

# Licensing Committee

29 November 2017

<b>Report title</b>	Consultation Response on amendments to Driver / Vehicle / Operator Conditions	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Kevin O'Keefe, Governance	
<b>Originating service</b>	Licensing Services	
<b>Accountable employee(s)</b>	Chris Howell	Licensing Manager
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## Recommendation(s) for action or decision:

The Licensing Committee is recommended to:

1. Approve the revised conditions for Private Hire Driver's, Vehicle's and Operator's attached at Appendix B.

## Recommendations for noting:

The Committee is asked to note:

1. That the proposed amendments have been subject to a consultation exercise.
2. That seven responses were received and changes shown in Appendix A.

## 1.0 Purpose

1.1 This report is intended to:

- a) Advise the Licencing Committee of the outcome of the consultation with the Private Hire Operators on proposals to amend the Council's existing conditions relating to Private Hire Drivers, Vehicles and Operators.
- b) Seek approval for the amendments to Private Hire Drivers, Vehicles and Operators conditions and adopt them as the standard conditions for licences granted on or after 1 January 2018.

## 2.0 Background

- 2.1 There have been many changes with the recent onset of technology within the private hire trade. This together with the intricacy of cross border hiring, necessitates amendments to the current Private Hire Licence conditions
- 2.2 Although there is no legal requirement to consult with the private hire trade groups, in the interest of positive working relationships, it was requested by the Licensing Committee on 25<sup>th</sup> September 2017 to consult with the private hire trade.
- 2.3 The Licensing Committee conditions licences for Private Hire Operators, Drivers and Vehicles through The Local Government (Miscellaneous Provisions) Act 1976 (the Act).

## 3.0 Consultation

- 3.1 The consultation exercise commenced on 2 October 2017 and the proposed amendments were sent to all Private Hire Operators licenced by the City of Wolverhampton Council.
- 3.2 The overall closing date for written comments in respect of the proposed amendments was 31 October 2017.
- 3.3 The responses received not agreeing with the proposed amendments are shown below together with Officer responses. The responses are contained in full at Appendix C
  - 3.3.1 ABC Countdown
    - *I do not believe that call centre staff members should be subject to an Enhanced DBS check or attend Safeguarding training, because it has not been stated why this would be needed.  
Unless a valid reason is put forward, I do not agree to these proposals.*
  - 3.3.1.1 It is acknowledged that an enhanced DBS can only be required in relation to certain occupations. The requirement has been amended to require a Basic DBS.

It is noted that it is an Operator's responsibility to ensure the staff they employ are fit and proper people to undertake their role.

Staff taking calls/bookings are privy to potentially sensitive information for example; when someone is away on holiday and the dwelling is empty; or when a child is dropped home before a parent is home from work; regular patterns of arrivals and departures. It is therefore necessary to have a basic disclosure for the people working in this environment. The safeguarding training will enable staff to better identify possible CSE issues at an early stage so as to help protect children and vulnerable people from harm. It will also help them to provide advice to drivers who call for such assistance whilst undertaking bookings.

3.3.2 A2Z Licensing provided a detailed response on behalf of GoCarz, DG Cars and Z Cars, Diamond Cars, Star Cars, Elite Radio Cars, 24 7 Cars Wolverhampton.

**Driver Conditions**

*Condition 3.9: We agree with the objective of this proposed condition, but question the lawfulness of it. A driver is under no statutory duty to cooperate with anyone other than a police constable and authorised officer of Wolverhampton Council. Maybe this could be advanced in a separate driver best practice or code of conduct document, which would avoid the risk of the Council acting ultra vires. It could be included in a document which also sets out the legal requirements duties that are set out at 1.4, 1.5, 2 and 2.1 that are mentioned above.*

3.3.2.1 The Council may attach such conditions to a driver's licence as the Council considers are reasonably necessary. Conduct and driver standards is of paramount importance to the Council and this condition reinforces the Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions and is therefore reasonably necessary.

*Condition 5.1: We would suggest amending the 2nd sentence to: "Any property found in the vehicle to be handled in compliance with the Operator's Lost Property policy and, in any event to be handed into the Operator or the nearest Police Station within 12 hours of finding."*

*The issue is that many police forces, including West Midlands are reluctant to accept property unless it is either valuable or clearly identifiable.*

*Should there be a time frame in which property is to be handed in. Within 12 hours?*

3.3.2.2 The comment is noted but it is not for the Council to condition Operators on how to manage their own internal day to day business procedures.

