

Report of: Section Head Taxi and Private Hire Licensing and Section Head Legal Services

Report to: full Council

Date: 13th January 2016

Subject: Changes to the Constitution to enable cross authority monitoring and enforcement of Taxi and Private Hire activity

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 Councils within the West Yorkshire Combined Authority have been working together to improve the consistency of Taxi and Private Hire monitoring and enforcement activities across the region. Since 1st October 2015 the Deregulation Act 2015 permits private hire firms nationally to sub contract bookings outside of their own licensing district. Currently Leeds City Council officers have no powers to conduct any enforcement activity on Private Hire vehicles not licensed by this authority. This has presented this and other authorities with concerns in relation to how this might be monitored, including for safeguarding reasons, and how enforcement should be carried out effectively. The introduction of these provisions under the Deregulation Act has prompted councils to seek to move to formal arrangements for cross authority working.
- 2 On 17th November 2015 the Licensing Committee considered a report from the Section Head Taxi and Private Hire Licensing recommending to full Council the delegation of Taxi and Private Hire enforcement functions from this council to the other councils within the Combined Authority and to similarly receive their delegated Taxi and Private Hire enforcement functions. The Licensing Committee agreed to the recommendation and went further to seek to include other councils, where possible, in particular those whose licensed Private Hire vehicles have been seen operating in Leeds.
- 3 The delegation of functions to and receipt of delegated functions from another council requires changes to this Council's Constitution. The General Purposes

Committee at their meeting on 8th December 2015 agreed to recommend to full Council approval of the necessary changes.

4.0 Recommendations

- 4.1 That Members agree that the Taxi and Private Hire enforcement powers as set out in paragraph 3.3 of this report are delegated by Leeds City Council to the following local authorities, namely: City of Bradford Metropolitan District Council; Wakefield Metropolitan District Council; Calderdale Metropolitan Borough Council; Kirklees Metropolitan Borough Council and City of York Council as well as retaining those functions within Leeds City Council. To agree to Leeds City Council receiving similar delegated enforcement powers from those named authorities.
- 4.2 That Members approve the necessary changes to the Constitution as at Appendix A and Appendix B to this report.
- 4.3 That the Section Head Taxi and Private Hire Licensing continues enquiries with other councils (including Manchester City Council and Rossendale Borough Council) to agree in principle to the same arrangements. Subject to agreement being reached in principle with those councils for full Council to delegate like powers to those Councils, and to receive the same, and note that the City Solicitor will use her delegated authority under Article 15.2 to give effect to the decision and maintain the Constitution up to date by including reference to those councils at Part 3 Section 2D.
- 4.4 That Officers report back to the Licensing Committee on the effectiveness of the arrangements as part of the updates they provide to the Licensing Committee on Taxi and Private Hire monitoring.
- 4.5 Members note that on recommendation from the Council's Licensing Committee any necessary changes to the Council's Licensing Policies arising from the proposed changes will be approved by the Council's Executive.

1 Purpose of this report

- 1.1 Councils within the West Yorkshire Combined Authority have been working together to improve the consistency of Taxi and Private Hire monitoring and enforcement activities across the region. Since 1st October 2015 the Deregulation Act 2015 permits private hire firms nationally to sub contract bookings outside of their own licensing district. This has presented this council and other authorities with concerns in relation to how this might be monitored, including for safeguarding reasons, and how enforcement should be carried out effectively. The introduction of these provisions under the Deregulation Act has prompted the councils to seek to move to formal arrangements for cross authority working.
- 1.2 On 17th November 2015 the Licensing Committee considered a report from the Section Head Taxi and Private Hire Licensing recommending to full Council the delegation of Taxi and Private Hire enforcement functions from this Council to the other councils within the Combined Authority and to similarly receive their delegated Taxi and Private Hire enforcement functions. The Licensing Committee agreed to the recommendation and went further to seek to include other councils, where possible, in particular those whose licensed Private Hire vehicles have been seen operating in Leeds. The Licensing Committee also agreed that any necessary changes to the Council's Licensing Policies arising from constitutional changes should be recommended for agreement by the Council's Executive.
- 1.3 The delegation of functions to and receipt of delegated functions from another council requires changes to the Council's Constitution. The General Purposes Committee, when they met on 8th December 2015, agreed to recommend to full Council approval of the necessary changes. The General Purposes Committee commended the work of the Licensing Committee and the licensing officers in bringing forward the proposals as well as the positive work taking place between all the West Yorkshire authorities, with City of York Council, and with the Police and Crime Panel on these matters. It was acknowledged that this innovative practice was also being considered nationally by the Local Government Association
- 1.4 This report sets out the background to the changes and how they will affect this Council, particularly issues of general public safety, safeguarding and enforcement capability.

2 Background information

- 2.1 In 2014 the Licensing Committee considered proposals of the Law Commission to reform Taxi & Private Hire licensing. The proposals included:
 - Enabling any person to use a licensed vehicle for social, domestic or pleasure purposes
 - Removing the absolute discretion of a local Authority not to issue a driver licence for a period of more than one year

- For Private Hire Operator licences to be granted for a period of 5 years only without discretion for the Council to grant for a lower period
- Removing the strict control of sub-contracting a Private Hire journey from within a licensing district only to enable sub-contracting to take place on a national basis.

