



## CHELTENHAM BOROUGH COUNCIL

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# Review of Cheltenham Borough Council's Taxi & Private Hire Licensing Policy - Consultation Document

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### **Introduction**

The Council's current licensing policy was adopted in 2014. In 2016/17 the council in partnership with representatives from the licensed trade undertook a review of the current policy.

This consultation document sets out the council's proposal for amendments to the policy and is seeking feedback from consultees.

### **How to respond**

Responses must be made in writing using this form either electronically or in hard copy. The form can be submitted:

1. By email to [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)
2. By post to Licensing Section, Cheltenham Borough Council, Promenade, Cheltenham, GL50 9SA
3. In person to the Municipal Offices Promenade, Cheltenham, GL50 9SA

If you are unable to respond to the consultation using this form, please contact the licensing section in the first instance.

**Consultation responses must be submitted no later than 21 December 2017.**

### **Further information**

Any questions relating to this consultation should be referred to the licensing section.

Your consultation response will form part of a public report. It will also be subject to freedom of information legislation.

**Please note that we are not able to provide individual feedback on consultation responses including notification of subsequent committee hearings. Please visit the council's democracy pages for information on future committee hearings:**  
<https://democracy.cheltenham.gov.uk/ieDocHome.aspx?Categories=-12984>

## 1. About you

**Full name:** Cheltenham Borough Council’s Licensing Sub-Committee as represented by Councillors Adam Lillywhite, Dennis Parsons, Diggory Seacome and David Willingham

**Organisation/group/department:** Cheltenham Borough Council

**Address:** Municipal Offices, Promenade, Cheltenham, GL50 9SA

**Please state in which capacity you are responding:** Cheltenham Borough Council’s Licensing Sub-Committee

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# Policy Proposals

## 1. Fitness criteria for licensed drivers

The council is proposing a number of changes to its fitness criteria for licensed drivers:

### 1. Knowledge test

Since the last policy review, a number of factors relevant to the current local knowledge test have changed which has prompted the need for a review of the current assessment:

- a. The council has introduced a higher standard for its practical driving assessment;
- b. Safeguarding training has been introduced for all licensed drivers and new applicants for a driving licence; and
- c. The council has adopted a dedicated English proficiency policy and assessment service.

As a consequence, the council is proposing a number of changes to the current knowledge assessment:

- a. Replacing the written Highway Code section of the test with the higher practical driving assessment;
- b. Introducing a learning day covering safeguarding, equality duty, law and conditions with a written/practical assessment at the end of the session;
- c. Retaining the local geographical knowledge and basic numeracy elements of the test; and
- d. Replacing the basic literacy written element of the test with the English proficiency policy and assessment service.

### Q1: Do you agree with the proposed changes to the current knowledge test?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee is in agreement with the proposed changes and thinks it is important to retain a geographical knowledge test despite sat navs now being commonplace, as well as a test of the drivers' spoken English.</p> <p><a href="#">Click here to enter text.</a></p>	

### 2. Three strikes policy

The council is proposing the introduction of a “Three Strikes Policy”. The proposed policy lists a number of misdemeanours that, should a licensed driver be found to be in breach of one or more of these, it will be recorded against the driver’s licence records. If the driver has at least three of these misdemeanours recorded against their licence, a review of their licence will be called in.

A copy of the proposed “Three Strikes Policy” is enclosed at Appendix 1 of this consultation document.

**Q2: Do you agree with the introduction and implementation of a three strikes policy?**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee is in general agreement with a “three strikes” policy as long as there is no automatic sanction once three strikes have been reached, because not all of the infractions listed are of equal severity. The third strike should trigger a review which is then dealt with on a case-by-case basis by the sub-committee by way of review.</p> <p>The following additional comments were made by the sub-committee in relation to the policy at appendix 1.</p> <ul style="list-style-type: none"><li>- Offences that fall outside the 3 strikes policy (for example serious offences such as drink-driving) are dealt with separately under the existing policy on convictions. The new 3 strikes policy needs to sit alongside and reference the existing policy on convictions, otherwise the new 3 strikes policy implies that other, serious offences are excluded and won't be dealt with. Reference to the existing policy on convictions should be included in the preamble to the 3 strikes policy.</li><li>- The heading to “Excluded offences” should be amended to make clear that these offences are serious and will cause immediate review. As it stands the heading implies that offences listed as “excluded” will not be dealt with at all.</li><li>- The following matters should be taken out of the list of “3-strikes infractions” and included instead in the list of more serious matters that will be dealt with immediately, because both are to do with the safety of the passengers and the public and both could result in invalid insurance: (1) Injuring or endangering any person or property through wanton and furious driving or other wilful misconduct; (2) Carrying excessive number of passengers.</li><li>- A member felt that as the only applicable police station is now Hester's Way, it is an unnecessary burden on drivers to insist that all lost property must be handed to the police. The member suggested that this should be changed so that it only applies to property over a certain value or of a certain type.</li></ul>	

