

## Licensing Sub-Committee - Miscellaneous

Wednesday, 5th January, 2022  
18:00

Attendees	
<b>Councillors:</b>	David Willingham (Chair), Angie Boyes (Vice-Chair), Alisha Lewis, Diggory Seacome and Jo Stafford
<b>Also in attendance:</b>	Vikki Fennell and Jason Kirkwood

### Minutes

**1. APOLOGIES**

There were none.

**2. DECLARATIONS OF INTEREST**

There were none.

**3. MINUTES OF THE PREVIOUS MEETING**

The minutes of the last meeting held on 3 November 2021 were agreed and signed as a true record.

**4. ITEMS THE CHAIRMAN DETERMINES URGENT**

The Chair congratulated Licensing Officer Freya Gill on her move to a new post within the Authority, the licensing team's loss is someone else's gain.

The Chair also thanked Annette Wight for all her assistance in the recent months and welcomed Judith Baker to the Democratic Services Team.

The Chair circulated a press statement that had been agreed between Cheltenham Borough Council and the police. This was an update following issues raised at the October meeting. This document is attached.

**5. APPLICATION FOR A HACKNEY CARRIAGE VEHICLES PROPERTIES LICENCE**

The Senior Licensing Officer introduced the three items, as set out in his agenda reports, after agreement from Members that they be considered together as one item. He explained that three drivers are seeking clarification as to how the Council will treat their lapsed applications, prior to them purchasing a new vehicle and/or making a new application. These cases are complicated for three reasons:

- the impact of the pandemic;
- the Council's planned introduction of a wheelchair accessible vehicle (WAV) policy from 31st December 2021;
- the subsequent change to that policy in September 2021.

The Sub-Committee is being asked if it will give delegated authority to officers to grant permission for the new vehicle licences when made, and either treat them effectively as late renewals with new vehicles, or not recognise continuity rights and refuse to grant new licences, which would mean the applicants would have to submit brand new applications and would have to own a WAV.

Officers consider it reasonable for drivers to have surmised that the WAV policy may have changed in view of the pandemic/lockdown; anyone approaching the licensing team was advised that the policy was as stated at the time, and that they would be informed of any change as soon as possible – the Council was as clear as it could be under the circumstances. However, some proprietors argue that the pandemic and the uncertainty made it difficult for them to make decisions regarding the purchase of new vehicles, and the question is whether this is sufficient reason to depart from council policy and allow continuity rights to these applicants.

The Senior Licensing Officer confirmed that, as always, each case must be decided on its own merits and that this is a temporary situation, with the Council due to consult on its new vehicle policy in the near future.

The case specifics of the three lapsed licences are as follows:  
HCV 116, expired 08.02.2021, due to failed MOT; the driver decided not to renew at the time.

HCV 141, expired 20.06.2020 – the council had a lot of contact with this license-holder regarding council policy and continuity rights, the driver asking for mitigations as set out in the report to be taken into account.

HCV 118, expired 30.07.2021 – correspondence from this driver can be viewed in the report.

#### Member questions

In response to member questions, the Senior Licensing Officer confirmed that:

- the cost to the driver of replacing a licence each year is the application fee of £232, plus a high-spec MOT and fitness test at a council-approved garage, plus insurance, which is more costly for Hackney Carriage vehicles. In addition, when a vehicle reaches eight years of age, it requires a six-monthly MOT:
- a licence is usually granted for one year, but any non-WAV vehicles due for renewal after 1st January 2021 would only have been licensed until 31st December 2021, when the new policy was due to be introduced. The Council would still have charged the full fee but would have given a pro-rata refund after the expiry date. Following the Council's change of policy in September, any non-WAV vehicle was given a licence for a full year;
- if continuity rights were granted, any future licence should be granted immediately subsequent to the prior expiry, to avoid any impression that drivers benefited without having a licence in the interim period;
- a new WAV would be licensed up to the age of 10 years if modified post-manufacture (as most vehicles are), 14 years if off the production line as a WAV.

