

Shropshire Council's Response to the Law Commission Consultation Paper No 203 on Reforming the Law of Taxi and Private Hire Services

1. General comments

- 1.1** It is clear that the fundamental issue raised by this consultation is the future of taxi provision. Other issues raised either flow from this or are attempts to remove anachronisms from legislation and practice or to improve enforcement.
- 1.2** The principle position of the Council's responses is to strongly recommend a removal of the current two tier system of Hackney Carriages and Private Hire Vehicles and replace it with a simplified single tier taxi licensing regime. The current system is not understood by the vast majority of the general public, it causes confusion to operators and risks danger to the public when Private Hire Vehicles illegally tout for taxi work. The work caused to licensing authorities as a result of the two tier system is considered to be burdensome and expensive; a simplification of the regime makes sense.
- 1.3** It is noted that the consultation paper appears to lean towards the retention of the current two tier arrangements. This is considered unfortunate and despite this apparent leaning, Shropshire Council, one of many rural and non-metropolitan areas, does not see the merit in retaining a complex, confusing and expensive two tier system.
- 1.4** There are other issues that require to be addressed in the event of a move to a single tier system, e.g. the current taxi rank arrangements where it is considered that the introduction of a "rank permit" would allow for the continued use of these ranks by those operators prepared to pay. Under Shropshire's suggested proposals all licensed vehicles would be known as "taxis" thus removing current confusion in the eyes of the public, all taxis could ply for hire, all could be pre-booked and all would be required to be owned and driven by "fit and proper persons".
- 1.5** Disabled access provision is also considered in the consultation paper. It is considered unreasonable (and indeed undesirable) to have provisions

requiring wheelchair accessible vehicles. Rather, recognising that many people with physical disabilities do not need or want wheelchair accessibility; instead the approach ought to be to encourage a mixed taxi fleet to meet the necessary demands in any particular area. This may be done by offering discounted annual license fees for wheelchair accessible vehicles recognising, in part, their additional costs. It is believed that enhanced and compulsory Disability Discrimination Act (DDA) training should also be part of the driver qualification process.

2. Specific provisional proposals and questions

2.1 Chapter 13 – Overview of Provisional Reform Proposals

Provisional Proposal 1

Regulation should continue to distinguish between taxis, which can accept prebooked fares, be hailed on the street and wait at ranks, and private hire vehicles, which can only accept pre-booked fares. (Page 160)

We believe that one regime, covering all taxis on a single tier basis should be introduced. The matter of taxi ranks could be dealt with by means of a separate permit.

2.2 Chapter 14 – Reform of Definitions and Scope

Provisional Proposal 2

London should be included, with appropriate modifications, within the scope of reform. (Page 162)

Agreed, it should be a national system and should apply to London.

Provisional Proposal 3

The regulation of taxi and private hire vehicles should not be restricted to any particular type of vehicle but should rather focus on road transport services provided for hire with the services of a driver. (Page 164)

Agreed

Question 4

Would there be (and if so what) advantages to restricting licensing to motor vehicles that require a driving licence? (Page 164)

As long as an individual driver/operator has competency in relation to a particular vehicle there would not be an advantage to restricting licensing to motor vehicles that require a driving licence.

Provisional Proposal 5

Public service vehicles should be expressly excluded from the definition of taxi and private hire vehicles; and taxi and private hire vehicles should only cover vehicles adapted to seat eight or fewer passengers. (Page 165)

Agreed

Provisional Proposal 6

References to stage coaches charging separate fares should no-longer feature as an exclusion from the definition of taxis. (Page 166)

Agreed

Provisional Proposal 7

The Secretary of State should consider issuing statutory guidance to the Senior Traffic Commissioner about the licensing of limousines and other novelty vehicles to assist consistency. (Page 167)

The Local Licensing Authority should deal with the licensing of limousines and other novelty vehicles.

Provisional Proposal 8

The concept of “in the course of a business of carrying passengers” should be used to limit the scope of taxi and private hire licensing so as to exclude genuine volunteers as well as activities where transport is ancillary to the overall service. (Page 168)

Agreed

Question 9

How, if at all, should the regulation of taxis and private hire deal with:

- (a) carpooling; and*
- (b) members clubs? (Page 170)*

They should not fall within the licensing regime.

