numbered. Entries must only be made at the time the booking is received and there should be no blank pages or lines whatsoever in the booking record.

Implementation:- With immediate effect.

- The operator shall enter or cause to be entered in the record book or computer data base, before the commencement of each journey, the following details for every booking of a Private Hire Vehicle invited or accepted by the operator or their agent.
  - The time and date of the booking and the time required – the 24 hour clock shall be used.
  - The full name of the hirer and contact number used in making the booking.
  - A detailed point of pick-up (not simply Boar Lane or Headingley etc).
  - The specific destination address.
  - The driver's identifying number/name.
  - PHO's shall ensure that the booking record can clearly identify the plate number of the PHV and badge number of the PHD for every journey.

Implementation:- With immediate effect.

- In the event of a failure of the computer data base the paper records shall be maintained in compliance with the preceding conditions for those PHO's who are not operating a computerised booking system. A computer data base should have the facility to print a paper record.

Implementation:- With immediate effect.

- Records should be kept in English and securely retained for at least 12 months following the date of the last entry or for such period as required by an Authorised Officer.

Implementation:- With immediate effect.

- All records shall be maintained and kept up-to-date at all times, and shall be available for inspection at all reasonable times without notice by an Authorised Officer, Police or VOSA. For the purpose of further investigation, records may be removed from the premises if so required or copied to disk, in the case of computer records. The PHO or responsible manager will certify them as a true and accurate record. GPS information must be securely stored when so required by the Council.

Implementation:- With immediate effect.

- A copy of any document shall be made available for collection by any duly Authorised Officer of the Council.

Implementation:- With immediate effect.

### **3.13 Telephone voice recording of bookings**

Some strong support was expressed by both trades as this could help in preventing plying for hire; keeps staff disciplined on customer care; good for resolving disputes; might cost more but it cuts out hassle between customer and operator; some old systems might not be compatible.

Officers feel that in recording incoming calls it will assist considerably in detecting false booking entries which arise in plying for hire cases. Technology has provided massive improvements in booking licensed private hire transport but has also made the detection of 'plying for hire' more difficult. Members are aware that even with the threat of the immediate suspension of their PHD licence, possible conviction and subsequent revocation of their licence that some PHD's are not deterred from unlawfully plying for hire. This is the strongest point of concern for Officers and the trade and potentially a significant risk to public safety. 'Committed' offenders simply telephone the base and record the detail of the journey at the time of plying for hire or later.

There are some dishonest ploys between some drivers and some who complete booking records to assist drivers plying for hire. Quite often the root cause of this is the PHO does not have a sufficient customer base to justify the number of drivers on his OPDS but is willing to accept the 'base rent' and then turn a blind eye to the illegal actions of drivers.

#### **Change proposal.**

- That a condition be placed on PHO's (not sole operators) that they utilise an approved voice recording system for incoming advance bookings which corresponds with the required detail in the booking records. The recordings must be kept securely as directed by Authorised Officers and in a manner that enables a speedy recovery of transactions. The technology must be approved in writing by the Council.

Implementation:- within 3 months of adoption of policy and conditions

- PHOs are not permitted to accept telephone bookings forwarded by their PHDs.

Implementation:- within 3 months of adoption of policy and conditions

### **3.14 Paper records or computerised booking records?**

Trade members were quite emphatic about the need to move forward with IT development in PHO offices to counteract false entries and improve customer service. Having said that, the existing PHO's recognised there needed to be a balance of the start-up point as set out below.

This question of customer service improvement has been answered by the trade on the basis of "if you want to grow your business you need to be able to properly handle the volumes of bookings".

In consultation PHO views were in agreement but the start-up point varied. The consensus was clearly that it is not possible to satisfactorily manage a PHO business to today's standards without computerisation. Members may be aware that there are a wide range of systems available and for clarity, the purpose of this report is to set a standard of integrity at a level that is proportionate to the business size.

Computer records are not infallible, but paper records show there is much more scope for easy falsification of records. An example is where a PHO leaves a series of blank lines in the knowledge that a driver who has dropped off in the city centre can then delay his departure, ply for hire and have a retrospective entry created.

