
From:
Sent: 22 August 2014 10:49
To:
Subject: FW: Consultation Response - Hackney Carriage & Private Hire Licensing Policy -
Attachments: 2014.08.22 Letter (policy consultation response) to Shropshire Council.pdf; ATT00001.txt

-----Original Message-----

From:
Sent: 22 August 2014 08:56
To: Taxis
Subject: Consultation Response - Hackney Carriage & Private Hire Licensing Policy -

Dear Sir / Madam,

As you may be aware, I act on behalf of [redacted] of [redacted] and [redacted], the two largest private hire companies in the county.

In connection with your consultation in relation to the proposed new / amended Hackney Carriage and Private Hire Licensing Policy, please see the attached letter, which I send on behalf of my aforementioned clients.

If you require further information or clarification of anything therein, please do not hesitate to contact me.

Yours faithfully,

Licensing Consultant, Mediator and Trainer Consulting Editor, Paterson's Licensing Acts 2015

Licensing
Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Our Ref:
Your Ref:
Date: 22 August 2014
Please ask for:

By First Class post and email to:
licensing@shropshire.gov.uk

Dear Sir / Madam,

**Hackney Carriage and Private Hire Licensing Policy
Consultation response of Central Taxis (Shrewsbury) and Diamond Cars (Shifnal)**

I act on behalf of _____ of _____ and _____ of _____ the two largest private hire companies in the county. Please accept this letter as their joint response to the consultation in relation to the proposed revised / new Hackney Carriage and Private Hire Licensing Policy.

In the hope that it assists, we shall present comments under subject headings and, wherever possible, identify text with reference to page, paragraph or condition of licence number.

① Hackney carriage zones

Not only would it be useful if the proposed policy included details of the recognised hackney carriage zones, but if an explanation were given as to their creation and the decision to retain them.

Whilst not a matter that directly affects my clients, the Council will appreciate that it is being challenged by way of objection to the annual accounts to satisfy the External Auditor that the Council genuinely has only five hackney carriage zones and not more, as it would if the former district councils had failed to pass resolutions to amalgamate their zones into single controlled districts.

② Private hire licensing

As the Council will appreciate, it is also being challenged to prove that each and every former district council adopted throughout the whole of each area Part II of the Local Government (Miscellaneous Provisions) Act 1976, because in the absence of such adoption, the Council cannot administer private hire licensing in any such area. The following comments are made without prejudice to these legal challenges.

③ Regulators' Code

The Regulators' Code (BDR0 14/705) came into force on 6 April 2014. It is a statutory code made under section 23 of the Legislative and Regulatory Reform Act 2006 and applies to local authorities in relation to hackney carriage and private hire licensing.

Rather than reproduce the whole code herein, we highlight below certain provisions of the code that we think to be particularly relevant and attach a copy of the code for your ease of reference.

5.1 Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.

5.2 Regulators should publish guidance and information in a clear, accessible, concise format using media appropriate to the target audience and written in plain language for the audience.

With the greatest of respect, the current proposed policy does not meet the above requirements. Rather than being a policy, it is a collation of a multitude of documents that fall in many regards to clearly distinguish policy, law, conditions of licence and good practice.

The Council is urged to reformulate the document so that it begins by clearly setting out policy matters (including those not included in the consultation document, such as that relating to the intended use of a hackney carriage and in relation to enforcement) and then separately append details of legal requirements, conditions of licence and any other relevant documents.

The guidance notes appearing at pages 25-29 appear best to amount to policy and ought to be the foundation of the proposed policy document followed by the relevance of convictions policy appearing at pages 31-46, although it would be appreciated if that document could be simplified and condensed.

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Section 1: Hackney Carriage Vehicle Licence – Conditions of Licence

Conditions 2 and 3 and much of 4 and 7.1 are not conditions of licence, but pre-licensing requirements that might be better described as being 'policy', because whilst they express the Council's usual requirements it may, in the exercise of its statutory discretion, derogate from policy if it considers it appropriate to do so in a particular case.

Condition 6 duplicates statutory requirements - Local Government (Miscellaneous Provisions) Act 1976, sections 49 and 50(3) – and should not, therefore appear as a condition of licence, but could properly be included in a list of legal requirements.

Condition 7.3 duplicates statutory requirements – Local Government (Miscellaneous Provisions) Act 1976, sections 50(4), 53(3) and 68 – and should not, therefore appear as a condition of licence, but could properly be included in a list of legal requirements.

Condition 13 duplicates Condition 6.2 which itself duplicates a statutory requirement.

Conditions 14 and 15 concerning notification of change of address and of convictions, cautions, arrests, etc are new and have my clients full support.

Condition 16 appears to be a statement of fact and not a condition of licence.

