

Report of **Head of Elections, Licensing and Registration**

Report to **Licensing Committee**

Date: **3 April 2018**

Subject: **Taxi and Private Hire Licensing: Report by Transport for London (TfL)**

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 This report informs Licensing Committee of the content of a report by Transport for London (TfL) on recommendations for new legislation to address cross-border hiring by taxi and private hire vehicles.
- 2 The report has many interesting points of information for Licensing Committee members, but seeks local authority support for new legislation. It requests authorities supportive of the recommendations to contact the Parliamentary Under Secretary of State for Transport.

Recommendations

- 1 That Members note the information in this report.
- 2 To seek Members' views and support for TfL's recommendations for new legislation to tackle cross border hiring.

1 Purpose of this report

- 1.1 To inform members of Taxi and Private Hire enforcement priorities, and recent activity.
- 1.2 To advise members of planned enforcement activity.

2 Background information

- 2.3 For laws and local conditions to be effective, they need to be enforced. Under current law, responsibility for enforcement of the taxi and private hire licensing lies with the licensing authority that issued the relevant licence. In particular, licensing authorities have powers to suspend or revoke licences, to refuse to renew them, or to place additional conditions on licences. Licensing authorities can also bring criminal charges against a suspected offender. Where breaches of licensing conditions also constitute offences, the police can also take enforcement action.
- 2.4 However, under current law, licensing officers are unable to undertake enforcement against vehicles, drivers and operators licensed in another area, and such 'cross border' operating is a regular occurrence in Leeds, particularly at nights, linked to the large night time economy in the city centre. Since the Deregulation Act (2015) came into force, and the rise in use of 'taxi' smartphone apps there has been a marked increase in drivers and vehicles being licensed in one area, but working predominantly in another area:
 - Leeds City Council has a database of vehicle registration of more than 700 out of district vehicles;
 - Transport for London found 85 of its licensed drivers lived at Leeds postcodes;
 - West Yorkshire & York licensing authorities holding a workshop in March 2018 of enforcement teams to agree joint ways of inspecting vehicles observed working across borders; and
 - 40 out of district vehicles inspected since October 2017 joint working with West Yorkshire Police (two traffic officers funded by West Yorkshire Police & Crime Commissioner).
- 2.5 The council has for a number of years lobbied local MPs and the Secretary of State for Transport about the risks posed by cross border operating, giving evidence in objection to the Deregulation Act, and also giving evidence to the Transport Minister's Task and Finish Group on taxi legislation. The council is also providing input to an LGA project aimed at establishing a database of refused, revoked and suspended licenses for drivers, and is also working closely with neighbouring authorities to put in place additional conditions, which will enable the five West Yorkshire authorities and City of York Council to take effective enforcement action against any private hire or taxi vehicle licenced by any of the six authorities.
- 2.6 Nationally, a Private member's Bill on Taxi and Road Safety looks unlikely to become law, with an adjourned second reading planned for October 2018.

Further, Knowsley MDC lost an appeal at the High Court in February 2018 by two private hire operators against an Intended Use Policy aimed specifically at restricting cross border hiring.

- 2.7 However, the TfL report is an important development, especially if a significant number of authorities were to contact the Parliamentary Under Secretary of State for Transport, Nusrat Ghani MP, in support of the TfL recommendations.

3 Main issues

Cross border hiring

- 3.1 The TfL report (attached as Appendix II) defines cross border hiring as “a situation where taxis or private hire vehicles licensed in one area work predominantly or wholly in another.”
- 3.2 TfL summarise the main problems and risks caused by cross border hiring in very similar ways to how Licensing Committee has discuss cross border operating.

