

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE DIRECTOR OF REGULATORY SERVICES  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**12 APRIL 2017**  
**ALL WARDS**

**CONDITIONS OF LICENCE FOR  
PRIVATE HIRE OPERATORS**

1. Summary

- 1.1 Following reports to this committee in April, July and November 2016, this report proposes the introduction of a new set of conditions to be attached to the licences issued in respect of private hire operators (appendix 1).
- 1.2 The current conditions relating to operators licences have been reviewed, amended and updated in an attempt to clarify certain issues and introduce new initiatives, procedures and remove what are already legal duties.
- 1.3 As a result of a number of initial consultation exercises, various versions of the conditions have been produced and these are available as background papers to this report.
- 1.4 Following the agreement of this Committee at its July 2016 meeting further wider consultation on the proposed conditions was arranged by way of a survey on the Birmingham Be Heard website.
- 1.5 Further consultation was then held with the trade and minor amendments have since been made to the proposed conditions in order to get to the final version presented to you in November 2016.
- 1.6 A subsequent wider consultation exercise was then held in December 2016 to get to the final draft presented here today.

2. Recommendations

- 2.1 That the Committee considers the proposed updated conditions for private hire operators at Appendix 1 and agrees to implement them with effect from the implementation date of the proposed policy on vehicle signage.
- 2.2 That outstanding minute 648 of 20 April 2016 be discharged so far as it relates to operators.

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### 3. Background

- 3.1 Following a proposal to this committee in October 2014 to introduce a Quality Rating Scheme for Private Hire Operators, officers from the Enforcement team consulted with the trade.
- 3.2 The vast majority of the feedback from that exercise was that before a Quality Rating Scheme could be introduced the conditions on which they would be measured MUST be reviewed as they were, according to the representatives there, "not appropriate given changes in technology".
- 3.3 A further report to this committee in January 2016 regarding the Implications of the Casey Report on Child Sexual Exploitation in Rotherham set out an action plan "*...to improve our systems and to minimise the risk...*"
- 3.4 This review of conditions for Operators completes part of that action plan.

### 4 Conditions

- 4.1 Section 55 of the Local Government (Miscellaneous Provisions) Act 1976, which relate to the issue of licences for private hire operators, states:

"A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary".

- 4.2 The purpose of attaching conditions to these licences is to be able to regulate a large variety of matters relating to the way operators, conduct themselves and the use of their vehicles. Conditions can prescribe the ways in which activities are conducted, the sort of documentation operators must maintain and how vehicles are to display their plates and signage.
- 4.3 The conditions are used to deal with issues that require regulating and are drafted to stipulate the exact manner in which activities are to be undertaken. Failing to comply with conditions may result in enforcement action being taken. This may include referral to a Licensing Sub Committee for them to consider whether the licensee is "fit and proper" and if not whether their licence should be suspended or revoked.
- 4.4 The current conditions for operators, was last reviewed and/or amended on the 15 September 2010, with an additional amendment in February 2015 to

account for the changes to the Equalities Act 2010. These are included in the background papers.

- 4.5 Since then, a number of changes have taken place both in respect of how the private hire trade operate with the introduction of new technology (apps.) and the ongoing review of vehicle signage.
- 4.6 The current conditions contain offences which may result in either the cautioning or prosecuting of the licensee. These conditions have been removed from the proposed conditions as these are legislative requirements and so there is no need for it also to be a condition of licence.
- 4.7 Further guidance has been produced (appendix 2) to accompany the new conditions advising operators of their legal obligations. This gives details of offences under the various Acts that relate to private hire.
- 4.8 The Licensing Enforcement Team deal with numerous complaints about the activities of licensees and undertake various exercises throughout the year including the stop checking of vehicles and drivers and the inspection of records and documentation retained at operators' bases. These conditions are used to measure the licensees' compliance and deal with such complaints.

## 5. Issue of Conditions of Licence

- 5.1 Conditions can only be issued upon the grant of a licence except in exceptional circumstances. Thus should Committee be minded to approve the amended conditions of licence as drafted, they will then be issued upon the grant or renewal of licence applications following the implementation of the proposed policy on vehicle signage.
- 5.2 It is worth noting however, that due to the availability of five year licenses for operators that we could be enforcing two sets of conditions for up to five years following the proposed introduction of new conditions.
- 5.3 Any individual aggrieved by the conditions of licence may make an application for exemption from them and attend a hearing before a Licensing Sub Committee. Alternatively, they can appeal to a Magistrates Court within 21 days of the service of the licence upon them.
- 5.4 A set of the new draft conditions with the reasoning as to why each condition is necessary is attached at appendix 3.

## 6. Consultation

- 6.1 Following an initial draft of Private Hire Operator conditions (background papers) produced by Licensing Enforcement, these were circulated around all those operators that have provided an email contact. At the time this was 55 of the 71 Operators currently licensed by the City Council.

