

## LICENSING AND SAFETY COMMITTEE

18 NOVEMBER 2014

### UPDATE ON TAXIS

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#### Summary

The purpose of this report is to update the Committee on the discussions and work carried out by officers with other local authorities and the MLTDA in looking at way we might tackle the safety concerns raised over the currently unregulated out of area drivers operating in Medway.

#### 1. Budget and Policy Framework

- 1.1 Licensing is a non-executive function but the policies proposed by this report are not policy framework documents and as such are a matter for determination by the Licensing and Safety Committee.

#### 2. Background

- 2.1 **Case law** – In the case of *Stockton - On - Tees BC v Fidler* the High Court [2010] EWHC 2430 (admin) held that:

- It is not an offence under section 46(1)(e) of the Local Government Miscellaneous Provisions Act 1976 to operate a hackney carriage on journeys booked and wholly contained in the area of a local authority, even though another local authority only licenses the vehicle.
- It is an offence under section 45 of the Town Police Clauses Act 1847 for a hackney carriage to stand or ply for hire in the area of a local authority where it had not been licensed to do so (even if it is licensed to do so in another local authority area).

The court highlighted that local authorities still had control of those plying for trade in their areas and that all hackney carriages still had to be licensed. It seems clear that a hackney carriage can be used for private hire in another borough but not as a hackney carriage.

At paragraph 78 of the judgement it stated, “No hackney carriage is exempt from local licensing as a private hire vehicle unless it is licensed as a hackney carriage somewhere, and it is an offence for it to be driven by one who is not licensed by a proper authority as its driver. No hackney carriage may ply for hire in the area of a local authority unless specifically licensed to do so within that area. (See sections 45 – 47 Town Police Clauses Act 1847). Although (as was hinted at by counsel before us) an authority such as Stockton-upon-Tees may have wished greater control over driver or vehicle in a specific case, it is not a consequence of this decision that either is without regulation, which it may be assumed will be properly and appropriately applied by whichever local authority is that which confers a licence in respect of the relevant hackney carriage, driver and employer. If it seems that there are nonetheless tensions between any policy of local licensing and regulation on the one hand, and the proper interpretation of the wording of statute as determined in this case, that must be a matter for consideration and review by Parliament rather than the courts.”

2.2 **Draft Deregulation Bill** – This has concluded its passage through the House of Commons and is now in the House of Lords at Committee Stage. The sections of this Bill that relate to Taxis are 10, 11 and 12 as detailed in **Appendix A**. These sections are still under discussion, subject to change and may not become law.

2.3 **The Issues** – The Council shares the concerns of our licensed divers in respect of safety concerns, overcharging and knowledge of the area when hackney carriage drivers licensed by other licensing authorities operate as a private hire within our area.

The current legal position as described above only permits Medway Council Licensing Enforcement Officer to deal with Medway Council licensed vehicles, drivers or operators. Conversely any third-party licensed vehicle, driver or operator may only be regulated by that respective licensing authority. This therefore causes problems in terms of cross-border work, whereby Medway Council has seen a number of third party drivers and vehicles carrying out their business within the Medway area. This paper sets out the strategies that may be adopted so as to ensure that any passenger who hires a vehicle for transport is kept safe, regardless of which licensing authority has licensed that driver or vehicle.

### 3. **The work carried out to date**

#### 3.1 **Meetings with Medway Licensed Taxi Driver Association (MLTDA) and MP –**

During the year regular contact via meetings, phone call and email have taken place between the MLTDA and Licensing in respect of Taxi matters in general and specifically in relation to the drivers/vehicles licensed by other authorities plying their trade in Medway as Private Hire.

Medway Council hosted a meeting of officers and the MLTDA on 24 April 2014 with one of the Medway MPs to outline the problems both the trade and licensing authority are facing in light of the case law and contents of the draft Deregulation Bill. At that meeting, the MP confirmed he would voice the trades concerns during the passage of the Bill in the House of Commons.

### 3.2 **Cross Border Working and joint operations -**

Medway and Tonbridge and Malling Licensing Enforcement Officers have been working together in respect of the Tonbridge and Malling licensed hackney carriage drivers operating as private hire in Medway. Joint operations have taken place, the sharing of information and providing statements resulting in drivers from Tonbridge and Malling being suspended.

### 3.3 **Lobbying by Local Government Association (LGA) – Key message published on 17 October 2014.**

The LGA welcomes the announcement this week that the Government has dropped clause 10 of the Deregulation Bill. Alongside other organisations, including the Suzy Lamplugh Trust, children's charities, police and crime commissioners and driver associations, we had raised repeated concerns that the measure, which would have enabled anyone to drive a licensed private hire vehicle (PHV) when it was off duty, would put passengers, and particularly women, children and disabled people, at greater risk.

The LGA is now urging government to drop the remaining two-deregulation measures relating to taxi and PHV licensing (clauses 11 and 12). We are not in principle opposed to deregulation, but this should be implemented as part of a package of reforms covering all aspects of taxi and PHV licensing, rather than through a piecemeal approach.