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Section 2: Private Hire Vehicle Licence – Conditions of Licence

Conditions 1 and much of 2 and 7.1 are not conditions of licence, but pre-licensing requirements that might be better described as being 'policy', because whilst they express the Council's usual requirements it may, in the exercise of its statutory discretion, derogate from policy if it considers it appropriate to do so in a particular case.

Conditions 7.1 and 8.1 duplicate or partially duplicate statutory requirements – Local Government (Miscellaneous Provisions) Act 1976, sections 50(3) and (4) and 58(1) – and should not, therefore appear as conditions of licence, but could properly be included in a list of legal requirements.

Conditions 9 and 10 concerning notification of change of address and of convictions, cautions, arrests, etc are new and have my clients full support.

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Section 3: Private Hire Operators Licence – Conditions of Licence

Conditions 2, 3 and 5 are not conditions of licence, but concerned with pre-licensing requirements. Furthermore, Condition 3 appears to suggest that the Council will

unlawfully require applicants who are not licensed drivers to submit to an DBS check. As the occupation of 'private hire operator' is not an exempt occupation, as prescribed by the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975, no-one can lawfully request a Standard or Enhanced DBS disclosure certificate. A Basic disclosure certificate can only be obtained by an individual from Disclosure Scotland, should the Council wish to incorporate such a pre-licensing requirement as a matter of policy.

Condition 6 partially duplicates statutory requirements by stating the need to have an OFCOM licence and to comply with the requirements of the Data Protection Act 1998, but also seeks to prescribe the level of service an operator should provide to a customer when it would not do so when licensing any other business. No local authority attaches conditions requiring bookmakers shops / offices to be adequately heated and ventilated or to require an ice cream van to be in attendance at a particular location at a particular time or to require pubs and off-licences to have sufficient staff to avoid queuing at the bar or checkout. These are commercial matters for the determination of the operator. Good operators will meet or exceed these standards and prosper whilst poor operators will have to raise their standards or fail.

Condition 7 will purport to restrict an operator's ability to sub-contract to an operator elsewhere in the country, which they will be able to if the Derogation Bill receives Royal Assent.

Condition 14 has not been, but should be, amended to bring it in line with the wording now proposed in relation to notifying the Council of convictions, cautions, arrests, etc in relation to other licences, i.e. hackney carriage vehicle licence, private hire vehicle licence and driver licence.

Condition 15 concerning the use of the words 'taxi' and 'cab' in the singular or plural is accepted and supported by my clients as a longstanding condition, but if the condition is not to be enforced – and it is not as the Council licenses operators trading as "... Taxis" – the Council should remove the condition. Alternatively the Council should enforce the condition, because it cannot commercially favour one operator over another.

Condition 16 is not, as a matter of fact, a condition, but a statement detailing the period for which a licence will be granted. This information is not only stated on the face of the licence, but will also be required to be changed from one or three years to five years if the Derogation Bill receives Royal Assent.

Condition 17 is attached to the wrong licence. The condition is concerned with the installation and use of CCTV in vehicles and should, therefore be attached to hackney carriage vehicle and private hire vehicle licences.

Section 4: Drivers' Licence – Conditions of Licence

Conditions 1-10 (although there is no number 10) are categorised as 'requirements' and are not conditions of licence, but pre-licensing requirements that might be better described as being 'policy', because whilst they express the Council's usual requirements it may, in the exercise of its statutory discretion, derogate from policy if it considers it appropriate to do so in a particular case.

The introduction of a maximum of three knowledge tests and driving assessments provided by Conditions 8 and 9 are noted and supported, as long as 'a Manager' exercises their discretion to allow an additional knowledge test(s) or driving assessment(s) in appropriate cases.

The request by some members of the hackney carriage trade for a separate test for hackney carriage drivers is supported by my clients, who respectfully urge the Council to specifically consider what subjects it is necessary to test for each type of licence, as required by the paragraphs 1.1 and 1.2 of the Regulators' Code. For example, it is suggested that all applicants for a driver's licence ought to be tested in mathematics, English and customer service, including disability awareness. The applicant's knowledge of the Highway Code should only be tested as part of the driving assessment and not unnecessarily duplicated within the knowledge test. Whilst hackney carriage drivers might reasonably be required to demonstrate local topographical knowledge of the zone in which they intend to ply for hire, the private hire driver, having the benefits of pre-booking and support from their operator, should not need to demonstrate, let alone have, local topographical knowledge. This assertion is perhaps best demonstrated by the licensing requirements in London – a hackney carriage driver has to pass the internationally renowned 'London knowledge', but a private hire driver does not. Even to be licensed as a London private hire driver an applicant has to merely demonstrate topographical skills – the ability to plan a route from one specified location to another in London. Whilst it cannot be said that such an assessment would be irrelevant, because of the rural nature of Shropshire, it is submitted that such an assessment would be unnecessary. It is appreciated that this would necessitate the introduction of separate tests and separate driver licences – hackney carriage, private hire and combined hackney carriage and private hire driver licences. As the licensing processes are the same, it is accepted that the fee payable for each licence would be the same.