- 6.2 Three replies were received from Star Cars, Elite and Uber and these are available as background papers to this report.
- 6.3 A number of the suggestions that were made by the respondents to the initial consultation and comments made by the enforcement team were included in the proposed conditions presented to committee in July 2016.
- 6.4 Following that meeting further wider consultation on the proposed conditions was arranged by way of a survey on the Birmingham Be Heard website.
- 6.5 This consultation was advertised in the last online trade newsletter 'Driving Forward' and post cards were sent to all vehicle owners, drivers and operators advising where they could view or download 'Driving Forward'. A copy of the post card and Driving forward are included in the background papers.
- 6.6 Details of the consultation were also published on the City Council's website and sent out to various potentially interested parties via social media.
- 6.7 The responses to this consultation are included in the background papers.
- 6.9 There were three responses to the consultation on the BeHeard website and these revolved around the issue of cross border hire and preventing it.
- 6.10 Unfortunately this cannot be covered by condition of licence as it is now legal (since the introduction of the Deregulation Act 2015) for operators to pass bookings to other operators from outside Birmingham.
- 6.11 Following that wider consultation a further meeting was held with trade representatives to discuss the proposed conditions.
- 6.12 Notes of the trade meeting are included in the background papers along with an alternative version produced by A2Z Licensing on behalf of Star Cars & Coaches Limited. Comments made at that meeting and in the draft from A2Z have been considered whilst preparing a final draft of conditions that was presented to committee in November 2016.
- 6.13 Account has also been taken of the Licensing Enforcement team's views and the need to protect the safety of the public.
- 6.14 Further comments have since been received from the Competition and Markets Authority and whilst these have been responded to separately their letter is included in the background papers.
- 6.15 A final round of public consultation was carried out via the Birmingham BeHeard website from 13<sup>th</sup> December 2016 until the 13<sup>th</sup> January 2017.
- 6.16 There were nine responses to this consultation through the BeHeard website and a further three responses via email, although one of these was a

duplicate of an online submission, giving a total of 11 respondents.

- 6.17 All points raised have been taken into account when preparing this draft of the operator conditions for consideration by committee and a number of conditions have been amended accordingly.
- 6.18 Two major points raised were the need to record the destination of the journey at the time of booking; and the requirement to keep a copy, rather than the original, of the driver's vehicle and driver licence.
- 6.19 The first of these centres around the use of new technology and in particular Interactive Voice Recognition (IVR).
- 6.20 Condition 31(e) is in place for three main reasons. Firstly, to ensure that bookings are genuine pre-bookings and to prevent bookings being backdated to cover up plying for hire and ensure that passengers get into the vehicle which they have been allocated by the operator. Secondly, to ensure passenger and driver safety by knowing where journeys start and end. Thirdly, to ensure that the route taken is the shortest route.
- 6.21 New technology allows the vehicles to be tracked via GPS whenever they are logged on to the operator's dispatch system and the destination is post-populated when the journey ends.
- 6.22 The driver is given the details of the journey when the passenger gets into the car.
- 6.23 Unfortunately not every operator has invested in this new technology and a number still use books to record journey records in. The City Council has to cover all operators with one set of standard conditions and so must secure the best data to ensure passenger/driver safety and aid in the detection of crime.
- 6.24 For this reason the condition has been drafted as it is but this does not prevent those operators from seeking exemptions to any such condition where they can demonstrate the technology can provide the requirements in 6.20 and each case can then be considered on its own merits.
- 6.25 The requirement to keep copies of licences was requested to be changed to the keeping of the original documents.
- 6.26 This would effectively prevent drivers from working for more than one operator at any one time.
- 6.27 This condition has not been amended especially given the response to the previous round of consultation by the Competition and Markets Authority.
- 6.28 The CMA said "The condition requiring PHV vehicles to display the name and call sign of the PHV operator (among others) may effectively prevent drivers for working for more than one operator... This reduces the scope for competition and could create the potential for significant consumer harm."

- 6.29 The Licensing Department does not want to restrict completion and is of the opinion that requiring drivers to work solely for one company may well do so and as such only require copies of relevant documents to be retained.
- 6.30 There is of course nothing to prevent individual operators from requiring that any driver who works for their company only works for their company and this should be down to the individual operating policies of those companies.
- 6.31 A further condition has been added following recent information obtained from the Local Government Association.
- 6.32 This is a letter from the Under Secretary of State for Transport Andrew Jones MP. This suggest that conditions be placed on operators to close a loophole in Licensing legislation that allows PSV drivers to carry out private hire work when they have potentially been deemed unfit to work as a private hire driver by the City Council.

## 7. Summary of Key Changes

- 7.1 The following points highlight the key changes from the original conditions to the final draft of the proposed conditions. The list does not include every minor variation to wording.
- Reduced from 57 to 42 conditions
  - Legal obligations removed
  - Guidance now produced as a separate document
  - Information to be reported has been streamlined
  - Allows for email as a means of communication
  - Allows for Apps to be used for inviting and accepting bookings and passing same onto drivers
  - Clarification over documents required for staff register
  - Removal of specific signage requirements (to be included in a proposed Vehicle Signage Policy)
  - Restriction to one approved sign only
  - Requirement to record sub-contracted bookings
  - Clarification on recording of destination
  - Specific requirement to notify Licensing of certain complaints
  - A restriction on the use of PSV's

## 8. Implications for Resources

- 8.1 This work has and will be undertaken within the resources available from within those funds generated by the licence fee structure.

9. Implications for Policy Priorities

9.1 The content of this report support the Committee's objective to improve standards of licensed people, premises and vehicles and the Council's strategic outcome of staying safe in a clean, green city.

10. Implications for Equality and Diversity

10.1 No specific implications have been identified.

## **DIRECTOR OF REGULATORY SERVICES**

### Background Papers:

Initial draft of conditions for Consultation with the trade  
Responses from the trade following initial draft version  
Annotated draft following initial consultation showing changes made  
Second draft for wider public consultation  
Driving Forward online and Postcard sent out to all licensees  
Operator conditions consultation on Be Heard  
Notes from Trade meeting  
Letter from Competition and Markets Authority  
Third Draft for further consultation  
Summary of responses from Be heard  
Consultation repsonses  
Star Cars & Coaches response  
Elite Radio Cars response  
24/7 Carz response  
Enforcement responses  
Letter from Andrew Jones MP to LGA in response to 03/21/2016 media release