Provisional Proposal 10

The power of the Secretary of State and Welsh Ministers to set national standards should be flexible enough to allow them to make exclusions from the taxi and private hire licensing regimes. (Page 171)

This proposal is too vague.

Provisional Proposal 11

Weddings and funerals should no-longer be expressly excluded from private hire licensing through primary legislation. (Page 172)

Agreed.

Question 12

Would there be merits in reintroducing the contract exemption, by means of the Secretary of State and Welsh Ministers' exercise of the power to set national standards? If so, what modifications could be made to help avoid abuse? (Page 174)

No, it was noted that this had not been raised as an issue at taxi liaison forum meetings.

Provisional Proposal 13

Regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to "streets". (Page 175)

Agreed, regulation of the ways taxis and private hire vehicles (whether or not the 2 tier system is retained) can engage with the public should not be limited to streets, but should be streets and public places.

Question 14

Is there a case for making special provision in respect of taxi and private hire regulation at airports? In particular, where concessionary agreements are in place should airports be obliged to allow a shuttle service for passengers who have pre-booked with other providers, or to the closest taxi rank? (Page 177)

No.

Provisional Proposal 15

The defining feature of taxis, the concept of “plying for hire”, should be placed on a statutory footing and include:

(a) references to ranking and hailing;

(b) a non-exhaustive list of factors indicating plying for hire; and

(c) appropriate accommodation of the legitimate activities of private hire vehicles. (Page 181)

The retention of a two tier system is not supported. If it is not replaced with a one tier system, this is agreed.

Provisional Proposal 16

The concepts of hailing and ranking should not cover technological means of engaging taxi services. (Page 181)

Agreed

Question 17

Would there be advantages to adopting the Scottish approach to defining taxis in respect of “arrangements made in a public place” instead of “plying for hire”? (Page 182)

No

Provisional Proposal 18

The concept of compellability, which applies exclusively to taxis, should be retained. (Page 182)

Agreed, the concept of compellability should apply to all licensed vehicles.

Provisional Proposal 19

Pre-booking would continue to be the only way of engaging a private hire vehicle and cover all technological modes of engaging cars. This is without prejudice to the continued ability of taxis to be pre-booked. (Page 183)

If it is decided to retain a two tier system of licensing then this is agreed.

Provisional Proposal 20

Leisure and non-professional use of taxis and private hire vehicles should be permitted. There would however be a presumption that the vehicle is

being used for professional purposes at any time unless the contrary can be proved. (Page 184)

Agreed; the restriction should remain and that whoever drives the vehicle should be a licensed driver.

Provisional Proposal 21

The Secretary of State and Welsh Ministers should have the power to issue statutory guidance in respect of taxi and private hire licensing requirements. (Page 185)

Agreed.

Provisional Proposal 22

Reformed legislation should refer to “taxis” and “private hire vehicles” respectively. References to “hackney carriages” should be abandoned. (Page 185)

Agreed.

Question 23

Should private hire vehicles be able to use terms such as “taxi” or “cab” in advertising provided they are only used in combination with terms like “prebooked” and did not otherwise lead to customer confusion? (Page 186)

Yes if the two tier system is retained.

2.3 Chapter 15 – A Reformed Regulatory Framework

Provisional Proposal 24

Taxi and private hire services should each be subject to national safety requirements. (Page 188)

Agreed

Provisional Proposal 25

National safety standards, as applied to taxi services, should only be minimum standards. (Page 189)

Agreed

Provisional Proposal 26

National safety standards, as applied to private hire services, should be mandatory standards. (Page 189)

Agreed

Provisional Proposal 27

Private hire services would not be subject to standards except those related to safety. Requirements such as topographical knowledge would no-longer apply to private hire drivers. (Page 190)

Basic navigation skills testing should be required as part of the knowledge test at a local level.

Question 28

Should local standard-setting for private hire services be specifically retained in respect of vehicle signage? Are there other areas where local standards for private hire vehicles are valuable? (Page 190)

Yes if a two tier system were implemented and no if a one tier system were implemented.

