

Cheltenham Borough Council

Licensing Committee – 4th December 2019

Safeguarding – Taxis and Private Hire

Report of the Licensing Team Leader

EXECUTIVE SUMMARY AND RECOMMENDATION

The council regulates the activities of the hackney and private hire trades through the licensing of hackney carriage vehicles and driver and private hire vehicle, drivers and operators.

This report follows on from the September Licensing Committee, where the draft Statutory Guidance for the Taxi and Private Hire industry (entitled 'Taxi and Private Hire Vehicle Licensing: Protecting Users' (the Guidance') was discussed.

There is still no certainty at this point from the Department for Transport in implementing the Guidance. However, it is felt necessary to continue to move forward on these improvements and update Members.

Members are asked to consider the improvements to date and the direction of travel on this work, in respect of the work being done by Gloucestershire County Council (GCC).

INTRODUCTION

The draft Guidance highlighted a number of key areas, where improvement nationally is required to address widespread concerns stemming from cases relating to CSE, where the taxi and private hire trades were involved:-

- On application or on renewal robust measures to ensure that drivers are fit and proper.
- Comprehensive policies and procedures to act quickly and effectively regarding concerns about drivers involved in abuse or exploitation of children.
- A requirement to ensure the continued good behaviour of drivers once licensed.

The DfT then went further by stressing the need for:-

- High common standards,
- Increased sharing of information and effective use of enforcement powers.

The September report went into great deal about how Cheltenham Borough Council (CBC) may respond to the issues raised. It put forward a large number of recommended actions to improve the regulation of the taxi and private hire industries, and better promote public safety.

However, it should be noted there is a similar piece of work being driven by GCC that seems to have some common goals to those laid out for the September meeting. This work is being carried out by the Taxi Licensing Task Group, and a supporting document for their remit is attached at ANNEX 1.

It is clear that certain elements of this work could be best served through an approach at county council level. This because some of those areas could be the most complicated and involved, it may take time to get consensus and agreement to implement change.

Therefore, it is suggested that CBC should continue with some aspects of this work, provided there is not likely to be any conflict with the work of the Taxi Licensing Task Group. The original Action numbers from the September report are used below to cross reference easily with this report.

LEVEL 1 IMPROVEMENTS

These are improvements to the Licensing Service that could be delivered quickly and without changes to Taxi Policy

ACTION 1

It is considered appropriate to adopt a procedure in respect of allegations involving children and adults at risk. A draft process was considered in September and was based on the process followed by many Safeguarding Children Boards, it had been amended to make it more specific to the needs of CBC Licensing. It needs discussion with the Local Authority Designated Officer (LADO) with GCC and the Police locally to ensure it is fit for purpose in our area. It must also sit properly with internal safeguarding policies/ processes at CBC.

This action requires further work before approval.

ACTION 2

Recent communication with other local authorities has shown a keen appetite for creating a 'flexible warranting' scheme in order to carry out more effective monitoring and enforcement of 'out of town' drivers and vehicles.

This would mean CBC would have the authority from other councils to deal with their licence holders whilst working in Cheltenham. It would mean that other councils would need to authorise our staff to act on their behalf in dealing with their licence holders.

Aside from giving CBC power to monitor and engage with those 'out of town' licence holders, it could also open up opportunities for joint enforcement exercises across Gloucestershire, if the authorisations are approved through reciprocal arrangements. It could also open up opportunities for neighbouring authorities to assist CBC on exercises around large racecourse events, particularly the Festival.

This work will be moved forward through GLOG or the GCC work ongoing due to the more complex nature of it.

ACTION 3

The Safeguarding training has been improved and a new version has been piloted for 2 months. This package will be completed during December and shared with Members and other local authorities.

ACTION 4

A training session for councillors was organised recently and well attended. However, there should be regular and scheduled opportunities to refresh knowledge, share experiences and develop Councillor's skills for licensing.

A draft schedule will be drawn up between the Legal Team, Licensing and Chairs/ Vice Chairs and circulated by the end of January 2020.

