

REPORT TITLE Draft Taxi Licensing Policy for Newcastle under Lyme

Submitted by: Head of Business Improvements, Central Services and Partnerships

Portfolio: Safer Communities

Ward(s) affected: All

Purpose

To request that the Committee consider the Revised Taxi Licensing Policy for Newcastle under Lyme.

To request that the Committee consider commencing an additional 4 week consultation period from Friday 20th March 2014 until Friday 17th April 2015 to allow key stakeholders to consider the amended policy and to ensure that all parties have had an opportunity to comment on the draft policy as a whole.

To request that an additional meeting of the Committee be convened for Monday 20th April 2015 when the Taxi Licensing Policy for Newcastle under Lyme will be agreed and implemented from 1st May 2015.

Recommendation

That the Committee:

- a) **Agree the amendments to the Draft Taxi Licensing Policy.**
- b) **Send the amended policy out for consultation for 4 weeks from 20th March 2015 to all hackney carriage and private hire drivers.**
- c) **That an additional meeting of this Committee be held on Monday 20th April 2015 to agree the final taxi licensing policy.**
- d) **That the final Taxi Licensing Policy for Newcastle under Lyme be implemented from 1st May 2015.**
- e) **That any Hackney Carriage and Private Hire licences issued to vehicles over 8 years of age will have until 31st May 2015 to meet any “exceptional condition” standards that may be contained in the final Taxi Licensing Policy.**
- f) **That where a vehicle fails to meet the ‘exceptional circumstances’ conditions, the licence will be deemed expired and a refund made as set out in the report.**
- g) **That a report be brought to a future meeting of the Committee by the Council’s Partnerships Manager in relation to concerns raised in the previous consultation responses regarding child safety and child sexual exploitation.**

1. **Background**

1.1 At the previous meeting of this Committee the decision relating to the Taxi Licensing Policy for Newcastle under Lyme was deferred following concerns raised by a representative from the Hackney Carriage Association in relation to the consultation process that the Council had carried out.

Your officers can now confirm that the following organisations and individuals were contacted in relation to the draft policy:

- a) All Newcastle Borough Council Elected Members (60 members)
- b) All Parish Councils (10 – feedback received to show that the policy was discussed at Parish Council meetings)
- c) All Locality Action Partnerships (11)
- d) VAST – email distributed to 412 contacts plus placed on the VAST website and e-bulletin.
- e) Newcastle under Lyme Borough Council Website
- f) Newcastle under Lyme Partnerships Team – distributed to approximately 50 partners
- g) Stoke on Trent City Council Licensing Department
- h) High Peak Licensing Department
- i) Stafford Borough Council Licensing Department
- j) Cheshire East Licensing Department
- k) Staffordshire Police
- l) Staffordshire Fire and Rescue
- m) Trading Standards (Protection of Children)
- n) Environmental Health
- o) Private Hire Operators in Newcastle under Lyme representing over 200 drivers
- p) Steve Eden – Private Hire Association Representative
- q) Representatives for the Newcastle under Lyme Hackney Carriage Association (response to the consultation was received)

1.2 Regular Meetings have also been held with representatives from the Hackney Carriage and Private Hire Trade since discussions relating to the age of vehicles became an issue following the decision made by Full Council on 16th April 2014 to implement an 8 year age limit for all saloon vehicles.

Meetings with representatives from the Trade to discuss the content of the draft taxi policy were held on:

- 12th June 2015
- 26th June 2014
- 17th July 2014
- 24th July 2014
- 5th August 2014 – The Chair of the Committee and Officers met with representatives from the Trade at the taxi rank in the Town Centre
- 21st August 2014
- 29th September 2014

1.3 A previous consultation exercise in relation to the age of Hackney Carriage Vehicles had been carried out in September 2013 which was sent to all drivers and requested

comments on whether hackney carriage saloon type vehicles should cease to be licenced once they reached 8 years of age. The results of this consultation were:

- A petition with 87 signatures disagreeing with the proposal and proposing that other types of vehicles be considered for licensing as Hackney Carriages.
- 25 individual replies that fell into 3 categories:
 - a) Responses rejecting the proposal 16
 - b) Responses agreeing with the proposal 3
 - c) Letters returned with no indication of any view on the proposal 6

The majority of responses disagreed with the proposal mainly based on the financial implications the change in the age policy would have for Hackney Carriage owners. Other reasons given for objecting to the proposal were that modern cars were more reliable and had a greater longevity.

