

Report of the Taxi & Private Hire Licensing Manager

Report to the Licensing Committee

Date: 5 November 2019

Subject: Taxi and Private Hire Licensing – Cross-border working and responses

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

1. Summary of main issues

Members of the Licensing Committee are asked to read and consider an overview of cross-border working, and the responses from central government, working groups, operators and licensing authorities in the UK.

Taxi and private hire vehicles have been able to work away from their licensing district because of changes in the use of technology and since deregulation of some areas of taxi and private hire licensing in 2015. Private hire vehicles licensed by other authorities (including some which do not border Leeds) are a common sight in Leeds. The report highlights that, while these vehicles can add to the supply of vehicles and customer convenience, there are a range of implications and possible responses for passengers, the local and regional taxi and private hire trade, licensing authorities and central government.

1.0 Purpose of this report

- 1.1 To provide a current position on the state of cross-border working as observed in Leeds. This includes vehicles not licensed in Leeds and recorded by the council as likely to be working in Leeds, and others licensed in Leeds but likely to be working elsewhere.
- 1.2 To inform committee members of the range of responses which are available to different areas of government, and to the trade itself. This may include additional licensing conditions, in the absence of UK legislation.

2.0 Background information

- 2.1 The role of the Taxi and Private Hire Licensing service has long been recognised as an important council function in ensuring that the travelling public are safe with professional drivers who have attained good standards, safe vehicles, and a dedicated enforcement team.
- 2.2 Licensing authorities are required to satisfy themselves that those holding licences are 'fit and proper' to do so. This is carried out, firstly during the determination of an application for a licence, and then at any time during the duration of a licence, for example, when evidence is obtained that suggests that a licensed individual is not a fit and proper person the licensing authority is entitled to suspend, revoke or refuse to renew a licence.
- 2.3 Under the requirements of the Local Government (Miscellaneous Provisions) Act 1976, the licensing authority requires that the driver, the vehicle, and the operator (for private hire vehicles) are all licensed and licensed by the same authority. The licensing regime is primarily local in its intention and effect – the licensing authority responsible for granting licences should have the ability to exercise control over the drivers and vehicles in its area, in order to maintain passenger safety and public confidence.
- 2.4 A number of developments have taken place in recent years to undermine the ability of a local licensing authority to exercise effective control over the vehicles being driven regularly in its area. First, there has been a significant growth in use of smartphone apps and associated technology. Second, there has been the entry into the private hire sector by new operators, with less of an interest in the principle of local licensing. Third, the Deregulation Act 2015 amended the existing law to enable operators to subcontract across licensing authority borders without equipping licensing authorities with the powers to carry out effective enforcement functions in respect of licence holders licensed by other authorities. Fourth, there has been an increase in 'licence shopping', where drivers apply or are encouraged to apply to one authority while intending to work in another authority.
- 2.5 These developments were recognised by the Task and Finish Group on Taxi and Private Hire Vehicle Licensing in its report in October 2018. The group's recommendations included:
- National Minimum Standards;
 - National Enforcement Powers; and
 - A National Licensing Database.
- 2.6 The group also drew attention to the effects of cross-border working, not falling wholly within licensing concerns for public safety, but having an impact on public safety, including on driver working conditions, hours of work, take home pay.

Recommendation 11 states:

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHV and taxi – see recommendation 6) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

- 2.7 The response from central government was to develop proposals for Recommendation 2 – common minimum standards, in its Statutory Guidance in February 2019. However, the statutory guidance did not contain any specific guidance about cross-border working, perhaps in part because Recommendation 4 of the group was to move away from local to regional or city-regional licensing areas, such as those linked to metropolitan mayors.
- 2.8 In February 2018, Knowsley MDC lost a judicial review of its new Intended Use policy, which sought to have drivers commit to work ‘predominantly’ in the Knowsley district, or their licence could be refused or revoked. The judge said:

A driver’s licence in the present context is generic, not specific, it is a licence to drive any PHV provided the PHV and the operator are both licenced by the authority for the same controlled district. I do not think a driver with an impeccable driving record can be fit to hold a licence in Knowsley, yet become unfit if he or she happens to move to Cornwall. If you are fit and proper in Gateshead, you are fit and proper in Minehead.