Question 29

What practical obstacles might there be to setting common national safety standards for both taxis and private hire vehicles? (Page 191)

None

Question 30

Should national conditions in respect of driver safety be different for taxi services compared with private hire services? (Page 192)

No

Provisional Proposal 31

The powers of the Secretary of State and Welsh Ministers to set standards for taxis and private hire vehicles should only cover conditions relating to safety. (Page 192)

Agreed

Provisional Proposal 32

The powers of the Secretary of State and Welsh Ministers to set national safety standards should be subject to a statutory consultation requirement. (Page 193)

Not agreed, consultation would only be required on technical advice issues

Question 33

What would be the best approach for determining the content of national safety standards? In particular should the statutory requirement to consult refer to a technical advisory panel? (Page 193)

Yes

Provisional Proposal 34

Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards. (Page 193)

Agreed.

Question 35

Should there be statutory limits to licensing authorities' ability to set local taxi standards? (Page 194)

No

Question 36

Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators? (Page 194)

Yes whether or not the two tier system is retained

Question 37

Should the powers and duties of licensing authorities to cooperate be on a statutory footing or is it best left to local arrangements? (Page 195)

Licensing authorities should keep their powers and duties to cooperate, but these should not be put on a specific statutory basis.

Provisional proposal 38

Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting. (Page 196)

Agreed, local arrangements should cover this proposal but this shouldn't be on a statutory basis.

Provisional Proposal 39

Licensing authorities should have the option to create, or remove, taxi zones within their area. (Page 196)

Yes

Question 40

Would it be useful for licensing authorities to have the power to issue peak time licences which may only be used at certain times of day as prescribed by the licensing authority? (Page 197)

No

Question 41

Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by a particular licensing authority. (Page 198)

Agreed, if the existing private hire system were replaced with a one tier system then geographical restrictions should be left to local terms and conditions; that is the local authority whose area the vehicle was expected to mostly work in could impose local conditions. If a one tier system were not implemented the current restrictions in relation to a Hackney Carriage's ability to work outside the area should remain and the law as set out in the "Berwick" case should be confirmed; indeed the "Fidler" case should be overturned by legislation and hackney carriages should not be permitted to take private bookings at all outside of the area it is licensed in.

Provisional Proposal 42

We do not propose to introduce a "return to area" requirement in respect of out of-area drop offs. (Page 199)

Agreed that if a two tier system were retained then a return to area requirement should not be retained.

Provisional Proposal 43

Licensing authorities should retain the ability to regulate maximum taxi fares. Licensing authorities should not have the power to regulate private hire fares. (Page 200)

Agreed

2.4 Chapter 16 – Reform of Driver, Vehicle and Operator Licensing

Question 44

Should taxis be allowed to charge a fare that is higher than the metered fare for pre-booked journeys? (Page 200)

No

Question 45

Should national driver safety standards such as the requirement to be a “fit and proper person” be either:

(a) set out in primary legislation; or

(b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? (Page 203)

National driver safety standards such as the requirement to be a “fit and proper person” should be included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions.

Provisional proposal 46

Vehicle owners should not be subject to “fit and proper” tests and the criteria applied would relate solely to the vehicle itself. (Page 204)

The “fit and proper” test should apply to both vehicle owners and the vehicle itself

Question 47

Should national vehicle safety standards be either:

(a) set out in primary legislation; or

(b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? (Page 205)

National vehicle safety standards should be included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions.

Provisional proposal 48

Operator licensing should be retained as mandatory in respect of private hire vehicles. (Page 206)

Agreed; if a two tier system is retained, or if there is a national licensing system for private hire vehicles, operator licensing should be kept.

Question 49

Should operator licensing be extended to cover taxi radio circuits and if so on what basis? (Page 208)

Yes, if a single tier system were implemented.

Provisional proposal 50

The definition of operators should not be extended in order to include intermediaries. (Page 209)

The definition of operators should be extended in order to include intermediaries.

Question 51

Should “fit and proper” criteria in respect of operators be retained? (Page 209)

Yes

Provisional proposal 52

Operators should be expressly permitted to sub-contract services. (Page 210)

Yes, as long as the sub-contractor is deemed to be a “fit and proper person”.

Question 53

Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply? (Page 210)

Yes, record keeping requirements should apply.

2.5 Chapter 17 – Reforming Quantity Controls

Provisional proposal 54

Licensing authorities should no longer have the power to restrict taxi numbers. (Page 213)

The power to restrict taxi numbers is not needed.