The Committee considered the above consultation responses at a meeting held on 3rd February 2014 and resolved:

(a) That, from 1st April, 2014, in relation to applications to licence Hackney Carriage vehicles, that are purpose built and wheelchair accessible, the vehicles shall be less than 5 years of age when first tested. These vehicles will continue to be relicensed on passing consecutive annual tests.

And

(b) That, consideration of the proposal that with effect from 1st January, 2015 all Hackney Carriage vehicles that are saloon cars will cease to be re-licensed when they are 8 years of age be deferred to a subsequent meeting to enable the officers to provide details of the age profile of the Council's Hackney Carriage fleet.

Following discussions with Members and the Trade and the setting up of the above mentioned Taxi and Private Hire Working Group, the resolution was put on hold pending the implementation of the new and full Taxi Licensing Policy.

2. Options

Having met with representatives of the Hackney Carriage and Private hire Trade on Thursday 12 March 2015 the following amendments are now recommended by your Officers in relation to the exceptional age policy:

OPTION 1 - Amended – Include the below exceptional age condition in the final policy:

1. Once a vehicle has reached 8 years of age it will be required to undertake an exceptional conditions test at the Council's Knutton Lane Depot alongside the normal taxi vehicle inspection test. This will allow the vehicle to be licenced for a further 6 months
2. Undergo a further 6 monthly vehicle inspection which will allow the vehicle to continue to be licenced for the rest of the 12 month period.

3. If the Operator wishes to challenge a Council decision in relation to the Exceptional test then an independent organisation can mediate (AA or RAC).
4. It is recommended that the fee for the exceptional conditions test be £65.

It is also recommended that the necessity to pass both the exceptional test and the Council test the first time be removed and that Council Officers be given discretion regarding this element of the test should the vehicle only fail on a very minor point.

There may be other influencing factors that may assist the Council in its decision making and which could also be added to the draft Policy:

- a) The vehicle will have uniform paintwork that is lustrous and scratch free.
- b) Be free of visible rust.
- c) Have an interior that is clean and upholstery which is supportive and free of stains and free of splits and wear and tear.
- d) Be free of any unrepaired damage.
- e) Repairs that have been made will have been carried out by qualified persons and will be to the highest standard.
- f) Be free of any major mechanical faults or defects.
- g) Will have a record of being serviced at regular intervals either by a main agent or other reputable garage. Ideally this servicing will be recorded in the vehicles original service booklet.

OPTION 2 – Enforce the existing age policy in relation to private hire and hackney carriage vehicles.

Hackney Carriage Vehicles

Purpose built Hackney Carriages and those vehicles which have been converted to incorporate the standards laid down by the Public Carriage Office will continue to be relicensed despite their age subject to passing an annual test and the licences running concurrently.

The Council will use the date of the first registration shown on the vehicle's log book to determine the age of that vehicle.

Vehicles that are not purpose-built - that is saloon vehicles, estate vehicles and hatchback vehicles - will continue to be re-licensed up to eight years of age subject to passing an annual test and the licences running concurrently.

Private Hire Vehicles

When a vehicle has been licensed as a Private Hire Vehicle it is capable of being re-licensed annually until the vehicle is eight years old, providing that the licences run concurrently.

The Council will use the date of first registration shown on the vehicle's log book to determine the age of the vehicle. Where a licence is issued and the expiry date is after the eight year rule the licence will remain in place until its expiry.

In respect of mini buses, these vehicles should be less than five years of age when first tested and can continue to be licensed for as long as the vehicle continues to pass the Council's annual test, provided that the applications to renew the licence run concurrently to the expiring licence.

2. **Issues**

In relation to the concerns raised by the representative form the Hackney Carriage association regarding the consultation process:

Your officers took the decision at the time of the consultation that it would be sufficient to consult with representatives of the trade rather than with individual drivers and to achieve this we sent correspondence to those individuals who through the previous consultation exercise and through the working group meetings had put themselves forward as such representatives.

However at the last meeting officers were informed that the representatives for the Hackney Carriage Association were only in fact representative of a minority of the Hackney Carriage drivers and proprietors and that there was in fact a possibility that a proportion of Hackney Carriage drivers were not aware and had not had the opportunity to respond to the consultation.

Legal advice has been sought regarding this and a recent court case regarding consultation resulted in a Judicial Review being awarded against a Council for a number of reasons, one of which was that it had failed to consult individually affected stakeholders.