- 2.9 In March/April 2018, Uber GB changed how it operates in the UK. Previously, an Uber driver could be licensed in London and work in Leeds. The new arrangements required drivers to pass local driver tests and take training, and for their vehicles to meet the local vehicle conditions. Uber GB has “geo-fenced” on a regional basis, so that drivers licensed outside Yorkshire are not able to be given bookings for passengers wishing to start their journey in Yorkshire.
- 2.10 So in trade and policy arenas there has been an ongoing discussion about cross-border working, and a broad awareness that local licensing authorities currently lack the legislative means to take effective action for drivers and vehicles working in their licensing area. The legislation may take years to develop, and it may also include a requirement, such as the journey to start or finish in the licensing authority, which many licensing authorities and areas of the trade would find difficult to support.

3.0 Main issues

- 3.1 The council’s Taxi and Private Hire Licensing service has monitored the rise in cross-border working in Leeds and West Yorkshire for a number of years. The main issues discussed here are as follows.
- Observed and recorded vehicles – other licensing authorities in Leeds, and Leeds in other authorities;
 - Driver licences and home postcodes;
 - The effect of regional geo-fencing;
 - Perceptions/views on cross-border working;
 - The implications for licensing authorities;
 - Current licensing and enforcement responses, including West Yorkshire & York; and
 - Possible future licensing and enforcement responses.

Observed and recorded out of town vehicles

3.2 It is salient to recognise the difference between a cross-border *journey* where a passenger wishes to go from one district to another, and a pattern of cross-border *working*, where the driver chooses to work, and is enabled by the operator, for a significant part of their working week outside of their licensing district. For the former, Leeds district in general and Leeds city centre in particular have a high number of highly important destinations in the region and city region. Leeds has three major universities, an international airport, a major railway station, and a vibrant night-time economy, and each contributes significantly to the demand for taxi and private hire journeys to and from Leeds from other towns and districts in the region. For the latter, Leeds' night-time economy attracts in excess of 100,000 people on a Friday and Saturday night between 5pm and 5am, and there are limited public transport services after 11pm, contributing to a high demand for vehicles at the end of a night out.

3.3 The taxi and private hire licensing team has been keeping a note of the numbers of taxi and private hire vehicles observed by our CCTV van and recorded as part of an on street check. In 2019, the council has recorded the number plates of 144 out of town vehicles:

95 Bradford

19 Calderdale

26 Kirklees

4 Wakefield

We have no number plate records for vehicles licensed by any other licensing authorities. In 2017 and 2018, the list of vehicles' licensing authorities included Rossendale, London, Anglesey, and range of other authorities distant from Leeds. This suggests that the 2018 Uber arrangement to ring-fence journeys to Yorkshire & Humber licensed drivers has had the effect of removing the vehicles from other regions.

3.4 Leeds and five of the neighbouring authorities have developed cross-border enforcement powers, so that each authority's enforcement officers can inspect vehicles and talk to the driver of vehicles licensed by any of the other authorities. The taxi and private hire licensing team has also records of every vehicle licensed by a different licensing authority which was either inspected on street or the driver was spoken to. In 2019, the council has recorded 104 on street checks:

66 Bradford

11 Calderdale

22 Kirklees

5 Wakefield

We have no records of any on street checks of vehicles licensed by any other licensing authorities. In 2017 and 2018, the list of on street vehicle checks' licensing authorities included Rossendale, Exeter, Brentwood, Wolverhampton, and a range of other authorities distant from Leeds. This suggests that the 2018 Uber arrangement to ring-fence journeys to Yorkshire & Humber licensed drivers has had the effect of removing the vehicles from other regions.

3.5 The other sources of information, such as complaints, feedback, photographic evidence without a number plate or vehicle badge number, suggest that there are

hundreds of vehicles working regularly in Leeds while licensed elsewhere in West Yorkshire.

Driver licences and home postcodes

- 3.6 It is also important to note that the developments supporting and enabling drivers from outside Leeds to work in Leeds also support and enable Leeds drivers to work outside Leeds. It is not clear how many Leeds drivers are predominantly working outside Leeds.
- 3.7 Of 4,983 current taxi and private hire drivers renewing their licence with Leeds in 2019, just over 55% (2,738) lived at a 'Leeds' or LS postcode, with 36% (1,814) living in Bradford or a BD postcode, with just over 2% living elsewhere in West Yorkshire (62 at an HX postcode, 42 at an HD postcode and 8 at a WF postcode).
- 3.8 The council's Taxi and Private Hire Licensing team undertakes joint operations with each of the neighbouring authorities in West Yorkshire and City of York, and recently received a complaint about Leeds drivers working in Sheffield, which is currently being investigated. In particular, attention can be drawn to regional events with many tens of thousands of visitors and likely to draw out of town drivers to work, and discussed below in the section on operators' views.
- Leeds Festival (c.60,000 visitors each day for three days);
 - Events such as Ed Sheeran in Roundhay Park (68,000 per night);
 - Major sporting or music events, at Headingley or Elland Road stadia; and
 - York Races (various events during the year);