Question 55

What problems (temporary or permanent) might arise if licensing authorities lost the ability to restrict numbers? (Page 213)

In the longer term customer demand will regulate the number of taxis operating.

Question 56

Should transitional measures be put in place, such as staggered entry to the taxi trade over a scheduled period of time, if quantity restrictions are removed? (Page 215)

Yes, some form of time phasing in of a total removal of cap should be put in place.

2.6 Chapter 18 – Taxi and Private Hire Reform Equality

Question 57

Should there be a separate licence category for wheelchair accessible vehicles?

This could involve:

- (1) a duty on the licensee to give priority to disabled passengers; and*
- (2) a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles. (Page 217)*

There should not be a separate licence category for wheelchair accessible vehicles, and it would not be necessary to impose a duty on the licensee to give priority to disabled passengers but consideration could be given to a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles.

Question 58

Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards? (Page 217)

Licensing authorities should offer lower licence fees for vehicles which meet certain accessibility standards, to compensate for the additional cost

of purchasing a wheelchair accessible vehicle and to ensure a mixed fleet of vehicles.

Question 59

Do you have any other suggestions for increasing the availability of accessible vehicles, and catering for the different needs of disabled passengers? (Page 217)

See response to question 58 (above) and proposal 61 (below).

Provisional proposal 60

We do not propose to introduce national quotas of wheelchair accessible vehicles. (Page 218)

Agreed

Provisional proposal 61

National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training. (Page 219)

Agreed

Provisional proposal 62

In order to better address concerns about discrimination, taxis and private hire vehicles should be required to display information about how to complain to the licensing authority. (Page 219)

Agreed, this requirement should cover all potential areas of concern for passengers in one notice, not just concerns about discrimination.

Question 63

What would be the best way of addressing the problem of taxis ignoring disabled passengers seeking to hail them? Could an obligation to stop, if reasonable and safe to do so, in specified circumstances, help? (Page 220)

The best way of addressing the problem of taxis ignoring disabled passengers seeking to hail them would be to raise awareness through training and reinforcing issues relating to disabled passengers.

2.7 Chapter 19 - Reforming Enforcement

Question 64

Should authorised licensing officers have the power to stop licensed vehicles? (Page 222)

In principle, yes.

Question 65

*What more could be done to address touting? Touting refers to the offence “in a public place, to solicit persons to hire vehicles to carry them as passengers”.
(Page 223)*

The introduction of a single tier system would eliminate the confusion people have between private hire vehicles and hackney carriages and reduce the temptation to tout. In relation to touting, punishment could be increased and the court given the power and guidance to ban offenders from taking passengers for up to 12 months.

Question 66

Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules? (Page 223)

In principle yes; but only on the basis that such powers would be used in circumstances where other methods of enforcement have failed to achieve compliance.

Question 67

Should licensing authorities make greater use of fixed penalty schemes and if so how? (Page 225)

Yes, there is a definite need for fixed penalty notices to be introduced and used for certain offences and vehicles should be off the road until the fixed penalty is paid with immediate effect.

Provisional proposal 68

Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas. (Page 225)

If an offence is proven enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas.

Question 69

Should cross-border enforcement powers extend to suspensions and revocation of licences? If so what would be the best way of achieving this? (Page 226)

Enforcement would be undertaken as per the response to question 67, but where suspension or revocation is required the case should come back to the original licensing authority for determination.

2.8 Chapter 20 – Reform of Hearings and Appeals

Provisional proposal 70

The right to appeal against decisions to refuse to grant or renew, suspend or revoke a taxi or private hire licence should be limited to the applicant or, as appropriate, holder of the relevant licence. (Page 230)

Disagree. There can be important cases (of principle or local importance) when the Council would wish to appeal on a matter of public interest.

Provisional proposal 71

The first stage in the appeal process throughout England and Wales, in respect of refusals, suspensions or revocations should be to require the local licensing authority to reconsider its decision. (Page 231)

Agreed

Provisional proposal 72

Appeals should continue to be heard in the magistrates' court. (Page 232)

No, once a local licensing authority has reconsidered its decision, appeals should go directly to the Crown Court.

Question 73

Should there be an onward right of appeal to the Crown Court? (Page 233)

Yes, from the licensing authority's decision, without first going to the magistrates court (see 72 above).