



<u>Committee and Date</u>
Strategic Licensing Committee
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<u>Item</u>
5
Public

PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY 2019 TO 2023

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1. Summary

- 1.1 The Hackney Carriage and Private Hire Licensing Policy ('the Policy') requires updating to reflect the Council's priorities and outcomes for 2019 to 2023, 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 simplify this where possible, whilst maintaining the foundations for robust enforcement to continue to increase compliance across the hackney carriage and private hire trade.
- 1.2 This report sets out the proposed Hackney Carriage and Private Hire Licensing Policy 2019 to 2023 and highlights those matters that have led to the most significant proposed changes.

2. Recommendation

- 2.1 That the Committee considers all the responses submitted during the consultation period and notes the officer's summary as set out in **Appendix A**.
- 2.2 That the Strategic Licensing Committee agrees, with any necessary modifications, that the proposed 'Hackney Carriage and Private Hire Policy 2019 – 2023' as set out in **Appendix B** 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 tackling child sexual exploitation, abuse, modern slavery and human trafficking of children and vulnerable adults.
- 3.3 Through agencies working together and sharing information, we aim to identify and prevent sexual exploitation, modern slavery and human trafficking to protect children, young people and adults with care and support needs and disrupt related activities in order to take action under relevant licensing legislation and, where appropriate, to prosecute perpetrators of abuse.
- 3.4 The Policy significantly increases the criteria that must be satisfied before a person will be deemed a 'fit and proper person' to be a private hire operator or to hold a vehicle licence as a vehicle proprietor. Drivers of Hackney Carriage or Private Hire Vehicles will continue to be required to meet the robust criteria that were implemented in 2015. The criteria continue to be set against the findings of the Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013 and now also take into account the wider implications of modern slavery, trafficking and exploitation and the statistical information available in the Taxi and Private Hire Vehicle Statistics, England 2018 published by the Department for Transport (DfT).
- 3.5 The DfT report highlights that nationally the number of licenced taxi and private hire vehicles and drivers reached record levels in 2018. The proportion of wheelchair accessible taxis in rural areas is reported at 15%.
- 3.6 There has been a 26% reduction in Shropshire Council licenced vehicles. Whilst there are likely to be a number of impacting factors, it is known that the criteria set out in the current Hackney Carriage and Private Hire Licensing Policy 2015 to 2019, together with the impact of the Deregulation Act 2015, have directly influenced this reduction. Having taken into account the overall responses to the consultations, there continues to be broad support for the principles that aim to protect public safety, the environment and the health of communities, on the basis that the Council extended the period of time in which the trade are able to recoup their return on financial investment, which will also reduce the barriers to entry into the trade.
- 3.7 An Equality and Social Inclusion Impact Assessment (ESIIA) has been undertaken, utilising evidence already held by the service area and the results of the public consultations.
- 3.8 The assessment has considered children and young people who are looked after by Shropshire Council and the families of children in need when considering the 'age' group and with respect to vulnerable adults, e.g. adults with learning disabilities, when considering the 'disability' group.
- 3.9 For all the groups, the impact is rated as positive; notably, with respect to the 'disability' group, the impact is rated as 'high positive' and 'age', 'race' and 'sex' as 'medium positive'. The impact is also rated as 'medium positive' for people for whom there are safeguarding concerns, given the greater ability of

the Council to fully demonstrate that it robustly tackles exploitation, abuse, modern slavery and human trafficking of children and vulnerable adults, and the likely improvements overall to public safety under the proposed changes, bringing particular benefits for vulnerable households.

- 3.10 Note, however, that except for 'age', 'disability', 'race' and 'sex', the impact is likely to be neutral – neither positive nor negative – with no anticipated need to take actions to mitigate or enhance the impact. The full ESIIA document can be found at **Appendix C**.

Reviewing the Policy

- 3.11 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
- 3.12 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.
- 3.13 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 taken and enforcement action.
- 3.14 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 modern slavery, trafficking and exploitation including 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;
 - legal challenge to any criminal proceedings instituted by the Council; and
 - reputational and professional damage to the Council.

- 3.15 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.
- 3.16 The proposed Policy is consistent with national guidance on hackney carriage and private hire licensing and follows best practice.
- 3.17 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.
- 3.18 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).

Consultations

- 3.19 A public consultation in respect of the proposed policy was undertaken over a 10-week period from 25 June 2018 to the 2 September 2018. The consultation welcomed and encouraged all interested parties to provide feedback in relation to the content of the whole policy and did not ask specific consultation questions, other than to ask generally for improvements that could be made to the policy, which would support hackney carriage and private hire businesses.
- 3.20 There were 55 individual responses to the consultation; 89% were from drivers, proprietors, operators and their representatives, with the remaining 11% from residents, two disability access groups and one town council. Full details of the responses, together with the feedback from the second 'Taxi Forum', have been analysed and officer comments and explanatory notes recorded.
- 3.21 The feedback that was received in response to the initial consultation can be categorised broadly into:
- Feedback that led to fundamental/significant changes, which relate to emission standards for vehicles, the impact of the Deregulation Act and cross-border hiring, the transitional period for all hackney carriages to become wheelchair accessible and the removal of the existing five hackney carriage zones.