PHO's thought that a balanced proposal might accommodate those operators with small businesses and as they grow provide a satisfactory way of professionally dealing with the customer base and enabling appropriate enforcement supervision.

### **Change proposal.**

- Paper records – Sole Operator  
PHO - 2 to 9 cars
- Approved computerised system – 10 – 19 cars
- Booking and dispatch system – 20 cars plus

Implementation:- within 3 months of adoption of policy and conditions

### **Change proposal.**

Members may also consider that it could be appropriate to set a policy that where there has been a breach of correct record keeping that it is appropriate (in addition to any other sanction) that there is a requirement to move from paper records to an 'approved computerised system'.

Implementation:- with immediate effect but with a 3 month grace period for the Operator to effect the required change

## **3.15 Requirement to report convictions**

This condition already exists in respect of PHD's and Officers feel it should be mirrored in respect of PHO's.

### **Change proposal.**

#### **REQUIREMENTS TO REPORT CONVICTIONS & ASSOCIATED INCIDENTS**

- (a) Any of the following events must be reported in writing to the Taxi & Private Licensing office within 72 hours during the currency of a licence giving full details:-
  - (a) any conviction or finding of guilt (criminal or driving matter);
  - (b) any caution (issued by the Police or any other agency);
  - (c) issue of any Magistrate's Court summons against them;
  - (d) issue of any fixed penalty notice for any matter;
  - (e) any harassment or other form of warning or order within the criminal law including Anti-Social Behaviour Orders or similar;
  - (f) their arrest for any offence (whether or not charged)
- (b) When required a licensed private Hire operator will undertake a Disclosure and Barring Service (DBS) vetting at his/her own expense and within a timescale set by the Council. Such a requirement may be on the basis of the Council's responsibility to ensure continued public safety and monitor licensed private hire operators.

Implementation:- With immediate effect.

## **3.16 Lost property**

The existing condition requires Pho's to deliver property to the licensing office. It had been considered that this should be changed to taking it to the nearest police station but there may be changes within police procedures that

could affect this in the future. As there is a condition requirement on the licensed PHD to do this, it is felt that this condition is not of significance.

## **Change proposal**

Existing PHO condition number 13 be removed.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 As highlighted earlier in the report there has already been a 3 month period of consultation (**Appendix 3**) and then a series of group sessions with private hire operators. Some of the issues raised are not part of this consultation exercise and will be dealt with separately. There are no significant contributions to deter approving the recommendations. The consultation has contributed to the formation of some of the policy and conditions proposals in this report and the recommendations at 6.1 and 6.2 set out the next steps.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 An equality impact screening assessment has been carried out on this policy and conditions and there is no impact on equality issues. The screening is available as a background document to this report.

### **4.3 Council policies and City Priorities**

4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

#### **Best Council Plan 2013 -17**

#### **Towards being an Enterprising Council**

#### **Our Ambition and Approach**

**Our Ambition** is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

**Our Approach** is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

#### **Our Best Council Outcomes**

Make it easier for people to do business with us.



## **Our Best Council Objectives**

Promoting sustainable and inclusive economic growth – Improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

## **4.4 Resources and value for money**

4.4.1 Costs to the Section have been absorbed within the Sections budget and undertaken as a normal area of development. Staff training will be similarly accounted for but briefings, training and testing requirements of PHO's will be the subject of an administrative charge.

## **4.5 Legal Implications, Access to Information and Call In**

4.5.1 In setting policy, Members have to consider whether the policy is proportionate to the aims of the relevant act and what is considered reasonable by the Council. The route of appeal against a policy such as this is by way of judicial review. When adopted the policy still allows for discretion to be applied in decision making in appropriate cases.

4.5.2 Where an applicant has been refused an operator's licence under the private hire regime, or is aggrieved by any conditions attached to such a licence, he may appeal to the Magistrates Court (section 55(4)).