#### Member Debate

Members raised the following issues:

- regarding the costs of licensing a vehicle, MOT and insurance costs are fixed items, so only the cost of the actual application is an additional burden for the drivers;
- as the decision made tonight could open the floodgates, it seems reasonable to bring all retrospective applications into line in order for continuity rights to be maintained – the vehicle with the oldest situation should renew to June 2021, then from June onwards;
- due regard must be given to human rights – a licence plate has monetary value, and drivers should not be deprived of this – and also consideration of equalities, eliminating discrimination against persons with protected characteristics. Ideally, more WAVs are required/desirable, but this must be balanced against the transitional period for this new policy and the Human Rights Act;
- due regard should also be given to the Council's aim of improving air quality by reducing CO2 emissions and pollution – although this is not specified in the vehicles policy; Euro 6 or above engine standards for vehicles are encouraged;
- whilst acknowledging the above, due consideration should also be given to the level of engagement drivers had with the Council over the past 12-18 months. Individual circumstances need to be taken into account, such as whether a vehicle was still roadworthy when the licence lapsed, whether a driver could have replaced it with a WAV and kept working, whether the licence related to a vehicle with several years left to run or whether it needed to be replaced, at the time with a WAV, and how or whether continuity rights should be granted in these circumstances;
- the council must establish a reasonable and rational policy, giving officers a clear steer, and enabling them to make the correct decisions under delegated powers in each case;
- the exceptional circumstances of the pandemic, lockdown and subsequent lack of work, together with uncertainty about the Council's changes in policy must be taken into account;
- it would seem reasonable, on legal advice, that to have continuity of rights there must be continuity of payment;
- a cut-off date is required – maybe from the date of the first lockdown? - to avoid a rush of people who have not previously engaged with the Council in any meaningful way coming forward now – the three applications under consideration may be test cases, with other drivers waiting on the outcome before approaching the Council;
- can officers say how many licences have lapsed from the beginning of the first lockdown?

In response to issues raised by Members in debate, the Senior Licensing Officer agreed that:

- it would seem a reasonable approach, if Members are minded to agree to continuity rights, that the vehicle with the oldest situation would renew to June 2021, then from June onwards;
- any decision is going to upset someone, but there is monetary value to plates, and if Members are minded to grant continuity, the plates will retain value, which is important going forward; if an individual's licence is renewed and Council policy changes, a saloon (non-WAV) vehicle will be given longer to remain as a taxi – there is a financial element to this;
- although there are no figures for the number of lapsed licences since the beginning of the first lockdown, it is reasonable to say that anyone who

has had no contact with the Council since their licence expired cannot come to the table now;

- although not clear how many licences have lapsed since the first lockdown, in

addition to the three agenda items under consideration, the licensing team has also received three other late renewal requests, plus two more complex requests – one where the driver wants to replace a licensed WAV with a saloon vehicle, and one from a driver who replaced a saloon with a WAV in May 2021, on the basis on the vehicles policy at the time, now wants to return to a saloon vehicle. – so eight decisions to make in total.

In further debate, Members felt that losing WAVs is not acceptable for equality reasons, but that given the circumstances of the pandemic and change in policy, they were in favour of granting continuity rights under delegated powers in the other six cases, subject to continuity of payment. Any driver who has not already contacted the licensing department (by close of play of the day of the meeting), will not be given special consideration – there is no need for a specific cut-off date.

The Chairman proposed taking the vote on Items 5, 6 and 7 together en bloc. Members were in agreement.

Vote on whether delegated authority should be given to officers to consider any applications arising from Items 5, 6 and 7 as late renewals under the terms discussed at the meeting  
5 in support - unanimous

**6. APPLICATION FOR A HACKNEY CARRIAGE VEHICLES PROPERTIES LICENCE**

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**8. CONSULTATION ON REQUIREMENT TO PARTICIPATE IN SCHEMES TO PROMOTE BETTER AVAILABILITY OF LICENSED WHEELCHAIR ACCESSIBLE VEHICLES (WAVS)**

The Senior Licensing Officer introduced the report.