- Feedback that led to a series of further amendments that have been made to enhance clarity in relation to the application processes for all licence types and the associated conditions of licence, the update service for the Disclosure and Barring Service (DBS), the DVLA insurance 'write-off' categories for vehicles, the requirements relating to the business model for executive private hire vehicles, the removal paragraphs that required private hire operators to take responsibility for vehicles being fit to convey passengers, and procedures to deal with personal property left in vehicles and private hire operator bases.

3.22 In addition, further changes were made by officers to extend, emphasise and/or clarify the following:

- that the hallmark of the licensing regime is localism and that the local authority responsible for granting licences ought to have the authority to exercise full control over all vehicles and drivers being operated within its area
- the role of members of the Strategic Licensing Committee with respect to them acting on behalf of individual applicants
- those specific matters that apply to all licence types
- sanctions that the Council may utilise to address non-compliances in certain circumstances
- the legal position relating to the 'exemption notice' applicable to novelty and executive private hire vehicles
- that existing licence holders must comply with all reasonable requests made by all relevant local authorities
- that the burden of proof applicable to matters determined under the policy is the civil and not criminal burden of proof
- the way in which the Council will use the new National Register for Hackney Carriage and Private Hire Licence Revocations and Refusals (NR3)
- the impact of the 'right to work' amendments brought in by the Immigration Act 2016
- the acceptable language skills required for hackney carriage and private hire drivers
- the requirements relating to approved trading names and telephone numbers for private hire operators
- the type of information that must be notified to the Council by existing licence holders, in particular those relating to PSV and PCV suspensions, revocations or written warnings and any community resolutions
- the definition of 'fit and proper person' as it applies to drivers, proprietors and private hire operators
- that drivers, proprietors and private hire operators must not use or allow to be used a vehicle for illegal or illicit purposes
- that the carrying of all types of assistance dogs is mandatory unless the driver holds a medical exemption and, where an exemption is held, where this exemption must be displayed
- the frequency of MOT tests within relevant conditions of licence
- the definition of 'executive service' within the private hire operator conditions of licence

- that proprietors must ensure all drivers are properly aware of the content of the applicable vehicle insurance including limitations and exclusions
 - that all drivers who drive any wheelchair accessible vehicle (not only those who drive wheelchair accessible hackney carriages) are trained to do so
 - that the impact of hardship on the applicant and their family will not be considered by the Council when determining an application or reviewing an existing licence
- 3.23 As a result of the changes identified above, a revised version of the policy was drawn up. Officers concluded that because the revised policy contained some fundamental changes there was a need to undertake a further period of consultation.
- 3.24 The Strategic Licensing Committee at a meeting held on the 23 January 2018 supported a further period of consultation on the revised draft. The consultation was carried out between the 25 January 2019 and 22 February 2019.
- 3.25 It resulted in a further 47 responses; 46 (98%) of these responses were received from individuals connected with the hackney carriage and private hire trades and one from the Competition and Markets Authority. Of the 46 responses received from the trade, two were petitions; one with 242 signatures and another with 16 signatures.
- 3.26 A significant proportion of the feedback, including the petitions referred to above, related to the impact of the vehicle emission standards and vehicle age-restrictions proposed under the policy. Significant concerns were raised around the additional financial burdens and the inability of drivers and proprietors to gain sufficient return on their investment when purchasing replacement vehicles. As a result, changes were made to allow vehicles with 'Euro 5' emission standards and vehicles up to 10 years old to continue to be licensed for a longer period than was originally proposed; however, the overarching principles that aim to continue to reduce the adverse impact of vehicle emissions on both the environment and the health of people in our communities are retained.
- 3.27 Further feedback has led to a series of minor corrections that generally improve the sense of a number of proposed requirements of the policy but do not make fundamental alterations. Additional amendments have also been made that aim to reduce barriers to entry into the hackney carriage and private hire trades, enhance the clarity of several proposed requirements and reduce the risk of specific elements of the policy potentially leading to judicial review.

These amendments include:

- removal of the list of examples of executive style vehicles;

- introduction of a requirement that drivers (not only private hire operators) must take responsibility for the hours they work to comply with the ‘Working Time Directive’;
 - clarification that certain specified non-UK/EEA drivers’ licences are recognised as valid licences under UK legislation;
 - changes to the knowledge test and driver assessment requirements to clarify the circumstances that lead to an actual failure of the test/assessment as opposed to simple non-attendance and the implications of this on the fees that are payable;
 - clarification that the number of MOT tests requested in relation to a vehicle licence will be aligned with the legislative requirements; and
 - removal of the requirement/condition for private hire operators to reach agreement with the hirer to accept a sub-contracted vehicle in advance of the journey being undertaken.
- 3.28 As a result of the changes identified above, a revised version of the policy has been drawn up and can be found at **Appendix B**.