4.5.3 Although breach is not a criminal offence, where an operator fails to comply with the conditions of its licence, the Council may revoke the licence (section 62(1)). Where an

operator is aggrieved by the decision to revoke, there is a right of appeal to the Magistrates' Court (section 62(3)).

## **4.6 Risk Management**

4.6.1 Some of the proposals raised in this report are new, not only to this Authority but to most licensing Authorities throughout the country. Reference is made earlier in the report to a recent court case involving Newcastle City Council and it is felt that the proposals in respect of 'out of town' issues fit into the essential decisions in those court findings proportionately. Members will be aware that some areas of the trade can be litigious but the proposals here are not thought to be in the medium to high risk range.

## **5 Conclusions**

5.1 The consultation and legal advice will help Members form views which can be further explored at presentation to the Committee. Officers do feel that the proposed conditions will inject more professionalism into some areas of the trade and contribute to improve service delivery and public safety.

5.2 The investment in technical improvements to call handling or booking or despatch systems, are set more in terms of parameters (number of vehicles licensed) and implementation timescales. This will assist PHOs to make business decisions in a reasonable timescale. The level of change will demand more conformity from some PHOs.

5.3 The training and testing proposals follow a tried and tested route of improvement being preferable to sanction in appropriate cases.

5.4 Legislation does allow out of town HCVs to operate as PHVs in this licensing district and although there may be a view that the interpretation of the relevant part of the act that allows that has been interpreted to liberally it is felt that the proposals presented in this report are proportionate and achievable and not restrictive to trade. Members may feel the measures are appropriate to prevent the total circumvention of this licensing Authorities safety controls.

## **6 Recommendations**

6.1 Members approve in principle the policy and conditions and direct officers to prepare a report for the consideration of the Executive to approve the policy.

6.2 That Members approve the lead in time scales for implementation of the policy and conditions.

## **7 Background documents<sup>1</sup>**

Equality Impact Assessment

Leeds City Council PHO conditions

Leeds City Council PHD conditions

Leeds City Council PHV conditions

Button on Taxis

Blue Line Taxis v Newcastle City Council

Licensing Committee report and minutes of 14/1/2014 – review of Private Hire Operator (PHO) conditions

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

**CONDITIONS ATTACHED TO THE GRANT OF A LICENCE TO OPERATE A PRIVATE HIRE VEHICLE**

1. Any person wishing to acquire a licence to operate a Private Hire Vehicle shall be a fit and proper person and make the application to the Council solely in their name on the prescribed form and pay such fee as prescribed by the Council. Such fee shall not be returnable under any circumstance, save at the sole discretion of the Council.

Every applicant for an Operators licence shall be required to disclose on the application form details of any conviction for any offence, bearing in mind the provisions of the Rehabilitation of Offenders Act 1974. A summary of these provisions is included in the conditions for your guidance.

Every applicant shall in addition to the information specified in the above two paragraphs, provide the name, date of birth and address of any person if the applicant proposes to operate the business in partnership with any other person(s).

Each operator licence issued by the Licensing Authority shall be issued only in the name of the applicant and that person shall be deemed solely responsible as the operator upon the licence being granted and the licence is not transferable from the first mentioned person to another person.

**2. OPERATOR LICENCE**

Each operator licence issued by the Licensing Authority shall be valid for such a period as the Licensing Authority may decide.

The current operator licence must be displayed at the business premises to which the licence relates in a prominent position at all times in view of the general public with the exception of such times as the licence is presented to the Licensing Authority for amendment, or it is required to be produced for inspection by an Authorised Officer of the Licensing Authority or a Police Constable.

**3. PLACE OF BUSINESS**

A licensed operator will only conduct the business from the booking office address specified on the licence, each booking office address requires a separate licence. (NB: Any licensed operator wishing to conduct a business from any address other than that specified on the operator licence shall make application to the Licensing Authority on the prescribed forms which will be regarded by the Licensing Authority as a new application for an operator licence, and the applicant shall satisfy the requirements of the Licensing Authority accordingly). An application on or within the grounds of liquor licensed premises will not be accepted.