**3. Working hours**

There are no national standards or statutory regulations that strictly govern working hours for licensed taxi and private hire drivers.

Through the policy review, it has been identified that there may be a need for the council to be proactive in regulating this in so far as it is able and practical. To this end, the following proposed policy changes are being consulted on:

- Amending licence conditions to set out a reasonable expectation on working hours for licence holders, implementing a mechanism whereby licence holders may need to keep a record of their working hours and to submit these records to the council; and
- Adopting a code of good practice for licensed drivers setting out the council's expectations on safe working practices and the implications for non-compliance with the code.

A copy of the proposed code is attached at Appendix 2 of this consultation document.

**Q3: Do you agree with the proposal to regulate working hours for Cheltenham licensed drivers?**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee recognises that it is appropriate to reduce tiredness caused by over-work and is in broad agreement with a policy designed towards achieving that.</p> <p>However the sub-committee recognises that such a policy will be difficult to enforce, and would therefore be supportive of it only if a satisfactory and preferably lightweight method of enforcement can be found that is not overly burdensome on either drivers or officers. The sub-committee suggested delegating to officers the task of finding such a solution, but suggested the following as examples:</p> <ul style="list-style-type: none"><li>- Drivers should maintain a handwritten log that must be kept in the vehicle at all times, showing the hours they have worked that day or week.</li><li>- Signage could be displayed in the vehicle advising passengers that if they think their driver appears to be tired, they can ask to see the log.</li><li>- Members recognise that any such manually-maintained solution is open to fraud and abuse, therefore officers should investigate the possibility of an electronic solution such as using tachographs, smartphone apps, or the vehicle's taximeter (vehicles not fitted with taximeters, i.e. private hire vehicles, can be monitored by way of their operator's records).</li><li>- A member commented that one reason for drivers working increased hours is the dilution of their trade caused by more drivers becoming licensed and suggested that a solution be found to this underlying issue.</li></ul>	

**Q4: Do you agree that the code of good practice referred to above is adequate to ensure safe working hours for Cheltenham licensed drivers?**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
See above	

**4. Criminal records checks (DBS)**

The council is proposing to implement a requirement that all future criminal records checks be undertaken online. The council currently accepts paper copies of Disclosure and Barring Service (DBS) certificates. However, the DBS service now offers an online checking service.

**Q5: Do you have any comments to make in relation to this proposal?**

The sub-committee is in agreement and has no comments to add.
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## 2. Fitness of licensed vehicles

The council is proposing a number of changes to its fitness assessments for licensed vehicles:

### 1. Vehicle emissions

It was necessary for the council to review its current emissions policy because the current deadline for phasing out older vehicles expires in 2018.

The purpose of the revised policy is 1) to contribute to the local and national air quality strategy to improve air quality in the town and 2) to have a safe, modern and professional licensed fleet.

To this end, the proposed revised policy is:

#### New vehicles

- Retain 5 year rule for petrol cars (which will result in an automatic Euro Emissions Standard 5 compliance)
- Apply Euro Emissions Standard 6 for diesel (i.e. vehicles no older than 1/9/2015)
- Any age for Ultra-low emission vehicles - defined as 75g CO<sub>2</sub>/km and under

#### Existing vehicles

Phase out older vehicles so to:

- Get all petrol vehicles to at least Euro 5 standard by 2020
- Get all diesel vehicles to Euro 6 standard by 2020

Given that by 2020 all licensed vehicles will be on the minimum Euro 5 emission standards, the council is not proposing a maximum age limit in vehicles provided that they continue to be in exceptional condition and safe. This will be assessed through the Council's enhanced MOT and fitness test for licensed vehicles, on the proviso that vehicles older than 8 years be subject to 6-monthly testing.

