



<u>Committee and Date</u>
Strategic Licensing Committee
10 th December 2014

<u>Item</u>
8
Public

HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY

Responsible Officer Frances Darling, Senior Commissioner (Public Protection)

e-mail: frances.darling@shropshire.gov.uk

Tel: 01743 251715

1. Summary

- 1.1 The Council's existing Hackney Carriage and Private Hire Licensing Policy ('the Policy') came into effect on 1 October 2011. It is largely based on the policy that was brought into effect when Shropshire Council was formed in 2009; consequently, the foundation of the Council's current Policy is, in effect, over 5 years old.
- 1.2 The Policy requires updating to reflect the Council's priorities and outcomes for 2014 – 2017, in particular in relation to protecting people from harm, promoting health and managing the environment. In addition, ongoing improvements in licensing practices and procedures need to be embedded within the Policy to further strengthen the application process and to provide the foundations for robust enforcement to increase compliance across the hackney carriage and private hire trade.
- 1.3 To this end, and in accordance with the resolution passed by the Strategic Licensing Committee ('the Committee') on the 24 September 2014, this report sets out the results of the second period of consultation that was undertaken in respect of the Policy and sets out a further revision of the Policy for consideration by the Committee.

2. Recommendations

- 2.1** That the Strategic Licensing Committee considers the feedback received as a result of the second period of consultation carried out between 29 September 2014 and 2 November 2014, together with the analysis and officer comments, as set out in **Appendices A, B, C and D**.
- 2.2** That the Strategic Licensing Committee agrees, with any necessary modifications, that the proposed 'Hackney Carriage and Private Hire Policy 2015 – 2019' as set out in **Appendix E** be reported to Cabinet for further consideration and a final decision with respect to adoption and implementation.

REPORT

3. Risk Assessment and Human Rights Act Appraisal

- 3.1** The proposed Policy wholly supports the Council's wider priorities and outcomes associated with keeping people from harm, promoting health, managing the environment and helping people to help themselves.
- 3.2** The Policy specifically takes account of the Council's safeguarding responsibilities, particularly in relation to children and vulnerable adults. The Policy significantly increases the criteria that must be satisfied before a person will be deemed a 'fit and proper person' to drive a hackney carriage or private hire vehicle. The criteria are set against the findings of the Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013.
- 3.3** Motor vehicle emissions are the primary cause of poor air quality nationally and poor air quality impacts on human health and the environment. The proposed Policy introduces a requirement for hackney carriage and private hire vehicles to meet European Emission Standards. This will have the effect

of reducing levels of air pollution. As a result of adopting the Policy, the Council has the opportunity to lead the local community in terms of demonstrating one of the means by which air quality may be improved and, in so doing, directly reduce the impact that vehicle emissions have on the local environment and human health. The Council's Director of Public Health fully supports actions that improve air quality as air quality is an indicator in the Public Health Outcomes Framework.

- 3.4** Unlike the Licensing Act 2003 and the Gambling Act 2005, the legislation that specifically controls the licensing of hackney carriages and private hire does not contain provisions that directly require the Council to prepare and publish a hackney carriage and private hire licensing policy in a particular manner.
- 3.5** Nevertheless, the Regulators' Code, which has statutory effect by virtue of Section 22 of the Legislative and Regulatory Reform Act 2006, means the Council must have regard to the requirements of the Code. The development of a hackney carriage and private hire licensing policy to guide licensing activities will ensure that the Council satisfies its legal responsibilities with respect to specific elements of the Regulators' Code and will assist the Council to demonstrate that it has had due regard to the Code in relation to this particular area of law.
- 3.6** If the Council fails to prepare and publish such a policy the Council will be open to criticism; in particular from those parties whom the Council seeks to licence. Without a policy, officers and Members will find it extremely difficult to make appropriate and consistent licensing decisions and to take proportionate enforcement action. As a consequence, the Council will face significant difficulty in justifying the way it has reached licensing decisions and taken enforcement action.
- 3.7** This will result in the Council failing to adequately deliver its safeguarding responsibilities and reduce its ability to directly, and in partnership with other agencies, tackle child sexual exploitation. Furthermore, the Council's ability to

control overall compliance of the hackney carriage and private hire trade will be hampered and there is the increased risk of:

- successful appeals by applicants who have had their licences suspended or revoked;
- service complaints to the Local Government Ombudsman;
- judicial review; and
- legal challenge to any criminal proceedings instituted by the Council.

The reputation and professionalism of the Council would clearly be at risk.