The licensed operator shall provide, at the address from which the business is conducted as specified on the operator licence, an enclosed area to which the public have right of access for the purposes of making a booking for the services of a licensed vehicle or awaiting the arrival of a licensed vehicle subsequent to any booking. No operator shall cause or permit any such area to be used by them or other persons for any other purpose than that outlined above.

The premises shall be kept clean, adequately illuminated, heated and ventilated and shall conform to any other relevant legal requirements.

All licensed operators shall have in force a Public Liability Insurance policy providing a minimum of £2,000,000 indemnity in respect of any one incident.

All licensed operators shall have in force an Employers Liability Insurance policy complying with the Employers Liability (Compulsory Insurance) Act 1969 covering death or personal injury arising out of any incident during the course of a person's employment.

#### 4. OFF STREET PARKING

During the currency of the licence, the operator shall ensure designated off-street parking provision at all times for the number of vehicles being operated.

No licensed operator shall use any land or premises for the said purpose where that operator does not have lawful right of use of that land or premises. The operator, if required to do so by an Authorised Officer of the Licensing Authority or Police Constable, shall produce such documentary evidence as may be reasonably required to establish the operator's lawful right to use such land or premises for the purposes of providing off-street parking provision for private hire vehicles.

#### 5. ACCEPTANCE OF BOOKINGS

Every contract for the hire of a private hire vehicle shall be deemed to be made with the licensed operator who accepted the booking, whether or not that licensed operator subsequently provides the vehicle(s).

#### 6. RECORD OF BOOKINGS

Each licensed operator shall keep a full and accurate record of every booking of a private hire vehicle in a register, details to include time and date of booking, time required, customer's name, particulars of the journey (from and to), and the vehicle used. These records must be maintained in a bound book with consecutively numbered pages. Operators must be able to identify from their records which private hire vehicle has undertaken any particular job, e.g. call sign = plate number.

The register must be maintained up to date at all times, and shall be retained at the address from which the business is conducted as specified in the operator licence for a period of not less than 12 months from the date of the last entry in the register.

The register(s) shall be available at any time without notice by an Authorised Officer of the Licensing Authority or a Police Constable who shall be empowered to take away the register(s) from the premises if required.

Licensed operators who wish to operate a computer booking record system **must** have the approval in writing of the Licensing Authority, and must adhere to all other relevant conditions.

#### 7. SPECIFIED VEHICLES

No licensed operator shall operate any private hire vehicle other than those which have been listed by an Authorised Officer of the Licensing Authority on the Operator Vehicle Schedule (Form OPVS). Any alteration to the form OPVS shall only be made by an Authorised Officer of the Licensing Authority.

When a licensed operator ceases to operate any vehicle specified on the OPVS, the operator shall forthwith, and in any event not later than 72 hours, notify the Licensing Authority for amendment by an Authorised Officer.

**8. SPECIFIED DRIVERS**

The operator shall notify the Licensing Authority of each and every private hire driver employed or used by the operator in his Operator Driver Schedule (Form OPDS). Where an operator ceases to employ or use any licensed private hire driver, the operator shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing and present the form OPDS to the Licensing Authority for amendment by an Authorised Officer. The private hire driver licence must be returned to the driver.

Each operator will retain at the address from which the business is conducted, the private hire driver licence of every licensed private hire driver employed or used by that operator.

The private hire driver licences shall be available at all times for inspection by any Authorised Officer of the Licensing Authority or Police Constable who may take the licence(s) away from the premises if so required.

Every private hire driver licence retained by the operator must display the trade name and operator licence number relating to his licence.

**9. RADIO EQUIPMENT**

No licensed operator shall use any radio equipment for the purpose of conducting the business specified in the operator licence, other than equipment approved by the Department of Trade and Industry (DTI) under the provisions of the Wireless Telegraphy Act 1949. The operator shall produce such licence for inspection if required to do so by any Authorised Officer of the Licensing Authority or Police Constable.