Public Safety *Cross border hiring allows a driver who has had their licence revoked or suspended in one area to apply to be licensed by another authority, which is unlikely to have information on the driver’s prior licensing history. The ability of drivers to operate in any area, regardless of where they have been licensed presents a public safety risk. (p7)*

Enforcement *A consequence of cross border hiring is that licensing authorities do not have adequate powers to tackle infringements in the taxi and private hire trades operating in their local areas, which can undermine local enforcement efforts, putting the public at risk and undermining the reputation of the trades. (p8)*

Undermining local licensing standards *Cross border hiring undermines the ability of local licensing authorities to set and enforce standards appropriate to their local area, which can undermine the standards that local customers expect. (p9)*

Complaints *Cross border hiring is making it harder for customers to complain to the appropriate authority in the event of an incident or the failure to meet their expectations and could lead to a loss of vital intelligence. (p10)*

Support for legislative changes

- 3.3 TfL propose to remedy these problems and risks with three key responses, each of which TfL state is essential, and they are seeking support from other authorities:

The start or finish requirement *Primary legislative change is needed to introduce a requirement that private hire journeys must either start or finish in the area for which the operator, driver and vehicle is licensed and taxi journeys must either start or finish in the area for which the driver and vehicle is licensed. (p11)*

National minimum standards *Primary legislative change is required or DfT Statutory Guidance to introduce national minimum standards, which should include a high level of safety requirements imposed upon the driver, vehicle and operator. Passengers have the right to expect a minimum level of safety wherever they are and whichever kind of vehicle they travel in. (p13)*

National enforcement powers Primary legislative change is required to introduce national enforcement powers which are essential to allow the effective enforcement of any licensed vehicle or driver working in licensed areas. (p15)

Discussion at Licensing Committee

- 3.4 The views of Licensing Committee members are sought on the request for support on proposed legislative changes, and what the council could submit to the Parliamentary Under Secretary of State for Transport, whether in full support, or making some adjustments or concessions.
- 3.5 TfL accept that in particular, the start or finish requirement may benefit from some adjustment or exemptions, such as permitting cross border hiring from neighbouring authorities, or concessions for executive/chauffeur service, school contracts, or by permitting a percentage of journeys to cross borders, or to place a restriction on app based journey bookings (pp 17-18). These matters are also very likely to arise as part of the review of the council's Operator Policies and Conditions, which is planned for later in 2018. They also relate to the collaborative work being undertaken by the West Yorkshire & York authorities.
- 3.6 TfL are also interested in authorities' views on other possible remedies:
- A statutory definition of plying for hire and pre-booked services;
 - Greater Enforcement Powers;
 - Fixed Penalty Notices;
 - Pedicab legislation; and
 - Capping the number of private hire drivers & vehicles.

4 Corporate Considerations

4.1 Consultation and Engagement

- At present, TfL are asking local authorities for their views.
- The service consults and engages regularly with the hackney carriage and private hire trades. The service holds forum meetings three times a year, with the private hire operators and separately with recognised hackney carriage associations/groups, and issues a newsletter three times a year. The service is seeking to set up driver association forum. The issue of cross border hiring is extremely important to many locally licensed drivers and operators, although some operators licensed in Leeds have their drivers work cross border in other local authority areas.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 Not applicable.

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; and
- 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; and
- Improving customer satisfaction.

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;
- 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 The Taxi and Private Hire Licensing service is cost neutral to the Council and by virtue of the Local Government (Miscellaneous Provisions) Act, 1976, raises its own revenue by setting fees to meet the cost of issuing and administering licenses.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 There are no legal implications arising from these proposals, and they are not subject to call in or publication.

4.6 Risk Management

- 4.6.1 There are no adverse risk management implications arising from the request from TfL, and they are not subject to call in or publication. However, the council's current assessment is that risks to passengers are raised by an increase in cross border hiring because of the reasons set out in section 3.2.

5 Conclusions

- 5.1 Licensing Committee has been aware for some time of the risks to the travelling public posed by high levels of cross border hiring of taxi and private hire vehicles, and the council has started to make some changes with high standards in Leeds and collaboration with West Yorkshire Police and neighbouring authorities. We have established Leeds as a city of strong licensing and enforcement practice.
- 5.2 However, the progress nationally via LGA and in parliament to higher minimum standards and stronger enforcement powers has been slow, in comparison with the increase in cross border hiring and use of smartphone app bookings.
- 5.3 The response from TfL shows that authorities need to raise their efforts in lobbying for the essential legislative changes, and the council has an opportunity to join TfL in influencing central government.

6 Recommendations

- 6.1 That Members note the information in this report.
- 6.2 To seek Members' views and support for TfL's recommendations for new legislation to tackle cross border hiring.