4. Financial Implications

- 4.1 The financial implications associated with the recommendation are limited to the employee costs associated with undertaking the consultation exercise and any costs of publishing the revised Hackney Carriage and Private Hire Licensing Policy. These costs are recovered through the licensing fees.

5. Background

General

- 5.1 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.
- 5.2 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, operators and holders of vehicle licences and that vehicles remain safe and fit for the purpose of transporting fare-paying passengers. The proposed Policy aims to build on the protection that was implemented in 2015.

- 5.3 The Council's existing Hackney Carriage and Private Hire Licensing Policy came into effect on 1 April 2015 and is due to expire on 31 March 2019. It is essential that the Council has a revised policy from 1 April 2019 to ensure a robust framework continues to be in place to provide the basis upon which to deliver the Council's statutory hackney carriage and private hire licensing function, which is fundamental to protecting public safety.
- 5.4 On 27 October 2017, a 'Taxi Forum' was held to commence the engagement with the hackney carriage and private hire trade. The feedback from the Forum was recorded and used to inform the initial draft of the revised policy, together with fundamental changes introduced by Council officers to address local and national issues that have arisen during the course of the existing policy.

These changes included the following:

- referencing all forms of exploitation rather than restricting this to only child sexual exploitation
- significantly increasing the criteria that must be satisfied before a person will be deemed a 'fit and proper person' to be a private hire operator or to hold a vehicle licence as a proprietor and amending the associated conditions of licence
- incorporating new requirements to address cross-border hiring and sub-contracting
- incorporating details of the new National Register for Hackney Carriage and Private Hire Licence Revocations and Refusals (NR3)
- incorporating new requirements in respect of the Equality Act 2010 and the list of designated wheelchair accessible vehicles
- addressing the impact of removing the existing five hackney carriage zones
- amending vehicle emission standards and also including vehicle age requirements
- introducing new sections specifically for novelty and executive private hire vehicles

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

- Department for Transport's 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' (March 2010)
- Deregulation Act 2015
- Equality Act 2010
- Town Police Clauses Act 1847
- Local Government Act 1972
- Local Government (Miscellaneous Provisions) Act 1976
- Report of the 'Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013' Alexi Jay OBE, published August 2014
- Taxi and Private Hire Vehicle Statistics, England 2017

<https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

- Councillor Handbook: Taxi and PHV Licensing, August 2017
<https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>
- Institute of Licensing Guidance on determining suitability of applicants and licensees in the hackney and private hire trades (April 2018)
- Taxi and Private Hire Vehicle Statistics, England 2018
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751202/taxi-and-phv-england-2018.pdf
- The Task and Finish Group report on Taxi and Private Hire Vehicle Licensing - Steps towards a safer and more robust system (first published 24 September 2018)
- The initial revised draft of the Hackney Carriage and Private Hire Licensing Policy 2019 to 2023 was presented to the Council's Strategic Licensing Committee. The relevant report can be found in the papers for the Committee meeting held on the 20 June 2018 at Agenda Item 18.
<https://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=166&MId=3729&Ver=4>
- The Inclusive Transport Strategy: Achieving Equal Access for Disabled People
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728547/inclusive-transport-strategy.pdf
- The second revised draft of the Hackney Carriage and Private Hire Licensing Policy 2019 to 2023 was presented to the Council's Strategic Licensing Committee. The relevant report can be found in the papers for the Committee meeting held on the 23 January 2018 at Agenda Item 5.
<https://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=166&MId=3868&Ver=4>
- Department for Environment, Food and Rural Affairs: Clean Air Strategy 2019
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf
- National Register of Taxi and Private Hire Licence Revocations and Refusals (NR3)
<https://www.local.gov.uk/topics/licences-regulations-and-trading-standards/new-national-register-taxi-and-private-hire>
- Welsh Government Consultation Document: Improving public Transport
https://beta.gov.wales/sites/default/files/consultations/2018-12/improving-public-transport_0.pdf
- Taxi and private Hire Vehicle Licensing: Protecting Users
<https://www.gov.uk/government/consultations/taxi-and-private-hire-vehicle-licensing-protecting-users>

Cabinet Member: Councillor Gwilliam Butler Portfolio Holder for Communities and Place Planning.

Local Member: Report is applicable to whole of administrative area of Shropshire

Appendices: Available Electronically

Appendix A - Responses submitted during the consultation period and the officer's summary (Note Appendix A contains two parts part 1 of 2 is the officers summary and part 2 of 2 contains the consultation responses)

Appendix B - Proposed Hackney Carriage and Private Hire Licensing Policy 2019 to 2023

Appendix C – Equality and Social Inclusion Impact Assessment (ESIIA)