

Report to: **Planning and Licensing Committee**
Date: **15th November 2016**
Title: **Approval of policy in relation to the licensing of Taxi drivers.**
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y / N**

Date next steps can be taken:
(e.g. referral on of recommendation or implementation of substantive decision)

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Recommendations:

1. That the Planning and Licensing Committee recommends to Council that the draft Taxi Driver Licensing Policy, is adopted at the meeting on 6th December 2016.

1. Executive summary

- 1.1. West Devon Borough Council as the Licensing Authority has the power to issue licences to drivers of Hackney Carriages and Private Hire Vehicles, whom they deem as being fit and proper.

There is no legal definition of what makes a driver a fit and proper person, and it is therefore down to the licensing authority to determine what qualifications they require an applicant to meet in order to be licensed. This policy proposes to set the minimum requirements we will require from new and existing drivers.

- 1.2. The Council's current policy and driver handbook was issued approximately 30 years ago, and is therefore out of date. Ideally a policy of this importance should be reviewed every 3-5 years.
- 1.3. There have also been a number of national incidents in relation to the safeguarding of children and vulnerable adults in the past few years associated with the taxi trade. This policy seeks to ensure that all of our drivers are aware of these issues and know how to act to combat child sexual exploitation, and other criminal activities.

2. Background

- 2.1. In West Devon we currently have 105 Combine Hackney Carriage/ Private Hire Drivers. A licence lasts for between 1 and 3 years. All new drivers are required to provide confirmation of their ability to hold a licence by demonstrating that:-
 - They have held a drivers licence for at least 12 months
 - They have an acceptable criminal record through providing an Enhanced Disclosure and Barring Service certificate.
 - That they meet the Group 2 medical standards
 - Pass a knowledge test demonstrating a good understanding of the local area.
- 2.2. Our current policies are outdated and do not offer adequate protection to users of the taxi service or the taxi drivers themselves, when considering changes to legislation.
- 2.3. Our policy must ensure compliance with Article 13 (2) of Directive 2006/123/EC, given domestic effect by regulation 18(4) of the Provision of Services Regulation 2009 SI No 2999, in that the 'authorisation procedures and formalities' for applicants 'shall not be dissuasive...and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures'.

When drafting the policy, we have taken into account best practice from other authorities in the wake of the recent incidents involving the taxi industry elsewhere in the Country.

The Policy has also been out for public consultation, meetings have been held with the taxi trade, and the policy was sent to various local and national representatives for comments. Comments received and alterations made to the policy can be viewed in Appendix A.

3. Outcomes/outputs

- 3.1. This report seeks that the Committee recommend to the Council at the meeting on the 6th December that the Taxi Driver Licensing Policy be adopted for implementation on the 1st January 2017.
- 3.2. We will assess the impact of the policy by reporting to the committee on an annual basis the number of applications received that have been

successful/refused, the number of penalty points issued in a 12 month period, the decisions taken by committee in relation to drivers brought to them in the previous 12 months, and the number of successful appeals brought against Council decisions.

- 3.3. The policy will be reviewed in at least 5 years' time, but sooner should circumstances require it.

4. Options available and consideration of risk

- 4.1. When considering an application for a Driver Licence the Council must ensure that the driver is a "Fit and Proper" person to hold a licence. A person aggrieved by refusal, suspension or revocation of a driver licence can appeal to the Magistrates Court within 21 days of that decision.

Decisions made by the Council need to be defensible. This policy seeks to set a minimum standard that we will expect our licensed drivers to meet. However, notwithstanding this Policy, the Licensing Authority will consider each application and enforcement action on its own merits.

- 4.2. The importance of the taxi trade in providing an essential service in a rural community such as West Devon is recognised, and imposing unduly stringent restrictions may adversely impact the adequate supply of taxis.

Therefore the policy seeks to strike a decent balance between protecting the safety of taxi users and ensuring that the policy does not unnecessarily restrict the ability of applicants to obtain a licence.

- 4.3. When drafting the policy a public consultation was held from the 5th September for a period of 6 weeks. During this period the Environmental Health Community of Practice held meetings with the taxi trade on the 13th and 15th September. The feedback from this consultation and amendments made to the draft policy can be viewed in the appendices to this report.

However based on the feedback received the following amendments were made and paragraphs considered;

Para. 5.9: The requirement for all drivers to hold a UK driving licence within 12 months of being granted a Taxi driver licence is above and beyond the requirements of U.K. law, however it is felt appropriate to require this as we cannot view the penalty point records on foreign licences.

Para. 5.10: There were concerns raised over the knowledge test content by drivers with them believing that requiring knowledge of the full district is unreasonable especially with the introduction of GPS etc. We agree with some of the comments but feel that a knowledge test should remain part of our policy but we will endeavour to work on the content of the test.

Para. 5.14: During the consultation period the DVSA announced the suspension of their testing from the 1st January 2017. This would affect all Devon licensing authorities who require new drivers to pass this test before being licensed. The Licensing officers across Devon are in collective negotiations with several providers including the Devon Travel Academy which is run by Devon and Somerset Fire and Rescue Service. The location of this training is likely to be Westpoint Exeter but could be held at any fire station as long as there are enough bookings to warrant it.