The Law Commission recently set out proposals for a much needed overhaul of taxi and PHV licensing, following full engagement with councils and trade bodies. The Commission's report provides a solid foundation for the reform of taxi licensing, following further consultation with taxi and PHV drivers and firms, licensing authorities and those who use taxis and PHVs. We note that the proposals in the Deregulation Bill were subject to an extremely limited informal consultation with just eight organisations over a ten-day period.

The Law Commission report does advocate the measures included in the Deregulation Bill in Clauses 11 and 12, however it also attaches to them a number of safeguards, which have not been included in the current proposals. More broadly, the Commission's report makes these recommendations as part of a much wider reform of taxi and PHV enforcement powers for licensing authorities, which would give them more effective powers to take action when problems occur, as well as reducing burdens on responsible operators and drivers.

Recent child sexual exploitation cases have sadly highlighted the way in which the trust that people place in taxi and PHV drivers can be abused. Rather than implementing isolated deregulation measures, our focus now must be on preventing taxis and PHV's from being used in this way in the future, so that that taxis and PHV's can fulfil their essential role in our transport network and – equally importantly – so that those using them can feel confident and safe in doing so. Therefore, we urge government to delete these clauses until such time as a comprehensive package of reform can be implemented.

3.4 **Other Council policies and conditions** – Listed below are a sample of the conditions on licences and relevant extracts from policies other licensing authorities have introduced: -

- The operator may only utilise drivers and vehicles also licensed by the same authority that they hold their operator licence with.
- Details of Drivers and vehicles not licensed by the Council or to the operator or Firm - For the avoidance of doubt, Condition 8 of these conditions also applies where the operator allocates private hire bookings to vehicles that are either not currently licensed by the Council or which are not licensed to the operator or firm at the time of the booking. Where Condition 8 applies because the allocated vehicle is not currently licensed by the Council and is licensed as a hackney carriage vehicle in another licensing authority area, Condition 8(c) shall be construed accordingly. These records must be separate from the records that are kept for all vehicles they operate. These details shall be produced on request to an authorised officer or police constable. (Condition 8 Details of Drivers The operator shall keep at their premises the following details of all drivers employed or used by them: - (a) name and address; (b) badge number; (c) expiry date of the private hire vehicle driver's licence)
- When the operator accepts a booking he/she will unless prevented by some reasonable cause ensure that a licensed private hire vehicle attends at the appointed time and place. The vehicle and driver despatched shall both be licensed by the same authority that you hold your operator licence with. When the operator accepts a booking he/she shall immediately prior to the commencement of the journey enter all details of the hiring in the form prescribed.
- Introduction of a star-rating scheme or Quality Taxi Partnership Scheme for operators. These schemes have focused on improving taxi services so that customers can “buy with confidence” every time they use a taxi.

4. **What we believe to be our options**

4.1 **Mystery Shopping** – Medway Council Licensing are looking at the possibility of working with other local authority licensing officers in swapping areas to carry out test purchases and mystery shopping to identify any breaches in respect of the driver, vehicle, route taken and overall experience. Any covert surveillance would be subject to RPPA obligations. The outcome of this could then aid the development of a policy.

4.2 **Policy & Conditions on Operator Licences** - The Council currently licenses a number of operators, some of which now have third-party licensed vehicles registered with them. The Council has the power to incorporate conditions on an Operator's Licence. In imposing conditions, it is particularly useful for operators; officers and the Council to have a policy so that they may understand which conditions would normally be imposed in certain circumstances. Any policy would be subject to consultation and approval by the Council before being implemented.

4.3 **Delegated functions** - Local Authorities have the ability to delegate functions, including enforcement powers, to officers of other authorities under section 101(1)(b) of the Local Government Act 1972. This has been used by a number of local authorities to effectively create larger enforcement areas. For example, enforcement officers across the district councils making up the Merseyside area are empowered to work across the vehicles of the five licensing authorities within Merseyside, and a concordat on enforcement has been established between these authorities. Similar arrangements are in place in Greater Manchester and within the local authorities neighbouring Gatwick Airport.

## 5. Risk Management

5.1 The options taken forward must be fully in line with relevant legislation and case law. Full consultation on any policies with relevant stakeholders will minimise the risk of challenge. Officers and the Committee will need to be aware of any effect these policies will have on existing licence holders and this will be a matter that is considered during the drafting of the policy.

## 6. Financial and legal implications

6.1 There are no direct financial implications currently arising from this report. The Council is under no legal obligation to have the policy referred to in this report in place, but having such a policy would assist with consistency and fair decision-making and provide justification in the event of legal challenge. Licensing Officers and Committees are not bound by any policy, but may have regard and apply appropriate weight to the policy in any decision-making.

## 7. Recommendations

7.1 The Committee is asked to instruct officers on their preferred choice of option(s) to be taken forward and to report back to this committee with a final draft version for approval.

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### Background papers

None