2.2 The proposals of the Law Commission did not pass through the House of Commons. At the same time the Government was consulting on Deregulation proposals and the summary and intention was:-

“ A Bill to make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals; make provision for the repeal of legislation which no longer has practical use; make provision about the exercise of regulatory functions; and for connected purposes.”

2.3 The above four proposals were included in the Deregulation Bill. Substantial opposition was mounted by this Authority in conjunction with the Police and Crime Commissioners, the Suzy Lamplugh Trust, Unite the Union, GMB and UNISON at a national level and the Local Government Association. The consequence was that the proposal to allow anybody to drive a licensed vehicle for social, domestic or pleasure purposes was withdrawn but the remaining three proposals progressed as part of the new Deregulation Act.

2.4 On 26 March 2015, the Deregulation Act 2015 received royal assent. This was followed by The Deregulation Act 2015 (Commencement No. 1 and Transitional and Saving Provisions) Order 2015 which set out the commencement date for Taxi and Private Hire deregulation measures. These provisions came into force on 1 October 2015.

2.5 Section 11 (private hire vehicles: sub-contracting) inserts two new sections (55A and 55B) into the Local Government (Miscellaneous Provisions) Act 1976 in relation to the sub-contracting of bookings from one Private Hire vehicle operator to another.

2.6 This is a major amendment to the 1976 Act affecting Taxi and Private Hire drivers and operators. There is currently no detailed information or operational guidance on these deregulation measures available from the Government, Department for Transport or other organisations.

2.7 The individual changes to introduce sub-contracting arrangements between Private Hire operators in different licensing districts mean that this presents significant difficulties for the Council in conducting its enforcement activities and to the public in terms of service standards and potentially public safety as it means:-

- Currently officers in this Authority have no powers to conduct any enforcement activity on Private Hire Vehicles not licensed by this Authority.
- Significant difficulties in verifying whether a pre booking was in place when investigating plying for hire concerns
- Potential confusion for the public who may not recognise the vehicle which turns up and cannot readily verify the credentials of the driver

- Investigations may become protracted and on a national basis
- Timescales for summary prosecutions (6 months) would be extremely tight
- Operators could pick the least challenging authorities in which to be licensed, to set up base there and simply transfer bookings from the Leeds district to that operating base
- Licensed vehicles from other licensed Authorities may have minimal exterior identification potentially creating opportunities for criminals, unlicensed drivers or sexual predators to more easily slip under the radar on opportunist illegal journeys.
- Leeds City Council is reliant on other councils having an enforcement capacity dedicated to Taxi & Private Hire Licensing.
- Risk to the Section's funding if a significant percentage of drivers migrate to other less regulated authorities.

In effect this part of the Act could virtually put enforcement capability out of reach of the licensing Authority.

2.8 These concerns are shared across many leading Authorities but the effects are more likely to be significant in areas such as Leeds, Manchester, Birmingham and other large cities but not exclusively so. Leeds is working within the remit of the West Yorkshire Combined Authority to try and establish some common licensing standards and enforcement compatibility across the West Yorkshire area. Some of the key issues being considered by the Combined Authority are the following:-

- Safeguarding - child sexual exploitation - human trafficking – a common minimum training standard for the trade
- Driver application process – improved common minimum standards
- English comprehension - common minimum standards for new applicants, It would only apply to existing licence holders where there was an identified need with the focus being on training and development within an agreeable timeframe.
- Convictions Policy and Convictions Criteria – a standard criteria be adopted.
- Decision making-scheme of delegation - All local authorities introduce a scheme of delegation to Officers for decision making
- Private Hire Operator Conditions – a common standard across the Combined Authority
- Private Hire Vehicle Conditions - All West Yorkshire licensed vehicles have similar recognisable door livery which deforms when removed.
- Common Byelaws - Hackney Carriages – a common standard across the Combined Authority

- West Yorkshire Centralised Licensing Database – maintaining a centralised record of licence applications, suspensions, revocations to enable greater checking at the point of revocation.
- Enforcement Capability - that each council sets out a clear ring-fenced budget and produces annual accounts to demonstrate to the licence holders that all money is being used lawfully and appropriately. Officers to prepare information sharing protocol and implement.
- Authorised Officer status - Licensing and Enforcement Officers able to carry out inspection and suspension powers on a vehicle licensed by any West Yorkshire council through the scheme of delegation of powers being co-ordinated across all West Yorkshire Authorities to enable more efficient enforcement action

3 Main Issues

- 3.1 Cross delegation of the Taxi and Private Hire enforcement functions across the West Yorkshire Authorities would improve the consistency of enforcement activities regionally and would assist in reducing possible concerns arising from the changes to the law allowing Private Hire firms to sub contract bookings outside of their licensing district.
- 3.2 Key Licensing officers in all West Yorkshire authorities met on 15th October 2015 to agree an approach going forward to minimise concerns. The outcome of this meeting was that it was agreed that all officers would consider whether there should be cross authority delegation of Taxi and Private Hire licensing enforcement functions. The intention would be to work towards all authorities having this in place as soon as possible but no later than by 1st April 2016.
- 3.3 The current functions which are delegated to licensing officers in this Authority are set out in the Assistant Chief Executive (Citizens and Communities)'s sub-delegation scheme and includes the functions set out in the paragraph below: The intention would be that Leeds Licensing officers would retain the sub-delegation of these functions but they would also be delegated to the other named councils.