It is therefore recommended that an additional 4 week consultation be held and that all hackney carriage and private hire drivers be written to individually to up hold the fairness of the consultation and as the outcome of the consultation will affect their livelihoods.

3. **Options**

The Committee can:-

a) Resolve to agree the above recommendations from officers.

Or

b) Resolve that the consultation already carried out was sufficient and fair and move to adopt the Taxi Licensing Policy with either:

i. Option 1 included (amended exceptional age policy) or

ii. Option 2; enforce the existing age policy in relation to private hire and hackney carriage vehicles

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

4.1 In formulating and proposing this Policy to Members, officers have adopted as their overriding concern the safety of the public.

- In terms of the Borough Council's corporate priorities, the draft Policy relates to the following:
 - Creating a clean, safe and sustainable Borough
 - Creating a Borough of opportunity
 - Creating a healthy and active community
 - Becoming a co-operative council which delivers high quality, community-driven services.

6. **Legal and Statutory Implications**

6.1 When considering any application for a Private Hire Vehicle Licence, the Borough Council, in accordance with Section 48 (1) (a) (i) (iii) (iv) and (v) of the Local Government (Miscellaneous Provisions) Act 1976, shall not grant such a licence unless they are satisfied that the vehicle in question is suitable in type, size and design for use as a private hire vehicle; is in a suitable mechanical condition; and is safe and comfortable.

6.2 As per Section 47 of the above Act, the Borough Council may attach to the grant of a Hackney Carriage licence such conditions as it may consider reasonably necessary. The range of conditions is wide and can therefore encompass safety, comfort and design.

6.3 The Borough Council may adopt a policy but should be clear that this is a policy which should be flexible in terms of its implementation and, therefore, should be applied to each case on its own merits.

6.4 A recent case in the High Court awarded a judicial review against a Council on the grounds that:

It did not consult landowners and occupiers individually and that the consultation did not meet the minimum standards of a lawful consultation procedure. The summary posted on its website and the details given in the email letters to consultees were too brief and superficial to provide for a meaningful consultation; also, the decision was made before all the consultation responses had been received. The curtailment of the consultation period was not justified and it resulted in unfairness.

7. **Equality Impact Assessment**

7.1 The purpose of age limits, as applied to Hackney Carriages, is to try and ensure that the licensed vehicles are safe, reliable and comfortable.

7.2 Any vehicle age policy, therefore, as applied in this area of Council business, is not arbitrary, but is a policy and it is for the Borough Council to consider any application which falls outside its own vehicle age policy on its own merits.

8. **Financial and Resource Implications**

8.1 Any vehicles over 8 years of age licenced that fail to meet any 'exceptional circumstances' criteria in the final Taxi Licensing Policy by the deadline of 31st May 2015, will be refunded the outstanding amount of the original tax fee.

It must be noted that any refund will not be equivalent to 50% of the original fee as the majority of the licence fee covers up front administration costs and the Council depot test and these will not be included in any refund. The refund will be calculated taking into account the processes required to produce the licence, it is anticipated that the refund will be in the region of up to 20% of the original fee.

Legislation states that a district council may remit the whole or part of any fee chargeable for the grant of a licence under section 48 or 55 of this Act (The Local Government (Miscellaneous Provisions) Act 1976) in any case in which they think it appropriate to do so

8.2 An unreasonable decision may lead to awards of costs in the magistrates' court and therefore use the limited resources available to the Borough Council. A clear and reasonable policy assists in delivering efficiency

8.3 The additional cost for an exceptional vehicle test at the Council's Knutton Lane Depot will be £65.

9. **Major Risks**

9.1. Public safety should not be compromised under any circumstances, and a robust Licensing Policy assists in securing public safety.

9.2 If public safety is compromised, then there is a risk of reputational and financial damage to the Borough Council as well as possible harm to the public.

9.3 In addition, any unreasonable refusals for the grant of a licence may also lead to reputational and financial risks to the Borough Council.

10. **List of Appendices**

11. **Background Papers**

Reforming the Law of Taxi and Private Hire Services – A Consultation Paper No. 203
Taxi and Private Hire Services – The Law Commission Paper No 347
Agenda for Public Protection Committee on 20th October 2014.

12. **Management Sign-Off**

Each of the designated boxes need to be signed off and dated before going to Executive Director/Corporate Service Manager for sign off.

	Signed	Dated
Financial Implications		

Discussed and Agreed Lead Officer – Dave Roberts		
Legal Implications Discussed and Agreed Lead Officer – Mark Bailey		
Report Agreed by: Executive Director/ Head of Service		