#### Q6: Do you have any comments to make on the revised vehicle emission policy?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The sub-committee is in agreement with the proposals but is uncomfortable about removing the 5 year rule entirely for ultra-low emission vehicles. Rather than have no limit at all, consideration should be given to changing the 5 year rule for ultra-low emission vehicles to a 10 year rule, so that it reads:</p> <ul style="list-style-type: none"><li>- All new vehicles, other than ultra-low-emission vehicles, must be less than 5 years old when first licensed (using the date of first registration on the registration document);</li><li>- Ultra-low-emission vehicles must be less than 10 years old when first licensed (using the date of first registration on the registration document).</li></ul>	

### 2. Vehicle standards and specifications

A review has been undertaken of the council's suitability standards for vehicles to be licensed and the following changes are being proposed:

Changing the vehicle fitness standards for wheelchair accessible vehicles making it a requirement that these types of vehicles be side-loading only.

The current policy permits rear loading wheelchair accessible vehicles.

The rationale for this proposed policy change is that there are difficulties with rear-loading public hire vehicles working off taxi ranks where safe entry is from the side.

There have also been concerns raised about the suitability of rear loading vehicles given that there is no other practical escape route for passengers in wheelchairs should the rear access point becomes unusable.

**Q7: Do you agree with the proposed policy change to only permit side loading wheelchair accessible vehicles?**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

If the policy change were approved, the council is proposing to phase out licensed rear-loading vehicles as and when these vehicles are replaced for new ones.

**Q8: Do you agree with the proposed phasing out process mentioned above?**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

### 3. Testing arrangements

The council currently only has one approved testing station for licensed vehicles which is Ubico. It has operated under this policy for several years but a need to review this has arisen. Due to the expansion of Ubico and the growth of the local trade, Ubico's ability to continue to act as sole testing provider within the agreed service level agreement has become increasingly difficult.

This has facilitated a review of the sole use arrangement with Ubico and it is proposed that testing arrangements be opened up to other testing stations that can demonstrate to the council their ability to test to the standard expected by the council.

**Q9: Do you agree with the proposal to nominate additional testing stations for Cheltenham Borough Council licensed vehicles?**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

We must be satisfied that each approved testing station is up to the standard we expect and contracted with CBC to provide a service of a specified standard. A set number of approved stations must be identified rather than have an entirely open market.

#### 4. Grandfather rights

Different rules currently exist for Hackney Carriage vehicle licence holders depending on the plate licence number. A number of Hackney Carriage vehicle licence numbers have grandfather rights attached to them which mean that as long as the licence remains valid, these vehicles do not have to be wheelchair-accessible and can be replaced indefinitely with non-wheelchair-accessible vehicles.

This is in contrast to other, newer licensed Hackney Carriage vehicles that do not have retained grandfather rights and which must be wheelchair-accessible and can only be replaced with wheelchair-accessible vehicles.

The council is seeking views on whether it should change the grandfather rules for Hackney Carriage vehicle licence holders to ensure that the same rules apply to all licence holders.

To this end the council is seeking views on a number of approaches in respect of this:

- a. Amend the grandfather rights so that these only apply to the current licensed vehicle and when the proprietor comes to replace that vehicle they are obligated to purchase a wheelchair-accessible vehicle and/or purpose built taxi;
- b. Make no changes to the current system;
- c. Amend the grandfather rights rules so that those who retain it can interchange between saloon cars and wheelchair-accessible vehicles without those rights being affected.

**Q10: Please indicate your preferred choice from the list above and provide further explanation for your choice.**

When asked for their preference, the majority of the sub-committee selected option C as their preferred option from those listed above, but with the following comments made by individual members.