The DSFRS training also includes passenger assistance training so we have removed mention of the specified provider being Midas.

Para. 5.17: We have received comments in relation to the frequency of training and whether we would accept training provided by other organisations.

In relation to the frequency of training, other organisations stipulate for other occupations that training should be undertaken every 3-5 years. It is envisaged that the driver policy will be reviewed every 5 years and therefore we can review the content during this review.

In regards to other providers, officers have concerns over the content of these courses and therefore believe drivers should be required to attend our sessions.

Para 5.20: There were a number of concerns raised about requiring drivers to use our nominated medical assessors, mainly due to the location of this assessor being in Plymouth. We have been unable to finalise discussions with the provider and therefore have amended the policy to allow drivers to continue to use their own GP's as well as using our nominated provider should they wish.

Para. 5.21: Comments have been received regarding the frequency of medicals, and the fact that there is no requirement for a medical after an initial application until the age of 45. This policy is in line with the DVSA standards for HGV and Bus drivers and therefore we feel it is appropriate to continue with this frequency.

It is the responsibility of the driver to inform the Licensing Authority of any medical conditions which may impact on their ability to drive, should we receive notification then we would require the driver to provide a medical assessment in a timely manner.

Para. 6.7: Following feedback the requirements for certificates of good conduct have been amended to take into account the impact that the proposals may have had on the children of armed service personnel who may have lived in many different countries. The policy therefore now only applies to countries lived in since the age of 18 rather than 10.

Chapter 9.0: The consultation has shown support for the introduction of a penalty points system, as long as the points are awarded in a fair and consistent manner. The Council intends to do this and we will report the

points awarded in the previous 12 month period as part of the annual report to the committee.

Appendix B Para. 4: Following concerns about the requirement for drivers to hand lost property into a police station within 48 hours of it being discovered, the policy has been amended to allow discretion by the driver as to what items of lost property should be kept and how to ensure it is reunited with the passenger.

Appendix B Para. 9: It was felt inappropriate to stop drivers from eating or drinking in their vehicles and therefore this was removed from the policy.

Also drivers were concerned over the wording about inappropriate conversations and therefore this was amended to make the policy more general.

Appendix D: Concerns have been raised over the frequency of appointments available for new drivers to undertake the knowledge test being once a month. Unfortunately it is felt with current resource levels we are unable to guarantee a greater number of days. We will always endeavour to be flexible with appointments and therefore we have included the word "normally" to the policy to allow for discretion of the officers.

5. Proposed Way Forward

- 5.1. This report seeks that the Committee recommend to the Council at the meeting on the 6th December that the Taxi Driver Licensing Policy be adopted for implementation on the 1st January 2017.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Town Police Clauses Act 1847 gave the Local Authority the power to grant licences to Hackney Carriages for the purpose of plying for hire within the district.</p> <p>The Local Government (Miscellaneous Provisions) Act 1976 amended the powers above to state that a licence can only be granted to someone who is a fit and proper person and has held authorisation to drive a motorcar (drivers licence) for at least 12 months.</p> <p>There is no definition of what someone fit and proper and this policy will help to ensure consistency when determining applications and</p>

		<p>other determinations such as when to suspend or revoke a licence.</p> <p>Whilst we may have a policy each application will still need to be determined on its own merits.</p>
Financial		<p>The policy does not have direct financial impacts on the authority. There will be an increase in obtaining a licence due to the additional requirements that applicants will need to meet, however this is at their expense.</p> <p>We will in due course need to review our licensing fees to ensure that they are in line with the decision made in the European Court of Justice in the Hemming & others v Westminster City Council case. Which states that licensing fees should be set at a level that does not dissuade applicants and is at most the cost of the procedure of issuing a license.</p>
Risk		<p>A determination by a licensing authority to refuse, revoke or suspend a licence can be appealed as can conditions attached to a licence. An appeal is made to the magistrates.</p> <p>Failure to having made a determination that is defensible could lead to costs being awarded against us.</p> <p>As has been found across the country where the taxi trade has been implicated in criminal actions there has been a negative reputational impact on those licensing authorities. The proposed policy has been developed taking into account learning from these scandals and other good practice.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		<p>The policy will hopefully have a positive impact on equality and diversity by promoting good practice in disability awareness amongst the taxi trade.</p>
Safeguarding		<p>The policy will hopefully have a positive impact on safeguarding by ensuring that an essential trade are well regulated, and drivers who have access to vulnerable children and adults are aware of the</p>

		signs of abuse and how to report these.
Community Safety, Crime and Disorder		A positive impact by ensuring that drivers who have access to sensitive information about people and their homes are thoroughly vetted.
Health, Safety and Wellbeing		No overarching concerns foreseen
Other implications		None foreseen

Supporting Information

Appendices:

- A - Consultation feedback
- B - Draft Taxi Driver Policy

Background Papers:

Taxi and PHV Licensing Councillors Handbook (England and Wales), Local Government Association

Taxi and Private Hire Vehicle Licensing: Best Practice Guidance, Department for Transport, 2010.

Minutes of the Taxi Trade meetings held on the 13th and 15th September.