The effect of regional geo-fencing

- 3.9 The challenges posed by new technology may also be addressed in licensing conditions or in policy proposals developed by the operators and companies utilising the new technology. This also may be a fruitful line of future licensing policy.
- 3.10 The arrangements put in place by Uber GB in the second quarter of 2018 require drivers to be licensed in Yorkshire and the Humber in order to be visible to passengers using the Uber app. The effect of the arrangements were for around 100 additional drivers to be licensed by Leeds and working for Uber, and presumably a similar increase in the five other licensing authorities in the region where Uber has an operators' licence. The arrangements have also shown a significant reduction in the anecdotal and the recorded details of vehicles licensed outside West Yorkshire.

Perceptions on cross-border working

- 3.10 Cross-border working is perhaps the dominant issue in taxi and private hire trade discussions. In every consultation the council has undertaken, and in almost every policy discussion, the issue of cross-border working has arisen.
- 3.11 The current legal/case law on cross-border working were discussed in section 2 regarding the Task and finish group and in the Knowsley case, and also in the legal considerations in section 6. Nonetheless it is evident that cross-border working is a highly divisive issue in taxi and private hire trade, licensing, enforcement, policy development, between different licensing authorities and central government.

- 3.12 The growth of cross-border working cannot be detached from the entry into the private hire industry of new providers who utilise smartphone apps across a number of licensing authorities. It is because of the app and through the app that the passenger can book a vehicle, and because of the app and through the app that the vehicle is visible on the app. This arrangement would not be possible on such a scale if the booking had to be made by a phone call or a face to face visit, which is the interaction the lawmakers had in mind when writing the legislation in the Local Government (Miscellaneous Provisions) Act 1976.
- 3.13 Drivers and passengers who use the app therefore accept that in many areas the vehicle which can be booked may not be licensed in the district where the journey starts. What passengers may not understand is that the driver or vehicle in a small number of cases would not be licensed in that licensing authority.
- 3.14 The view of the taxi and private hire trade ranges from acceptance to outright hostility to cross-border working and the expansionary model of operators such as Uber. It is often viewed as providing vigorous and unfair competition to local incumbents, driving down fares to drive out or close down competitors and then pushing fares up when demand increases. Some in the trade regard the app based model as a potentially powerful tool to help modernise the whole industry, but regard it as unfair that drivers and large scale operators can 'licence shop', choosing the authority with the cheapest, friendliest, or weakest licensing regime, fewest background checks, and locally established firms cannot.

Implications for licensing authorities

- 3.15 Cross-border working has a range of implications for licensing authorities. Primarily, its main impact is to undermine the principle of local licensing, and have a possibly counterintuitive impact on regulatory workloads and licensing fees, with lower levels of enforcement and lower fees. The most recent Department for Transport taxi statistics bulletin shows an enormous variation between the number of licenced vehicles in authorities between 2018 and 2019. In Lewes the number of vehicles licenced increased by 91%, in Aylesbury Vale (by 64%) and Wolverhampton (62%), and the fall over the same period in Rossendale (50%), Telford and Wrekin (34%) and St Albans (37%). It is highly unrealistic to assume local demand has risen and fallen naturally in those districts, so it is a fair conclusion that cross-border working is playing a major factor, and that large app based operators are working regionally, not locally.
- 3.16 Because taxi and private hire licensing is either largely or wholly ring-fenced (operating budgets based on fee income), the pattern of large scale shifts in licensing can lead to significant changes in workloads for licensing, administration, enforcement, and in the level of fees. A local authority with a rise in applications for drivers and vehicles, may not implement the enforcement improvements needed to keep pace with the increase, and so the per head licensing fee cost may fall, making it an even more attractive place to be licensed for licence shoppers.
- 3.17 The challenge for local authorities is multiple. First, there is a chance that the licence shopping applicant has chosen to apply to be licensed in an authority with lower fees, or lower standards of DBS or other background checks, or a lack of a clear and effective policy about fit and proper person. In such cases, there is a risk that a driver could work in Leeds by being licensed by an authority with less rigorous checks or standards. Similarly, the local licensing authority will receive requests to lower or remove conditions and requirements to compete with the authority with the lowest or fewest standards.