All functions associated with Taxi and Private Hire monitoring and enforcement including:

Local Government (Miscellaneous Provisions) Act 1976

Section 53(3) (a) Driver to produce his licence for inspection

Section 58 Return of identification plate or disc on revocation etc.

Section 60 to suspend and revoke vehicle licenses

Section 61 to suspend and revoke drivers' licences

Section 68 Fitness of private hire vehicles

Section 73 – Obstruction of Authorised Officers

Town and Police Clauses Act 1847

Section 45 prosecution for plying for hire

Road Traffic Act 1988

Section 143 (no insurance)

- 3.4 Each council would retain the ability to grant and renew licences, those functions will not be delegated. The enforcement functions would be delegated. The ability to prosecute will rest as at present with the district within which the alleged offence occurred. Officers in each named Authority will agree to provide evidence where necessary to support prosecutions by the other Authorities where they have been involved in investigating the alleged offence. How this will work in practice including recompense for each authority will be set out in an agreement between all of the named authorities.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Consultation with the Hackney Carriage Associations and the Private Hire Trade is not a legal requirement in these circumstances but has still been undertaken to identify any issues and maintain relationships with the trades. The closure date for consultation responses was Friday 13 November 2015. Licensing Committee has reviewed the responses received and the feedback from members of both the Taxi and Private Hire trades was in agreement with the proposals to share authorisation to officers across the West Yorkshire Combined Authority. One trade representative requested a further meeting with the Chair of the Licensing Committee to discuss the wider implications of the Deregulation Act.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality, Diversity, Cohesion and Integration Assessment has been carried out on the impact of the proposals within this Authority and finds that there is potential for an impact on the different equality characteristics. The screening is available as a background document to this report and details how the Council will work to reduce any negative impact by various options including the provision of an interpreter, promoting effective communication and offering remedial training packages. This Authority will also take appropriate legal advice and consult as necessary before any changes to policies are made.

4.3 Council policies and Best Council Plan

- 4.3.1 The necessary changes to the Council's policies will be forwarded to the Executive for approval. 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, to :

- 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:

4.3.4 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 Leeds City Council Taxi & Private Hire Licensing has a ring-fenced budget with all fees retained solely for licensing purposes. There may be financial challenges which cannot be evaluated at the moment but the expenditure is closely monitored and any emerging needs would have to be met from the reserve fund or through licence fee variations. The opportunities to seek costs from defendants will be strongly pursued by solicitors representing the Council at court.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The enforcement functions in this report are council functions. The Local Government Act 1972 section 101(1) (b) permits delegations of council functions from one council to another. Section 101(3) of the same Act permits that other council to arrange for discharge of those functions by a committee, sub-committee or officer of that council, effectively as though the function had always been theirs.

The function would need to be delegated by full council (rather than by an officer or the licensing committee) and should be captured in the Constitution so the delegation across councils is clear.

- 4.5.2 Officers in this council would still have the delegated authority to carry out the same functions. All of this would also be captured in the relevant sub-delegation schemes of officers.
- 4.5.3 If polices need to be altered to reflect the above then on recommendation from the Licensing Committee an Executive decision would be taken.
- 4.5.4 Changes to Parts 1 and 2 of the Constitution can only be approved by full Council after consideration of the proposal by the General Purposes Committee and following advice from the Council's Monitoring Officer (Article 15.2 of the Constitution)

4.6 Risk Management

- 4.6.1 In amending the Constitution to accommodate the changes, the risk of any failure to comply with any legal challenges which may arise is minimised.

5 Conclusions

- 5.1 The recommendations are intended to facilitate Taxi and Private Hire enforcement across the named authorities.

6 Recommendations

- 6.1 That Members agree that the Taxi and Private Hire enforcement powers as set out in paragraph 3.3 of this report are delegated by Leeds City Council to the following local authorities, namely: City of Bradford Metropolitan District Council; Wakefield Metropolitan District Council; Calderdale Metropolitan Borough Council; Kirklees Metropolitan Borough Council and City of York Council as well as retaining those functions within Leeds City Council. To agree to Leeds City Council receiving similar delegated enforcement powers from those named Authorities.
- 6.2 That Members approve the necessary changes to the Constitution as at Appendix A and Appendix B to this report.
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- 6.4 That Officers report back to the Licensing Committee on the effectiveness of the arrangements as part of the updates they provide to the Licensing Committee on Taxi and Private Hire monitoring.

6.5 That Members note that on recommendation from the Council's Licensing Committee that any necessary changes to the Council's Licensing Policies arising from the proposed changes will be approved by the Council's Executive.

7 Background documents

7.1 Deregulation Act 2015

7.2 ECDI Screening Assessment