- 3.8** Conversely, by preparing and publishing a policy, the Council demonstrates that it takes its hackney carriage and private hire licensing role seriously. It creates transparency for all stakeholders providing the manner in which the Council intends to undertake its hackney carriage and private hire licensing responsibilities. Furthermore, it provides the Council with a basis for a robust defence to any challenges that may be encountered in respect of decisions made and enforcement action taken. It also demonstrates commitment to and compliance with the Regulators' Code.
- 3.9** The proposed policy is consistent with national guidance on hackney carriage and private hire licensing and is deemed to be best practice.
- 3.10** The proposed policy aims to ensure that the human rights of applicants, licence holders and the public who use hackney carriages and private hire services are protected. However, it is recognised that it is a fine balance to ensure that this is achieved for all parties involved. Nevertheless, the policy has been written to assist the Council to comply with the Human Rights Act 1998 and to avoid the risk of adverse Human Rights Act implications as a result of undertaking the hackney carriage and private hire licensing function.
- 3.11** Whilst there is no legal duty specifically placed on the Council to consult with respect to this policy, it is good practice to do so and is in line with the Department for Transport's 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' (March 2010). The full extent of the consultation is set out

at paragraph 5.3 below. Responses to the earlier consultation undertaken between 2 June 2014 and 24 August 2014 have previously been considered by the Committee. This report focusses on those responses received as a result of the consultation undertaken between 29 September 2014 and 2 November 2014.

4. Financial Implications

- 4.1** There are no direct financial implications for the Council as a result of the recommendations set out at paragraph 2 above. However, staff resources will be required to implement and enforce the changes being proposed by the revised Policy.

5. Background

5.1 General

- 5.1.1** The Council has a duty to provide for the licensing of hackney carriages under the Town Police Clauses Act 1847 and under the relevant adopted provisions of the Local Government (Miscellaneous Provisions) Act 1976. In addition, the adopted provisions of the 1976 Act mean that the Council must provide for the licensing of private hire drivers, vehicles and operators.

- 5.1.2** Whilst it is recognised that this duty requires an efficient and effective administrative process, the fundamental purpose of the licensing regime is to protect the safety of the public. This means the Council must ensure that only fit and proper persons are licensed to be drivers and operators and that vehicles remain safe and fit for the purpose of transporting fare-paying passengers. The proposed Policy aims to provide the foundation of this protection.

5.2 Relevant national reports

5.2.1 During the process of review and consultation, officers have been mindful of the Law Commission's review of the legal framework relating to taxis and private hire vehicles across England and Wales. The Law Commission's final report and draft Bill were published on 23 May 2014 and the recommendations have been presented to Government. However, as yet the Government has not responded; consequently, the extent to which the recommendations will be accepted is unknown and no timescales have been published in this respect.

5.2.2 The review of the Council's Hackney Carriage and Private Hire Licensing Policy is set against the background of the Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013 undertaken by Alexi Jay OBE. The outcome of the enquiry was published in August 2014. In particular, Members should note that the published report states: *'One of the common threads running through child sexual exploitation across England has been the prominent role of taxi drivers in being directly linked to children who were abused.'*

5.3 Consultation

5.3.1 The Committee commenced the process of reviewing the Policy in March 2014 when it confirmed that informal engagement with the hackney carriage and private hire trade was to be undertaken through a number of 'Taxi Forum' meetings across the County. During these Forums, held between the 15 April 2014 and 24 April 2014, the trade had the opportunity to identify areas of the Policy where improvements could be made.

5.3.2 In May 2014 a further report was presented to the Committee with a revised Policy that captured the improvements suggested by the trade, together with changes identified by the licensing service. A decision was made by the Committee to formally consult on the revised Policy for a period of 12 weeks

from 2 June 2014 to 24 August 2014. This was carried out through the Council's website and advertised in the Shropshire Star newspaper.