The following were the responses to Member questions:

- A driver cannot have two fares i.e. a separate fare for a disabled passenger and another fare for non-disabled passengers as this will be discriminatory. In the past WAV's have been met by the private hire market. A driver is not able to charge from where they are (for example on the rank in the Promenade) to where they are picking the person up from.
- It was confirmed that most of the taxi ranks are in the town centre.
- It was explained that the Equalities Act states that you cannot charge extra for a disabled passenger.
- There was confirmation from the Senior Licensing Officer that there is some conflict between the Law and what the wheelchair user is happy with.

There was agreement that there was more research into the matter needed, including the proposal of an app for drivers. Ground breaking is good however it was felt that it needs to be done with more thought and research. It was agreed unanimously that the matter should be referred to Overview and Scrutiny to form a Scrutiny Working Group.

**9. LOCAL GOVERNMENT ACT 1972 EXEMPT INFORMATION**

Members voted unanimously to enter exempt session.

**10. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE**

The Senior Licensing Officer introduced the report.

After Member questions and Member debate.

It was discussed by the committee that it might be appropriate for this matter to be adjourned to allow the applicant to attend an interview with the Senior Licensing Officer. The adjournment was put to the vote

FOR: 5

AGAINST: 0

The matter was adjourned and will be heard again on 18<sup>th</sup> January 2022.

**11. BRIEFING NOTES**

Members were issued with a copy of the letter that the Chair had sent to both the local police and to the Minister for Crime and Policing regarding safeguarding notification issues.

David Willingham  
**Chairman**

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## Statement and update in respect of Common Law Police Disclosure

I would like to take this opportunity to update the committee and the public about a common law police disclosure issue that was identified earlier in the year, and our response to it.

Regarding the exempt items that were considered by the Miscellaneous Licensing Sub-Committee on Wednesday, 6 October 2021, these concerns were followed up by a letter to the Chief Constable, copied to the Police and Crime Commissioner and others, expressing our concern about the delay in the licensing authority being informed of the initial arrest, and requesting a meeting. That meeting has now taken place, and I would like to update the committee on the actions that have been taken as a result of this incident.

The meeting with Gloucestershire Constabulary established that the reason that the allegations were not reported to the Council in June 2021, is that at that time, the Police were unaware that the individual was a licensed driver. Following constructive dialogue, Gloucestershire Constabulary will be working with licensing officers to ensure that in future, more effective information sharing occurs between the Police and Licensing Authorities. We all understand that safeguarding is everyone's responsibility and of the need to work constructively to identify where improvements can be made.

Since this is a national issue affecting every licensing authority and police force, a letter has also been sent to the Home Office for the attention of The Rt Hon Kit Malthouse MP, in his role as Minister for Crime and Policing<sup>1</sup>. Lord Jones of Cheltenham was also kind enough to ask a written Parliamentary question about common law police disclosure<sup>2</sup>.

I would like to reassure the public that Cheltenham Borough Council's licensing processes are based on the highest possible standards in light of the prevailing legislation and national guidance. We are confident therefore, that taking a Cheltenham licensed taxi, or private hire vehicle, is as safe as we can reasonably ensure.

The Council has a robust Taxi Licensing Policy and performs background checks on all drivers via the Disclosure and Barring Service (DBS), the Driver Vehicle Licensing Agency (DVLA) and the National Register of Revocations and Refusals (NR3), to name but a few, and requires drivers to undertake mandatory safeguarding training. Where issues are identified with any safeguarding process, we will always seek to work constructively with our partners to improve those processes.

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<sup>1</sup> Redacted copy available

<sup>2</sup> <https://questions-statements.parliament.uk/written-questions/detail/2021-12-08/HL4800/>

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