ACTION 5

In the case of the most serious complaints about the behaviour of licence holders, a senior manager may be requested to carry out a review of the handling of the complaint. This decision will be made by the Team Leader Licensing and Chair of Licensing Committee. The review would look at actions by CBC staff and any other public bodies concerned.

This could provide oversight of the handling of such investigations and allow a comprehensive review to be carried out. The emphasis of such reviews will be to improve the response to such issues and learn from cases.

This action is to be discussed with senior managers.

ACTION 6

With immediate effect, CBC Licensing will ensure a clear separation of responsibility in respect of complaints about a licence holder's alleged behaviour and any subsequent decision making about their fitness to hold a licence. That means that where an officer has taken part in an investigation of a complaint, that same officer will not take part in any decision making process related to the fitness and propriety of that driver, aside from providing a witness statement and/ or giving evidence in accord with that statement to the committee or subsequently at court.

ACTION 7

Officers will produce a written policy/ procedure for immediate suspensions or revocations by officers/ managers at CBC, where relevant issues arise. Due to the fundamental importance such a document, it will require approval by the Members.

Work has been started on this document, but it is taking time to complete due to its importance in the decision making process, and the likelihood of being open to legal challenge.

ACTION 8

CBC Licensing does not have a legal obligation to refer an individual for barring to the Disclosure and Barring Service (DBS) under the Safeguarding Vulnerable Groups Act 2006 (the 2006 Act). There is a suggestion from the DBS that they will investigate referrals that are made to them outside of the scope of the statutory referral process, but they advise that the body doing so must do so in accord with all relevant data protection and employment law.

However, there is a power to refer and a duty to provide information if a proper request is made by the DBS.

Given the often complex nature of such cases, it is felt that the primary consideration should be the harm test, under the 2006 Act, namely that the person may:-

- (a) Harm a child or vulnerable adult,
- (b) Cause a child or vulnerable adult to be harmed,
- (c) Put a child or vulnerable adult at risk of harm,
- (d) Attempt to harm a child or vulnerable adult, or
- (e) Incite another to harm a child or vulnerable adult.

If the harm test is satisfied in relation to a written complaint about a taxi/ private hire driver then Licensing will consider the following:-

- Is there an organisation involved in responding to a complaint that has a duty to refer? If that is the case, it seems appropriate to ensure that body is aware of all relevant information about the complaint held by Licensing. This ensures an appropriate response by that organisation in terms of its duty.
- If that is not the case, then Licensing will consider whether the legal tests are satisfied in order to use its power to refer an individual for barring.
- If Licensing is subject to a request for information from the DBS in relation to a potential barring decision, it will consider whether it is appropriate and legal to do so.

In all such cases, the decision making process and relevant considerations will be recorded.

ACTION 9

With immediate effect, officers will carry out quarterly reviews of all enforcement work carried out. The purpose of doing so will be to improve ways of working and the Licensing Service:-

1. Looking for emerging trends in non – compliance or patterns of adverse behaviour in licence holders.
2. Learning from the handling of those cases.
3. Seeking ways to be more proactive in engaging with the trade and in monitoring/ enforcement exercises.
4. Sharing best practice and learning from legal cases elsewhere.

These reviews will be recorded, subject to further discussion and findings will be publicised through Gloucestershire Licensing Officers Group (GLOG), with relevant stakeholders and with licence holders where appropriate.

ACTION 10

Social media is a strong tool and is used to communicate with licence holders and the public more effectively. There could be more extensive use of the Licensing twitter feed in a targeted manner to propagate best practice, share relevant information, publicise the team's response to complaints and decision making at committee and improve the working relationship with the trade.

Work is required to move this action forward.

ACTION 11

To refresh and re – establish the liaison arrangements with the trade through the Liaison Group that already exists. The intention being to:-

1. Develop effective arrangements to consult with the trade when needed.
2. Provide a means for the trade to flag up their own concerns that affect their workplace.
3. Propagate best practice.

To this end, all licence holders will be contacted to ascertain their views on the following:-

1. *What framework do they believe will best support communication and consultation between the council and licence holders?*
2. *Do they believe that hackney carriage and private hire trades should be represented in one body or separately?*
3. *How often do they believe the group(s) should meet?*
4. *Are they willing to take part in such a process?*

The feedback will be discussed and a meeting date will be set in early 2020 to reinvigorate the process.