- 5.3.3** In September 2014, the outcome of the 12 week consultation was presented to the Committee, with a further revision of the Policy. The content now focussed more on safeguarding and the environment as well as incorporating the necessary changes to strengthen the application process and provide the means for robust enforcement to increase compliance across the hackney carriage and private hire trades. Consequently, the Committee supported a further period of consultation, not being less than 4 weeks, being undertaken. This was carried out between 29 September 2014 and 2 November 2014 using the Council's website, an additional 'Taxi Forum' meeting held on the 28 October 2014 in Shrewsbury and a further advertisement in the Shropshire Star.
- 5.3.4** An analysis of the responses received has been undertaken and the results are set out at **Appendix A**. Each response has been fully considered by officers and a summary has been prepared; this is available at **Appendix B**. The summary details the degree to which the proposed policy has/has not been amended, together with explanatory comments where this is necessary. The actual responses (redacted to remove personal details/information) received are set out at **Appendix C**. The notes taken at the 'Taxi Forum' held in October are produced at **Appendix D**.
- 5.3.5** The revised policy, with relevant tracked changes, is set out at **Appendix E**. In addition, the proposed improvements and substantive changes, compared with the current 2011 Policy, are summarised in **Appendix F**.
- 5.3.6** The Enterprise & Growth Scrutiny Committee considered the overarching scope and purpose of the proposed Policy at the meeting held on 6 November 2014. There was overall support for the direction of the Policy with respect to ensuring public safety.

5.4 Particular issues highlighted by responses to the consultation

European Emission Standards

- 5.4.1** The proposed introduction of European Emission Standards for vehicles is based on the impact that these standards have on reducing pollutants which are of concern in Shropshire. Clean air is essential for a good quality of life. In the past air quality was largely affected by pollution caused by industry. Today it is motor vehicle emissions that are the primary source of air pollution concerns in Shropshire and this follows the national picture.
- 5.4.2** Poor air quality has negative effects on the environment in which we live and on human health. Those most at risk are the very young and the elderly, and people already suffering from conditions such as asthma or bronchitis. In high concentrations, air pollution can cause irritation of the eyes, nose and throat, can lead to the worsening of lung and heart diseases, and in very extreme cases it can be associated with the onset of certain cancers. At a local level, air pollution causes soiling and corrosion of buildings and a reduction in the growth of plants. At a global level, it has an adverse and very serious effect on the health of entire ecosystems, as well as being linked to causing acid rain and climate change.
- 5.4.3** Poor air quality is a significant public health issue. The burden of particulate air pollution in the UK in 2008 was estimated to be equivalent of nearly 29,000 deaths at typical ages and an associated loss of population life of 340,000 life years lost. In Shropshire 4.2 % of all mortality is calculated as being as a result of air pollution; this equates to around 130 deaths annually. Consequently, measures to reduce levels of particulate air pollution, or to reduce exposure of the population to such pollution, are regarded as an important public health initiative.
- 5.4.4** In Shropshire there are five air quality management areas where levels of air pollutants exceed the limits set by legislation. The main contributor to air pollution in each of these areas is vehicle emissions. Areas where air quality

management areas are located and where monitored levels of pollutants are close to legislative target levels include Bridgnorth, Shrewsbury, Ludlow, Ternhill and Pant.

- 5.4.5** It cannot be concluded that the views of the trade are fully represented as a result of the consultation; however, there is an indication that the trade supports the adoption of the European Emission Standards providing sufficient time is permitted for the transition. This support, taken together with the wider implications for public health and the environment, provide a sound basis for introducing this requirement into the Policy. It should be noted that the original timescale has already been extended to take account of direct feedback from the trade.

European New Car Assessment Programme (NCAP)

- 5.4.6** The proposed introduction of the European New Car Assessment Programme (NCAP) safety ratings for vehicles is based on the impact these standards will have on improving the safety of vehicles driven by the Council's licensed drivers and as a result the increase in public safety.
- 5.4.7** The NCAP organizes crash-tests and provides a realistic and independent assessment of the safety performance of cars sold in Europe. Established in 1997, NCAP is composed of seven European Governments as well as motoring and consumer organisations in every European country. NCAP is a catalyst for encouraging significant safety improvements to new car design.
- 5.4.8** These proposals should not result in any significant burden on the trade as replacement vehicles are likely to be newer vehicles thereby meeting the appropriate standard at the time of manufacture.

Vehicle colour

- 5.4.9** In 2011, during the review of the standards/conditions, the Committee agreed that both hackney carriage and private hire vehicles could be any colour. However, representations were made by specific sectors of the trade, as part of the consultation between June and August this year, requesting that the Council require hackney carriages to be black and private hire vehicles to be any colour other than black.
- 5.4.10** Having a clear distinction between vehicle type on colour has significant benefits for both public safety and enforcement. For example, the public are less likely to attempt to hail a private hire vehicle in the street if they know that only black vehicles (with 'TAXI' roof signs and Council issued hackney carriage plates) are legally permitted to respond to such a hail. This promotes the 'helping the community to help themselves' priority of the Council as the public become more able themselves to reduce the risks associated with hailing private hire vehicles by more easily recognising those vehicles, i.e. hackney carriages, that they ought to hail. (Note: The insurance on private hire vehicles that are not pre-booked is invalid.)
- 5.4.11** However, despite the recognised potential benefits, there is an indication from certain sectors of the trade that this proposal is not supported (but noting the limitations of the conclusions that can be drawn from the responses to the consultation). In addition, it is accepted that there is a certain degree of practical difficulty associated with implementing this element of the policy, i.e. during the transitional period both hackney carriages and private hire vehicles could be black and therefore cause rather than reduce confusion. Consequently, the proposed Policy has been amended to encourage vehicle proprietors, owners and operators to consider this approach on a voluntary basis when replacing and changing vehicles.