1. A member felt that it is unnecessary and disproportionate to require all hackney carriage vehicles to be wheelchair accessible. It is sufficient that some are accessible without making it a requirement of the entire trade.
2. Consideration should be given to requiring private hire operators to use wheelchair accessible vehicles (WAVs), such as a condition on their operating licence that at least 50% or a minimum of 5 vehicles dispatched by the operator must be WAVs. The member felt that people requiring a WAV are much more likely to phone a company than use a taxi rank, therefore placing a requirement on the private hire trade would be more effective than having a 100% accessibility requirement on the taxi trade.
3. Another member felt that from an equalities point of view, all licensed vehicles should be WAVs as it is unequal if a person who requires such a vehicle arrives at a taxi rank and cannot find one. This member's preferred option was that 'grandfather rights' be dispensed with on replacement of their vehicles. This would mean that no one would be required to buy a new

vehicle immediately, but when they came naturally to replace their vehicle, the replacement must be wheelchair-accessible. It was recognised by the member that this would mean it would be several years before the entire trade became wheelchair accessible.

4. A member felt that the existing taxi trade are struggling because there are too many taxis and they are having to work longer hours to make a living. This would become worse if new taxis did *not* have to be wheelchair-accessible because WAVs are more expensive than saloon vehicles. Removing this requirement would result in more vehicles and more applications being made, which would further saturate the trade and have a detrimental effect on existing drivers. Another member felt that it is not the council's duty to regulate the numbers of taxis as market forces will determine a natural limit and it is beneficial to the people of Cheltenham to have more vehicles available.

## 5. Equality Act 2010: Taxi and private hire requirements

The council is seeking to implement the new statutory requirements placed upon it by the newly enacted section 167 of the Equalities Act 2010 as part of this policy review.

Section 167 places a new duty on the council to provide a list of wheelchair accessible hackney carriages and private hire vehicles for publication. It also places certain obligations on drivers of vehicles on this list to carry wheelchair users and not to impose any additional charges for doing so.

The legislation leaves it to the council to decide what type of licensed vehicles should be included on the designated list. The statutory guidance however makes it clear that these must be vehicles capable of carrying wheelchairs.

To this end, the council has taken a view similar to that recommended by the statutory guidance whereby all vehicles licensed by this council to carry, as a minimum requirement, a "reference wheelchair" will be added to the designated list.

This list will be published in order for people who require the services of a wheelchair accessible vehicle to easily find this information.

**Q11: Please provide any comments you would like to make in the box below.**

The sub-committee is in agreement with the proposal with the comment that the new General Data Protection Regulations need to be taken into consideration when it comes to personal information being published.

## 3. Licensed Operators

### 1. Conditions

There is an increasing issue of out of town vehicles working in Cheltenham due to the relaxation of out of district sub-contracting rules.

The council cannot enforce against vehicles and drivers not licensed by it (unless it is a criminal offence committed). It is therefore proposed that the council amend its conditions for licensed private hire operators to introduce a new requirement on them that, when they subcontract a booking to an operator not licensed in Cheltenham, they take all reasonable steps to ensure that the vehicle dispatched is not silver. The rationale behind this is to try to avoid members of the public confusing out of town vehicles with Cheltenham's predominantly silver hackney carriage fleet.

**Q12: Do you agree that this proposed change is necessary? Please explain.**

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<a href="#">Click here to enter text.</a>	

#### 4. Other minor changes

The revised policy will reflect a number of minor changes:

1. Changes resulting from the enactment of the Immigration Act 2017 relating to right to work status verification
2. Removal of the requirement for drivers to attain the NVQ.

#### 5. Other comments

Do you have any other comments to make relevant to the taxi and private hire policy review?

A member asked officers to make sure that any case-law that sets a precedent that has occurred since the last review is incorporated into the new policy such as KAIVANPOR V BRIGHTON AND HOVE CITY COUNCIL.

The same member asked for the new policy to include a statement that where there have been allegations against a licence-holder without convictions, those matters may still be taken into account on a case-by-case basis when determining an application, because the evidential limit is the civil standard, i.e. the balance of probability. Therefore where a number of allegations have been made that indicate a pattern of behaviour, but through lack of evidence no criminal charges have been brought, those matters may still be taken into consideration by the licensing committee in its decision making. Another member felt that the council needs to be very careful with this as people's livelihoods and reputations should not be jeopardised through "trial by media" where no conviction has taken place.