7 Background documents

Appendix I Email from TfL to local authorities and Executive Summary

Appendix II TfL Report

Link to web page for report: <http://content.tfl.gov.uk/cross-border-hiring-proposals.pdf>

Appendix I Email from TfL to local authorities and Executive Summary

From: TPH Senior Relationship Manager (SRM)
[<mailto:SMBTPHSeniorRelation@tfl.gov.uk>]
Sent: 09 March 2018 10:37
To: Blake, Cllr Judith <Judith.Blake@leeds.gov.uk>
Subject: TfL Report on Taxi and Private Hire Reform

Dear Cllr Blake,

Following significant public interest, Transport for London has today published a report setting out our proposals for resolving cross border hiring.

Over the last six months TfL has been working with licensing authorities and stakeholder groups across England to understand the individual challenges facing each authority and how a solution may be developed to respond to these challenges.

The key recommendations are as follows:

- To require all taxi and private hire journeys either to start or finish in the area in which the driver, vehicle and operator are licensed.
- Set high national minimum standards to provide a consistent approach to customer safety and accessibility.
- Create national powers to ensure authorities can enforce national minimum standards in their areas, regardless of where the operator, driver and vehicle is licensed. This would be supported by a provision for data sharing, for example licensing decisions and conduct of licensees, between licensing authorities.
- Consider the impact of these issues in Scotland and Wales, and work with respective devolved governments to ensure any future requirements in England are not undermined.
- A statutory definition of 'plying for hire' and what constitutes a 'pre-booked journey' to help enforcement and prevent illegal activity.

A copy of the report can be found here: www.tfl.gov.uk/tph-policy

I would like to thank those authorities that kindly shared their experience and information to enable us to produce this piece of work.

If you support this paper we would encourage you to write to the Minister of State, Nusrat Ghani MP expressing your support.

If you have any further suggestions please do contact me.

Kind regards,

Helen Chapman

Interim Director, Licensing, Regulation and Charging

Executive Summary

This policy paper has been prepared as a submission to the Department for Transport's (DfT) Taxi and Private Hire Task and Finish Working Group that was established in late 2017. The Group was established in order to consider the adequacy and efficiency of legislation and guidance concerning the licensing of taxis and private hire vehicles (PHVs) in England. The paper is seeking support from the Task and Finish Working Group to include proposals for national legislative change in the report being prepared by the Working Group for the Parliamentary Under Secretary of State for Transport, Nusrat Ghani MP, to consider. This paper sets out recommendations from Transport for London (TfL), supported by the Mayor and has been informed by engagement with local licensing authorities, industry stakeholders and debated within the DfT's Taxi and Private Hire Task and Finish Group, to urgently address issues of cross border hiring within the taxi and private hire trade.

The term 'cross border hiring' is commonly used in the taxi and private hire industries to describe where taxis or private hire vehicles that are licensed by one licensing authority work wholly or predominantly in another licensing authority area. This practice is permitted under current legislation and there are no geographic restrictions providing the operator, driver and vehicle are licensed in the same licensing authority (referred to as the triple licensing requirement) and the booking is also accepted in that authority.

From our engagement with local licensing authorities we are aware that nationally cross border hiring generates serious public safety issues while undermining local licensing regimes. The scale of the cross border hiring problem has been magnified significantly in recent years through the advent of new technology. It also restricts the enforcement capabilities of local licensing authorities as they only have limited powers to enforce against out of town vehicles.

Cross border hiring in the taxi and private hire industries has been commonplace for many years which has resulted in localised issues, particularly in areas where there are a number of licensing authorities in close proximity.

It was considered as part of the Law Commission Review which commenced in 2012. The Law Commission put forward proposals to Government which, to date, have yet to be taken forward. Since the review, there have been major technological advances in the industry with many taxi and private hire customers now preferring app based services. This is coupled with significant and rapid growth in the number of private hire drivers and vehicles and both of these issues have exacerbated cross border hiring concerns. The proposals considered by the Law Commission review, in respect of addressing cross border hiring, are now considered by TfL and other stakeholders we have engaged with, to be out of date.