Zones and wheelchair accessibility

5.4.12 The Committee has previously considered the issue of 'Taxi Zones' and in March 2010 recommended that from 1 April 2011 zones be abolished together with the introduction of a single set of unified standards/conditions for hackney carriage licensing for the purpose of forming a single unified taxi licensing arrangement and a common set of standards/conditions for hackney carriages across the administrative area of Shropshire Council.

5.4.13 The Committee considered and agreed common standards/conditions in March 2011 and these are reflected in the current Policy that came into effect in October 2011. (The standards/conditions have been reviewed as part of the current consultation and further changes are proposed.) However, the abolition of zones failed to progress at that time and this remains the position. This is largely due to the fact that all hackney carriages will be required to become wheelchair accessible and there has been resistance to bring about this change as a result of objections from certain sectors of the trade; albeit there is support from other sectors. The delayed Law Commission report has also hindered progress. The Committee was made aware of these matters through a number of reports during 2011 and 2012.

5.4.14 As a result (and taking into account the feedback from the consultation), there is no proposal to move to a single zone until the implications of the Law Commission's report and recommendations are fully understood and implemented.

6. Conclusions

6.1 The primary purpose of the proposed Policy is to address the Council's safeguarding responsibilities as they apply to the licensing of hackney carriage and private hire vehicles, operators and drivers. There is overall support for the robust approach being proposed.

- 6.2** The issues that have generated conflicting views, i.e. vehicle emissions, NCAP safety ratings, vehicle colour and zones/wheelchair accessibility are secondary to the safeguarding purpose of the proposed Policy.
- 6.3** It is proposed to move forward with the European Emission Standards and the NCAP safety ratings.
- 6.4** With respect to vehicle colour and wheelchair accessibility, it is proposed that the Council undertakes a wider programme of collaborative working with the trade to encourage voluntary adoption of these standards.
- 6.5** With respect to the amalgamation of zones, it is accepted that the Government's implementation of the Law Commission's report and recommendations is likely to be key to the direction the Council will wish to take in the future; consequently it is proposed that the current five zones remain in place at this time.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

- Minutes of the Strategic Licensing Committee Meeting held on the 23 March 2010
- Report entitled 'Common Licence Conditions for Hackney Carriage and Private Hire Vehicles and Drivers' presented to Strategic Licensing Committee on 16 March 2011
- Minutes of the Strategic Licensing Committee Meeting held on the 16 March 2011
- Minutes of the Strategic Licensing Committee Meeting held on the 8 June 2011
- Minutes of the Strategic Licensing Committee Meeting held on the 13 June 2012
- Minutes of the Strategic Licensing Committee Meeting held on the 5 September 2012
- Report entitled 'Request for the Review of the Hackney Carriage and Private

Hire Policies and Associated Documents’ presented to Strategic Licensing Committee on 19 March 2014

- Report entitled ‘Request for the Review of the Hackney Carriage and Private Hire Licensing Policy’ presented to Strategic Licensing Committee on 21 May 2014
- Report entitled ‘Request for the Review of the Hackney Carriage and Private Hire Licensing Policy’ presented to Strategic Licensing Committee on 24 September 2014
- Law Commission Report on ‘Taxi and Private Hire Services’, published May 2014 (http://lawcommission.justice.gov.uk/docs/lc347_taxi-and-private-hire-services.pdf)
- Report of the ‘Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013’ Alexi Jay OBE, published August 2014

Cabinet Member: Cllr Steve Charmley

Local Member:

Not applicable as issue applicable to whole administrative area of Shropshire Council

Appendices:

Appendix A - Consultation analysis

Appendix B - Summary of the consultation responses with officer comments

Appendix C - Redacted consultation responses

Appendix D - Notes from ‘Taxi Forum’ held on 28 October 2014

Appendix E - Proposed ‘Hackney Carriage and Private Hire Licensing Policy 2015 – 2019’

Appendix F - Proposed improvements and substantive changes