**10. ADVERTISING**

No operator may use the word **TAXI** or **CAB** or **HACKNEY CARRIAGE** or any combination or derivation thereof in any advertising manner in any media, and any such advertising shall include the words Licensed Private Hire.

Where any operator in the course of business uses the trading name of business address specified on the operator licence to offer the services of a Hackney Carriage to the general public, the operator shall not use the words **TAXI** or **CAB** or **HACKNEY CARRIAGE** or any combination or derivation thereof in any advertising manner unless the number of Hackney Carriages that the operator can offer (without engaging the services of any other company or trading concern) is not less than 49% of the number of licensed private hire vehicles specified on the form OPVS.

**11. STANDARD OF SERVICE**

The operator shall provide a prompt, efficient and reliable service to members of the public at all times and shall ensure that when a private hire vehicle has been hired to be in attendance at an appropriate time and place, that vehicle shall, unless delayed or prevented by sufficient cause, punctually attend at that time and place.

**12. GUIDE DOGS**

Every proprietor, driver and operator of a licensed private hire vehicle shall ensure that guide dogs are carried within the passenger compartment of the vehicle on request.

**13. LOST PROPERTY**

All property carried or articles of any description left by any person booking or waiting for a private hire vehicle at the address from which business is conducted shall forthwith, and in any event not later than 72 hours, be delivered to:

The Taxi and Private Hire Licensing Section  
225 York Road Leeds LS9 7RY.

#### 14. NOTIFIABLE ALTERATIONS

**Place of Residence** - During the currency of the licence, the operator shall notify the Licensing Authority in writing of any temporary change of residence which is for a period in excess of 21 days. In either case, the Licensing Authority shall be notified in writing within 7 days of such change taking place.

**Radio Equipment** - Where any licensed operator is granted a licence by the DTI to use radio equipment, and where that equipment is to be used for the purposes of conducting the business specified on the operator licence, the operator shall within 7 days of the grant of a licence issued by the DTI notify the Licensing Authority in writing stating the serial number and letters of the licence and any transmission frequencies authorised for use. The operator shall also notify the Licensing Authority in writing of any authorised change in transmission frequencies or of any additional frequencies within 7 days of such changes taking place.

**Convictions** - During the currency of an operators licence, the person named on the licence shall forthwith, and in any event within 7 days of any conviction, notify the Licensing Authority in writing of such conviction(s).

**Disposal of Business** - Each operator, when disposing of any business interest, shall within 14 days give notice in writing to the Licensing Authority that the business registered in his/her name has terminated.

#### 15. COMPLAINTS

Operators on receiving any complaint of a serious nature regarding any person licensed by the Authority must immediately inform the Taxi and Private Hire Licensing Section as to the identity of the person involved and the nature of the complaint.

#### 16. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, PART 2

All licences in connection with the driving and operation of private hire vehicles and all conditions attached to the grant of such licences are issued by the Licensing Authority in accordance with the provisions of the 1976 Act.

Each operator shall make themselves aware of the provisions of the 1976 Act and any other relevant legislation including the Licensing Authority conditions attached to the grant of a private hire operator, driver or vehicle licence.

**PLEASE NOTE THAT SHOULD YOU FEEL AGGRIEVED BY ANY OF THE CONDITIONS IMPOSED ON THE LICENCE, YOU HAVE THE RIGHT OF APPEAL TO A MAGISTRATES' COURT WITHIN 21 DAYS FROM THE DATE WHEN THIS LICENCE WAS ISSUED TO YOU.**

## **Policy in respect of Conditions attached to the grant of a Private Hire Operator licence.**

### **Customer focus, business improvements and best practice**

#### **Corporate clothing (shirt or outer garment)**

There are distinct benefits for this in terms of enhanced safety for customers and also improving the image of the trade in the city. There appears to be a positive link in supplying a uniform style shirt with the company logo on it and customer satisfaction along with the professional outlook of the operator. However, it is thought to be beyond licensing control and should be considered as a good business practice by PHO's.