ACTION 12

The Council will publish enhanced information on its website providing safety advice to prospective customers regarding the taxi and private hire trades.

A draft guidance sheet is attached at ANNEX 2. This guidance will be completed and posted online.

ACTION 13

Licensing staff have been specifically briefed about 'Whistleblowing' i.e. they are briefed on the route they can take to flag up concerns with management about decision making in respect of driver's licences (not on council Policy but in respect of concerns about officers individual decisions where concerns have arisen) and that they are provided with a named manager who would be responsible for investigating any concerns.

It should be stressed that there has been no evidence of such problems at CBC. However, there have been genuine concerns about the granting of licences in some other council areas.

ACTION 14

Further consideration is required whether there is the need for Operators to maintain a recruitment policy for employing ex – offenders or at least signpost them to appropriate advice. This could help employers to recruit more effectively and avoid wasting time with potential recruits that might be unsuitable.

ACTION 15

To liaise with Gloucestershire Constabulary and other Gloucestershire Licensing Authorities to seek the establishment of a Single Point of Contact (SPOC) within the Police force locally. This officer could act as a champion for issues related to taxi and private hire licensing and act as the key liaison officer for Licensing Authorities.

This work is ongoing and the GCC work may best achieve this outcome.

ACTION 16

Improve liaison with other Gloucestershire Licensing Authorities:-

- Share policy and procedure to enable use of NR3 by all,
- Improve sharing arrangements by Licensing Authorities of all suspension decisions across Gloucestershire Licensing Officers Group (GLOG). There is an

existing protocol including revocations and refusals, but this needs review and has been superceded by the NR3 to a large extent.

- Formalise sharing of appropriate data in relation to County Council investigations in relation to persons transporting children or adults at risk.

This work is ongoing and the GCC work may best achieve this outcome.

LEVEL 2 IMPROVEMENTS

Changes where Taxi Policy requires amending prior to implementing

ACTION 1

CBC should consider mandating the use of the Update Service from the DBS on application, renewal and maintained during the licence period.

A review of the licensed driver application process, ongoing checks during the currency of a licence and renewal process should be carried out. Changes to those processes may require change to taxi policy and so may require consultation to be carried out. It makes sense to look at those processes in their entirety and not simply consider the use of the Update Service in isolation.

ACTION 2

A key tool in determining the fitness and propriety of drivers is the conviction policy of the Licensing Authority. Work has been done nationally by the IoL and DFT to produce consistency in this area. Although there are some inconsistencies in content where councils do have such policies, there is a marked contrast in how consistently those policies are considered.

Due to the slight differences in the policies and the variations in applying them, it seems appropriate to await the final outcome of the national discussions in this area. Ideally, there will be a national standard to bring genuine consistency.

ACTION 3

Conditions would be required for all licensed vehicles to display 'complaint information' i.e. a notice informing the public how to complain about their journey.

However, in the meantime officers will review information on the CBC website to ensure it is clear and easy to understand how to make a complaint to Licensing Team about concerns. This work will be completed by the end of 2019. This will include information on how 'out of town vehicles' can work legally in Cheltenham and how to complain where problems arise with this vehicles.

ACTION 4

The issue of mandating the provision of CCTV cameras in vehicles was discussed at the September meeting. Currently, there is no mandatory requirement to maintain such systems in any licensed vehicle in Cheltenham. GCC are mandating use of CCTV systems in licensed vehicles used on school contracts, and there has been little resistance to that requirement.

However, many licensed vehicles do maintain such systems of their own volition with no control in place over their systems, where there is no accurate audit of the systems in use and where those having the systems have little idea of their legal responsibilities in respect of the data they are collecting.

There is inconsistency across some councils in how they view their legal responsibilities in mandating CCTV and it is an issue that is likely to be referred to in the Guidance.

The most sensible approach seems to be to provide considerably more advice and signposting to licence holders, and set specification criteria for CCTV equipment and give clear direction on the use of systems. This may provide a balanced and effective approach to the issue in the local context for Cheltenham, until the council takes a decision on whether to mandate use of CCTV.