As the regulator for taxi and private hire services in London, TfL's primary purpose is to ensure public safety. In recent years, we have seen a significant growth in the number of drivers applying for a licence in London with the intention of working elsewhere. We know this to be an issue due to the large number of complaints we have received about TfL licensed drivers, from licensing authorities around the country as well as through analysis of a small sample of data from a London Driver Diary Survey. Appendix 2 contains a map that has been produced by TfL to demonstrate the scale of the problem and also includes responses from licensing

authorities around the country, which elaborate on the various issues they face because of cross border hiring. We believe urgent legislative reform is required to address these issues.

In November 2017, the Metropolitan Police Service submitted a paper to the Working Group and gave verbal evidence to the group in December. In their submission on cross border hiring they state that: "This is the single largest risk to Policing nationally". This has been included as Appendix 3.

In July 2017, the Mayor was asked by The Right Honourable Chris Grayling MP, Secretary of State for Transport, to provide more detail on our proposals to address cross border hiring. Since that meeting, the DfT Working Group has been convened making it the ideal platform to consider these proposals.

To address the issue of cross border hiring we recommend the following package of changes be progressed together:¹

1. Introduction of a start or finish requirement, meaning that all taxi and private hire journeys either start or end in the area in which the driver and vehicle (and operator in respect of private hire) are licensed.
2. National minimum standards set at a high level, to provide a consistent approach to customer safety and accessibility.
3. National enforcement powers, to allow enforcement officers to enforce the national minimum standards in their areas regardless of where the operator, driver and vehicle are licensed, supported by a provision for data sharing.
4. We would also recommend that the impact of these issues in Scotland and Wales are considered by the respective Governments, as not to undermine any future requirements to address cross border hiring in England.

In his draft Transport Strategy, the Mayor set out his intention to deliver a safe, secure, accessible, world-class taxi and private hire service in London. The strategy also recognises that the rapid growth in the number of private hire vehicles on London's roads is contributing to worsening congestion. Addressing the issue of cross border hiring will go a long way in terms of tackling public safety issues, however further powers are required to limit the overall number of private hire vehicles licensed so as to manage their contribution to overall congestion, particularly in central London. This is why the Mayor continues to press Government for powers to introduce a cap on the number of private hire drivers and vehicles in London.

The Mayor and TfL have a number of other legislative proposals required for consideration. These were published in the Mayor's Taxi & Private Hire Action Plan in September 2016. This paper provides an overview of these legislative requests and asks the Working Group to consider the inclusion of these proposals in its recommendations to Government:

- A statutory definition of plying for hire and pre-booked services – as the law stands, plying for hire is difficult to prove and requires significant enforcement resources;

¹ While we have engaged widely with other licensing authorities, the proposals relate to England only.

- Greater enforcement powers – changes in primary legislation to address common enforcement issues in London, for example, the power to seize vehicles that are found undertaking a passenger journey without hire or reward insurance cover
- Approval from the Secretary of State for TfL to issue Fixed Penalty Notices (FPNs), for example to drivers found not wearing a badge, which would act as an instant deterrent for minor offences
- The introduction of legislation for TfL to control and regulate pedicabs in London allowing us to ensure the safety of passengers and other road users; and

Next Steps

We are seeking the support of the Working Group to submit these proposals to Government as part of the overall recommendations following their detailed review of the legislation governing taxi and private hire. TfL will also continue to engage with other licensing authorities in England to further enhance support for these proposals.

Separately, Daniel Zeichner MP's Private Member's Bill received its second reading debate in Parliament on 2 February 2018. The Bill is due to return to the House of Commons in the Autumn for the resumption of the second reading debate although its chances of success will now be slim. This Bill proposes the introduction of a national database that licensing authorities must use to determine if an applicant for a private hire driver's licence has been refused, suspended or revoked by another licensing authority. TfL will continue to support the Bill and offer technical support to Daniel Zeichner MP and the DfT as required.

Notwithstanding the failure of the Bill to progress at this time, TfL will carry on working with the Local Government Association (LGA) on the development of its database of refused, suspended and revoked drivers that licensing authorities will be able to use on a voluntary basis. We would welcome this to become a mandatory requirement.