Separating the licences, which is legally necessary, because the Council cannot insist upon granting a combined licence to someone who wants to apply for only one of the licences, will require the compilation of conditions of licence specific to a private hire driver's licence, because a number of the current conditions relate to hackney carriage drivers.

The Council would also have to make or enforce existing byelaws in relation to hackney carriage drivers, because there is no power to attach conditions to a hackney carriage driver's licence. See *Waltham v Talbor Port Neath County*

Borough Council [2002] EWHC 1634 (Admin). It is suspected this is well known by the Council and probably one of the factors that resulted in the Council introducing the combined hackney carriage and private hire driver's licence.

Conditions 1, 3, 4, 3, 6, 2, 11, 12, 15, 16, 17 duplicate a myriad of statutory requirements – The Smoke-Free (Exemptions and Vehicles) Regulations 2007 (as stated in Condition 1), Transport Act 1985, section 139(2) and Schedule 7, Town Police Clauses Act 1847, section 48 (as stated in Condition 4.3), The Motor Vehicles (Wearing of Seatbelts) Regulations 1993 (as amended), Local Government (Miscellaneous Provisions) Act 1976, sections 61(2)(a), 50(3) and 50(4) and the Criminal Justice Act and Public Order Act 1994, section 167.

Conditions 20 and 21 are not conditions of licence, but pre-licensing requirements that might be better described as being 'policy', because whilst they express the Council's usual requirements it may, in the exercise of its statutory discretion, derogate from policy if it considers it appropriate to do so in a particular case.

In relation to Condition 21, the Council is asked to include all documents in the application pack that it requires to be submitted, because it seems unreasonable to reject an application when the required documents were not provided by the Council in the first place.

Condition 22 appears to be a matter of policy in relation to those applying for their first driver's licence, but might usefully be a condition attached to a licence renewed prior to receipt of the DBS disclosure certificate. It is respectfully submitted that the Council might emphasise the need for drivers to produce the DBS disclosure certificate by re-stating the requirement on the face of the licence and / or in a covering letter issued with the licence.

With regards to the requirement for a DBS disclosure certificate, the Council is asked to introduce on-line bulk processing, presuming that annually it (and not just licensing) processes in excess of 1,500 applications, being the minimum number required to enrol for bulk processing. It is accepted that this comes at a higher cost to the applicant, but it is considered that the benefit to the trade of dramatically improved processing times and to the Council access to better information. If the Council cannot introduce bulk processing or chooses not to do so, it is respectfully asked to revise its processes so that an applicant for a new licence may submit their DBS application at the very beginning of the licensing process, because it is the part of the process that usually takes the longest and can delay a person's entry into the hackney carriage or private hire trade.

Section 5: Private Hire and Hackney Carriage Licence – Guidance Notes

As has already been mentioned, this section appears to be 'policy' and would, from a readers perspective, better come at the beginning of this collation of documents.

Save for the matters already identified in relation to hackney carriage vehicle licences, private hire vehicle licences, operator licences and driver licences, my clients have no representations to make in relation to this section.

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Appendix A: Drivers' Licence – Guidance Relating to the Relevance of Convictions and Cautions

It is respectfully submitted that, as a 19 page document (including 3 pages contained in Appendix D), this policy is too long and complex. Other councils have managed to condense their policies in relation to the relevance of convictions, medical standards and knowledge into a single page document that is simple to read and understand.

For the avoidance of doubt, I confirm that the objectives of the policy are not challenged in any way whatsoever, although one question why paragraph 53 in relation to sexual offences suggests that the period from conviction should "usually [be] between 7 and 12 years" when paragraph 57 then goes on to specify 12 years free from conviction in relation to each of the offences listed, which may not be, but seems fairly comprehensive.

When considering how it might condense and simplify this policy the Council is urged to consider the new rehabilitation periods for convictions and cautions incorporated into the Rehabilitation of Offenders Act 1974 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 139, which might provide an opportunity for the Council to link its requirements to the statutory rehabilitation periods.

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Appendix B: Trailer Guidance

No comment.

11

Appendix C: Stretched Limousine Guidance

No comment.

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Appendix D:

Whilst a reference list of motoring offence and the associated offence code is useful, as stated above, it should not be necessary to incorporate this into the relevance of convictions policy.

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Appendix E: Advertising on Hackney Carriages and Private Hire Vehicles

No comment.

If anything herein requires further information or clarification, please do not hesitate to contact me.

Yours faithfully,