- 3.18 Second, there is a risk of confusion on the part of the travelling public, which might lead to a reluctance to complain or provide feedback about a bad experience. Should the passenger complain to the authority where the problem occurred or to the licensing authority which granted the licence, which might be many miles away? The passenger may decide not to bother, and potentially useful information is not shared and not acted upon.
- 3.19 Third, it is physically much more difficult for the issuing licensing authority to check on the vehicles and drivers who are working miles away from the licensing office and inspection bay. Licensing authorities need to make contact with each other to co-ordinate enforcement and ensure that action to address complaints and on street inspections.
- 3.20 Fourth, authorities do not possess national enforcement powers whereby any enforcement officer would have the power and authority to insist that a driver licensed by another council talk to him or her, and allow the vehicle to be inspected. The council has anecdotal information that before 2017, drivers from other authorities often refused to speak to our enforcement officers.
- 3.21 Fifth, in many cases, the fees, from which ultimately part of the costs of administration, compliance and enforcement are funded, are paid to the home licensing authority which may not be the authority in which the licensee predominantly operates and where at least some of those costs may be incurred. The licensing authority where the cross-border vehicle is driven, receives no funding from the fee. As a result, there is a significant workload pressure or an increased fees burden for the drivers, vehicles and operators who are licensed in that district. To illustrate, if there were 800 drivers and 800 vehicles regularly working in Leeds, but being licensed elsewhere, Leeds City Council is carrying out some enforcement and on street inspection and information sharing activity with the home authority for those vehicles. The loss of income or pressure on the current licence regime is:

800 x licence renewal (£150)	= £120k
800 x vehicle renewal (£135)	= £108k
Total	= £228k

Current licensing responses and WY&Y response

- 3.22 The UK response to cross-border working and licence shopping has been to revise policies and conditions, often on a collaborative basis, and sometimes on a centralising basis, to reduce the motivation to be licenced in one authority and work in another. The Task and Finish Group recommended alongside national legislation/powers and IT systems, that authorities adopt minimum standards, which guaranteed a common minimum level below which an authority would not fall, but still permitted authorities to put in place local policies or conditions at a higher or more demanding level as deemed appropriate.
- 3.23 In our region, the five West Yorkshire and City of York authorities have combined to work together to harmonise licensing polices and supporting arrangements, with a view to reducing the risk of harm to people in the region caused by a weak link in licensing, or a failure to act on information. In the North West, the ten Greater Manchester authorities have started consultation on minimum standards. Both projects seek to develop shared or very similar policies, but require political and organisational support to bring the whole region up to the same minimum standards.

- 3.24 Under the West Yorkshire and City of York collaborative arrangements, each authority's enforcement team has reciprocal powers to inspect on street each other authority's vehicles and to take immediate action to take unroadworthy or dangerous vehicles off the road. In Leeds, plying for hire operations are organised at locations where out of town vehicles are likely to operate.
- 3.25 In Leeds, these powers and operations are supported by joint operations between Leeds and other licensing authorities, and were also supported by funding for Operation Control from the West Yorkshire Police and Crime Commissioner. This work on Friday and Saturday nights equates to between a third and a half of all on street inspections carried out.

Operation Control

Aim – improve public safety in Leeds City Centre

From October 2017 to July 2019, c. 190 Friday and Saturday nights

Cost around £50,000 (WYPCC)

2 West Yorkshire Police traffic officers and 2 vehicles

Vehicles inspected: 1656 (around 75 inspections per month)

Action:

Satisfactory	967	58%
Pass and advise	247	15%
Suspension	175	11%
Rectification	135	8%
Review of suspension	99	6%
Warning letter	23	1%
Advice given	10	1%

Out of town vehicles inspected: 327

Out of town drivers of interest to the police: 22

Possible future licensing policies and enforcement responses

3.26 Looking forward, in the absence of changes to national powers and legislation, there are a number of areas where future licensing policies and enforcement responses may take shape. The following are suggested areas to investigate, starting with the more general, moving to the more specific.

- **Regional definition of 'cross border' and 'out of town'.** The Task and Finish group recommended that consideration be given to licensing on a city-region basis, such as West Yorkshire. This opens up the question about whether the five West Yorkshire authorities could agree on a common definition of cross-border or out of town. Should it continue to be any vehicle not licensed by Leeds? Or should it be any vehicle not licensed by an authority which does not have a geographic border with Leeds (i.e. only Bradford, Harrogate, North Yorkshire, Selby, and Wakefield). Or should it be limited to West Yorkshire (i.e. only Bradford, Calderdale, Kirklees, and Wakefield)? Or could some other definition be used?