NEXT STEPS

Licensing Committee is asked to feedback on the actions laid out above, as it is clearer now that some work is best carried out the GCC group given the level of collaboration that is required to raise some standards consistently across neighbouring council areas.

Where required, permission will be sought from the lead Cabinet Member to move forward remaining actions.

Where necessary, consultation will be carried out, and Licensing Committee would play a full role in that process.

Following the consultation exercise and subject to any responses received, Cabinet will receive a further report with a recommendation to amend the existing policy to implement those improvements.

Background Papers

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ANNEX 1

SCRUTINY REVIEW – ONE PAGE STRATEGY	
Broad topic area	Economy and communities
Specific topic area	Taxi and PHV licensing
Ambitions for the review	<p>To explore the economic benefits and make recommendations in respect of adopting a common set of standards, sanctions, fees and guidance for taxi and private hire vehicle licensing for all local authorities in Gloucestershire. This will consider:</p> <ul style="list-style-type: none">• the National Revocations and Refusals Register• the fit and proper persons test• environmental concerns, including air quality• adaptations for people with disabilities• the ongoing government review and LGA best practise• app based taxi services• the role of taxis and PHVs in rural communities• school transport• training and how training is shared• safeguarding and vulnerable users• the economic benefits to be gained by a common partnership approach between District Licensing Authorities (DLAs)
How do we perform at the moment?	There is currently no joined up approach to licensing.
Who and how should we consult?	<ul style="list-style-type: none">• Cabinet members in county and districts• Economic Growth Scrutiny Committee• Economic Growth Joint Committee• Taxi and PHV operators• Taxi and PHV users, including vulnerable users• GCC Integrated Transport Unit• District Licencing Chairs• District and county council officers, including the Gloucestershire Licensing Officers Group• Safeguarding leads• Gloucestershire Police <p>A series of meetings followed by further consultations.</p>
Background information	<ul style="list-style-type: none">• LGA Taxi and PHV licensing Councillors' handbook• Taxi and Private Hire Vehicle Licensing Task and Finish Group report and government response• DLA policies relating to Taxi and PHV licensing
Support	Maria Arthurs-Hartnett, Democratic Services

	Sophie Benfield, Democratic Services Jo Savell, Communities and Infrastructure
How long will it take?	6 months. Aim to report back at the 18 th March 2020 meeting of the Economic Growth Joint Committee.
Outcomes	Recommendations on a common set of standards, sanctions, fees and guidance for taxi and private hire vehicle licensing for Gloucestershire for consideration by the Economic Growth Joint Committee and the District Licensing Authorities.

Safety Advice for Passengers

When Using Taxis and Private Hire Vehicles - Draft

Everyone can take some simple steps to enhance their experience using these vehicles, which for simplicity, we will call 'taxis'. The vast majority of licensed taxi drivers provide a good service, but a small number may take advantage of their position. These steps can help you get home safely and avoid being ripped off.

1. Take a licensed vehicle. Do not use a vehicle without a licence plate on the back of it. We carry out checks on licensed vehicles to protect you.
2. Make sure the driver is licensed. If the driver cannot show you his ID card, do not get in the vehicle. We carry out checks on licensed drivers to protect you.
3. If you book a car, ensure that you know who is picking you up and what vehicle they are driving. The company may not know this information, when you make the booking but should be able to confirm this information prior to picking you up.
4. Never take a private hire vehicle without a pre – booking. The insurance is likely to be invalid and the driver is breaking the law.
5. Think ahead and plan your journey home. You must take responsibility for your own safety.
6. If the vehicle has a taximeter make sure it is turned on when you start the journey. Ensure you have an idea about how much the fare will cost, to ensure you can get home. Ask to see the fares card if you have concerns about the fare.

If you take a taxi and wish to complain, please contact the council that has licensed the vehicle and driver. The Licensing Team at Cheltenham Borough Council will investigate complaints against our drivers and vehicle owners.

We do not tolerate:-

Discrimination of any kind,

Inappropriate behaviour or language from drivers,

Overcharging,

Racist comments or behaviour,

Sexism.

Contact us at licensing@cheltenham.gov.uk or on 01242 264163