#### **Staff training and public access to PHO premises**

It would be good practice for each private hire operator (except single vehicle companies) to ensure that all of their call handling staff have received:

- Accredited customer service training
- Data protection training
- Be subject to a DBS

DBS disclosure is thought to be important considering the amount of personal and secure information that can be collected. It is felt that the practice of using totally unqualified staff is inappropriate. Concerns in the trade are that people are 'employed' outside of all of the employment law, Inland Revenue arrangements, minimum wage legislation and outside of other financial scrutiny arrangements that should be in place.

The Data Commissioner retains responsibility for monitoring the 'data controller' (PHO). However, if there were to be breaches of data security the Council reserves the right to take compliance or formal action against the PHO to reduce the risk of crime or danger to public safety. HM Revenue and Customs or the Health and Safety Executive are the appropriate authority for some of the proposals. Whilst there may be some issues which might be poor business practice or worse it is thought to be beyond licensing control.

Officers may inform the appropriate regulatory body if they have a concern.

#### **Record of driver hours**

In contrast to the regulation of hours worked by a PSV or HGV driver, a self-employed private hire driver has no such legal restrictions on them. If they were the subject of a contract of employment with the PHO then there would be a restriction of 48 hours per week averaged over a 17 week period, but that is the only legal constraint. The consequences of driver fatigue all too often appear following some serious road traffic collision and whilst the driver may be held accountable for any subsequent fatality it is an issue that PHO should be aware of when they use a PHD



in those circumstances. There are many full time drivers but also others who use their PHD licence as a secondary form of income.

This issue needs an awareness by PHO's and it would be best practice for PHO's to be alert to the signs of tiredness and exhaustion and may wish to consider their own liability in not taking full account of such issues.

### **Fare awareness**

This is often the subject of complaint by the travelling public and is frequently the root of arguments. That situation can be improved upon by clearer information at the time of booking and a visible notice showing how fares are calculated on the PHO web-site or public waiting area, to be easily read by a person seeking to hire a PHV or HCV at those premises. It would be helpful if at every point of producing such information it was pointed out "fares should be agreed before the journey". "Where the vehicle uses a meter this should be clearly explained and on what occasions it is not used (pre-arranged contract fares, out of licensing District fares etc).

The more information that can be visible to passengers the better it is for your driver, your business reputation, and, of course, the public. Being upfront with this can help reduce the risk of assaults.

### **Vehicles operated under the licence**

Planning legislation has primacy but licensing Officers will support communities where complaints are made in assisting enforcement by planning and regulatory Officers and also seeking an early resolution to a problem through the relevant PHO.

### **Trading name**

It is not the intention to restrict the appropriate or innovative naming of a PH business but it has been a source of frustration in the past to the trade and Officers. There are examples of a PHO selling the business and 'good will' only for a new operator to open a short while later with a very similar business name. Sometimes this is not dealt with in contractual arrangements and can lead to confusion with the public (as well as ill will within the trade). Similarly, where a PHO licence is revoked or suspended it seems inappropriate that the identical operating name or one closely associated to that is taken into use. Again this can be confusing for customers and drivers, and perhaps undermining of the council's regulatory sanctions.

It is a pre-requisite to the grant of a PHO licence by ensuring that any potential confusion is removed when a preferred operating name is put forward. This would also apply to those names which might conflict with the operating name within a neighbouring local Authority.

**Safety standards of licensed vehicles under the operating licence**

Officers have already presented a report to Members that they will consider the prosecution of PHO's for defective vehicles used in the course of their business and it is intended to continue with that and offences where there is no vehicle insurance in place. On rare occasions that may be out of the control of the PHO but control measures can be put in place which would help the PHO reduce their personal risk of prosecution and increase public safety.

To increase public safety and reduce the risk of prosecution to themselves PHOs are strongly advised to maintain a monthly record of vehicle inspections carried out by them on their operating licence to ensure checks on tyres, Council livery, accident damage, condition of interior etc, as prescribed by the Council and a check list of expiry dates of the PHD, PHV licences and MOT expiry dates.

The personal responsibility of the licensed PHO is for the safety of their customer is inescapable and each PHO should be able to demonstrate their commitment to road safety.