- **More forensic check of journey records of out of town vehicles.** The recommendation that journeys should either start or end in the licensed district suggests that it is possible for licensing authorities to contact operators and drivers to request more information about their movements, the bookings and information about where the vehicle was between the bookings. At present, Leeds has limitations about the number and data and time of bookings it can request, with a two hour time window it can request for journeys, which does not enable the council to build up a picture of how out of town vehicles are being used.
- **Additional conditions on app based operators.** It may be possible to place additional conditions on the operator licence for operators who are applying to be licensed in Leeds and are also licensed in other authorities. If it is not legal to place intended use conditions, consideration might be given as to whether it would be possible to require operators using apps and working in both Leeds and other areas to insert an additional question in the journey booking process for journeys originating in Leeds: ‘We have drivers and vehicles trained and licensed by a number of authorities in your vicinity. Do you want to state a preference for a locally trained driver?’ This has the virtue of aligning with customer preference. If the customer chooses, they can prefer the local driver, and reduce cross border, or if they are not concerned, they can make an informed choice. It may be possible to conduct a survey of the public in Leeds or in the wider West Yorkshire area to gauge their views on such a proposal.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This is a discussion paper. No new consultation is required in order to discuss the issue of cross-border working.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no implications for equality and diversity /cohesion and integration.

4.3 Council Policies and City Priorities

- 4.3.1 The council’s taxi and Private Hire Licensing is in line with the following council priorities and policies.

Best Council Plan

- 4.3.2 The council’s licensing policies contribute towards the following Best Council Plan objectives:

- Keeping people safe from harm, protecting the most vulnerable.
- Improving access to affordable, safe, and reliable connected transport for young people.

Climate Emergency

- 4.3.3 Taxi and Private Hire Licensing also contributes towards the following Climate Emergency priority in the Council Plan:

- Improving air quality, reducing noise and emissions.

4.3.4 Leeds City Council has both a moral and legal obligation to discharge its duty of care in respect of 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 adults at risk of harm.

5.0 Resources and Value for Money

5.1 This is a discussion report and does not make any estimates or forecasts about possible changes and implications for resources and value for money.

6. Legal Implications, Access to Information and Call In

6.1 It is safe to say that with a range of competing interests and interested parties (a number of which may have the means and motivation to resort to the law), any firm proposals the council may seek to pursue will require scrutiny from a legal perspective at an early stage.

7. Risk Management

7.1 The council has a taxi and private hire risk on its risk register relating to the risk of harm coming to a person in Leeds using a taxi or private hire vehicle not licensed by Leeds City Council. The council is the responsible organisation for regulating the taxi and private hire industry so that people in Leeds using taxi and private hire vehicles are safe and feel safe. The current assessment of the control of the risk is 'Good', but it is unlikely that the assessment would be more positive until national licensing and enforcement powers and IT systems are in place.

7.2 The council may identify further actions to address the risk. However, failing or refusing to check out of town vehicles on street is very unlikely to be considered as an option.

8. Conclusion

8.1 Cross-border working, where a driver is licensed in one licensing authority and works largely or predominantly in another, is a contentious subject in taxi and private hire industry and for local authorities as regulators.

8.2 Licensing authorities are required to satisfy themselves that those working regularly in their districts are 'fit and proper' to do so. However, there are limitations about what action a local authority can take to check cross-border vehicles and drivers, which can ultimately only be addressed through new legislation and IT systems.

8.4 The report has outlined the motivations and the consequences of the recent developments, and shared the response from central, regional and local government.

9. Recommendations

- 9.1 To provide a current position on the state of cross-border working as observed in Leeds. This includes vehicles not licensed in Leeds and recorded by the council as likely to be working in Leeds, and others licensed in Leeds but likely to be working elsewhere.
- 9.2 To inform committee members of the range of responses which are available to different areas of government, and to the trade itself. This may include additional licensing conditions, in the absence of UK legislation.

Additional documents:

Taxi and Private Hire Vehicle Licensing: Steps towards a safer and more robust system (2018)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745516/taxi-and-phv-working-group-report.pdf

Department for Transport Taxi and Private Hire Vehicle Licensing: Protecting Users (2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784216/taxi-phv-licensing-protecting-users-draft-stat-guidance.pdf

Department for Transport Taxi and Private Hire Statistics for England 2019 (2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/833569/taxi-and-phv-england-2019.pdf

Gerald Gouriet QC Knowsley Council's 'Intended UsePolicy' is unlawful (2018)

<https://licensing-lawyer.co.uk/knowsley-intended-use-policy/>

James Button Bulletin (2018)

<http://www.jamesbutton.co.uk/Subscriber/Bulletins/May%202018.pdf>