*Condition 12.1: We agree with the objective, but wonder whether the duty to notify should be shorter than 3 days, because otherwise a driver may continue to drive when they should not necessarily do so. Unless the Council also includes a condition requiring a driver to provide the Licensing Service with medical reports on request and at the driver's expense, the Council will not have medical evidence upon which it can properly assess whether it is appropriate to suspend or revoke a driver's licence.*

3.3.2.3 This is agreed and the condition amended to 24 hours.

*Condition 13.1: Waiting on yellow lines is not a breach of parking regulations – parking is a breach. See copy of R (on the application of Makda) v The Parking Adjudicator [2010] EWHC 3392 (Admin) attached.*

3.3.2.4 The comments are noted and the condition has been amended.

#### **Vehicle Conditions**

*Condition 3.2: The Council cannot change conditions attached to the licence or indirectly by a supplementary changing a specification during the term of the licence, unless the licence holder agrees to such changes. See R (on the application of Dean) v Secretary of State for Business, Energy and Industrial Strategy [2017] EWHC 1998 (Admin) attached.*

3.3.2.5 This is agreed and the condition has been removed

#### **Operator**

*Condition 2.3: We agree with the objective of this proposed condition, but question the lawfulness of it. An operator is under no statutory duty to cooperate with anyone other than a police constable and an authorised officer of Wolverhampton Council. Maybe this could be advanced in a separate operator best practice or code of conduct document, which would avoid the risk of the Council acting ultra vires.*

3.3.2.6 The Council may attach such conditions to a driver's licence as the Council considers are reasonably necessary. This condition is necessary as there is currently no provision in legislation. This is intended to speed up Enforcement action.

*Condition 10.1: Whilst this condition is undoubtedly desirable, it is illegal to undertake an Enhanced DBS check in relation to a person who is not engaged in certain specified occupations, such as being a hackney carriage or private hire driver. This condition is ultra vires.*

3.3.2.7 It is acknowledged that an enhanced DBS can only be required in relation to certain occupations. The requirement has been amended to require a Basic DBS. It is noted that it is an Operators responsibility to ensure the staff they employ are fit and proper people to undertake their role.

*Additional Suggestion Condition re Lost Property: Given the requirements for lost property for drivers it will be necessary to consider adding a requirement for Operators to have a policy regarding lost property, to be supplied to the Council.*

3.3.2.8 The comment is noted but it is not for the Council to condition operators on how to manage their own internal day to day business procedures.

- A2Z provided feedback on many other proposed and existing conditions this is primarily regarding the wording of the condition and whether it should be included at all in a list of conditions. The full version of the comments is at Appendix C

3.3.2.9 These have been considered by Officers of the Council and the amendments have been made where we are in agreement.

#### **4.0 Financial implications**

4.1 The proposed CSE training for the staff of private hire operators can be accommodated within the existing private hire budgets. [SR/20112017/W]

#### **5.0 Legal implications**

5.1 The Local Government (Miscellaneous Provisions) Act 1976 Part II (the Act) allows the local authority to condition licences for hackney carriage and private hire vehicles, proprietors, drivers and private hire vehicle operators.

5.2 Section 48(2) of the Act provides a district Council may attach to the grant of a private hire vehicle licence such conditions as they may consider reasonably necessary and section 48(7) provides the safeguard of an appeal for anyone aggrieved by any condition attached to the grant of their PH Vehicle Licence.

5.3 Section 51(2) of the Act provides that the Council may attach such conditions to a driver's licence as the Council considers are reasonably necessary and section 52 provides the safeguard of an appeal to the Magistrates' Court for anyone aggrieved by any conditions attached to the licence.

5.4 Section 55(3) of the Act provides that the Council may attach such conditions to an operator's licence as the Council considers are reasonably necessary and section 55(4) provides the safeguard of an appeal to the Magistrates' Court for anyone aggrieved by any conditions attached to the Operator's licence. [SH/17112017/T]

#### **6.0 Equalities implications**

6.1 An equalities analysis was undertaken at the proposed consultation stage.

6.2 Application of the conditions will ensure that the service provided by private hire Driver's and Operator's is fair and consistent with all users of the service.

#### **7.0 Environmental implications**

7.1 There are no environmental implications to this function.

#### **8.0 Human resources implications**

8.1 There are no Human Resource implications to this function.

## **9.0 Corporate landlord implications**

9.1 There are no landlord implications to this function.

## **10.0 Schedule of background papers**

10.1 Previous report to Licensing Committee (25 Sept 2017).