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Consultation response on Hackney Carriage and Private Hire Licensing Policy 2016 prepared by the Transport Working Group for the RTW Town Forum

Hackney Carriage (taxi) and Private Hire vehicles provide an important service in our community; for tourists and other visitors, they are the first point of contact with Royal Tunbridge Wells. Drivers are, in effect, ‘ambassadors’ of our community and passengers expect to be transported in comfort and safety.

The nature of the service is that taxi drivers frequently come into contact with people at their most vulnerable – late at night, alone, tired, unfamiliar with their route, lone female, young, and sometimes influenced by alcohol. Because of this, TWBC, who licenses the operators and drivers, must ensure that drivers and operators are of the highest quality and can be held to account for their performance.

On the other hand, employment as a taxi or private hire vehicle driver is an ‘entry level’ job, with flexible working hours, an opportunity for a second job to earn ‘extra money’, and utilising an existing transferable skill (driving). With some training, taxi driving is open to anyone.

Updating the licensing of taxis, private hire vehicles, drivers and operators to take account of changes in legislation is welcomed. However, the RTW Town Forum considers that this revised document fails to provide sufficient safeguards for users of the service to ensure that drivers are ‘fit and proper’. A definition of Fit and Proper in this context might be: “ *Would you allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter, or any other person for whom you care get into a vehicle with this person alone.*”

Officer response:

There is no definition of ‘fit and proper’ in the Local Government (Miscellaneous Provisions) Act 1976 nor a fixed legislative process.

In the absence of a statutory definition of ‘fit and proper’ the Council will use the test formulated by Solicitor James Button, who specialises in taxi law and President of the Institute of Licensing

Would you (as a member of the licensing committee or other person charged with the ability to grant a licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter, or any other person for whom you care, to get into a vehicle with this person alone? [Button on Taxis; Licensing Law and Practice p.389]

Therefore it is for the Council to determine how it wishes to be satisfied that a driver is ‘fit and proper’ and to this end the Council considers a range of documentary evidence, practical criteria and qualifications provided by an applicant in order to be satisfied that an individual is ‘fit and proper’.

In recent years, serious cases of child sexual exploitation in other parts of the country have damaged the reputation of taxi drivers. We want to be sure that the reputation of taxi drivers

in Tunbridge Wells is protected by ensuring that **“TWBC licensing policy is of the highest order providing a watertight system of vetting that is not open to fraud, and one that promotes zero tolerance of bad behaviour, bad driving, crime or deception.”** Furthermore, TWBC must be proactive in ensuring adherence to the regulations at all times by checking all documentation and vetting procedures thoroughly and by performing regular monitoring and spot checks to ensure compliance with its own licensing rules.

We have researched other Councils' Licensing policies, in particular those affected by child sexual exploitation crimes, to see how they have tightened their licencing terms, and compared them to this draft document from TWBC. As a result we have made some suggestions, based on Rotherham Council's Licensing Policy 2015. This document and the RTW Town Forum response to the Hackney Carriage Unmet Demand Survey 2016 have been attached for your information.

Our concerns are:

FRAUD:

The possibility of fraud and deception is very high in a digital and global working environment. Establishing proof of identity, nationality, criminality and qualifications is a heavy responsibility for employers and for Councils as licensing authorities for services to the public. It is common practice to obtain two forms of identification, one to prove identity and one to prove address. For example, driving licence as proof of name plus a utility bill or bank statement. Provisional driving licences, mobile phone bills and credit card statements are not acceptable.

We are concerned that the safeguards provided in this revised Licensing Policy are not sufficiently robust to check and detect fraud and deception. The follow paragraphs are a cause for concern:

4.3/ 24.3 *The Authority will accept scanned accompanying documents with online renewal applications* . Scanned documents can be easily doctored and we suggest that original documents must be presented. Bearing in mind that some licences are only renewed every three years, this is not an onerous task. Furthermore, the person to whom the documents relate must present them in person to the relevant officer who can then certify that they are an original and true copy, date and sign them, photocopying them and handing the originals back. The advent of electronic billing needs to be taken into account in reviewing the vetting process particularly as most utility bills are now electronic.

Officer response:

4.3 of the policy relates to drivers. All new applicants are required to submit in person the original documentation to enable the officer to verify his/her identity. At renewal stage should the identity images differ from those held by the authority, then the Council reserves the right to require the original documentation, with the applicant, to be presented to the Officer.

24.3 of the policy relate to vehicles, these are renewable each year. However the same principal applies as above, if there is a discrepancy between the copies retained on the Councils' system then original documentation will be required to be produced to the Officer.

5.5 *Two items relating to identification must be provided.* These items must relate to the private residence of the taxi driver. In order to protect the Council as well as the taxi driver, we suggest that these requirements should be aligned with the money laundering requirements. Documents which are acceptable in those circumstances are e.g. Utility bill in the driver's name and Council Tax Bill in the driver's name. This would enable the Council to confirm both name and address for the driver, and then confirm them against the Electoral Register (or some other reliable source). Whilst we appreciate that some applicants may have limited access to original documentation, it is all the more important that several sources are required to verify identity, which once established should lead on to other checks being made.

Officer response:

ID is checked for all applicants in accordance with the Disclosure and Barring checking guidelines for counter signatories.

<https://www.gov.uk/government/publications/dbs-identity-checking-guidelines/id-checking-guidelines-for-countersignatory-applications>

In addition to the above, we also undertake additional safeguarding checks with the local Police Licensing Officer to confirm identity and suitability.

7.8 *A first time driver applicant must demonstrate by means of an online knowledge test* Whilst it is accepted that this is now an online test, it is suggested that this test should be taken within a regulated environment. The DVLA have a driver testing facility in Meadow Road in Tunbridge Wells. This could be used for the testing the driver's knowledge and would prevent someone else taking the test on behalf of the driver. This knowledge test should be completed and the results sent to TWBC prior to the driver submitting his application for a licence.

Officer response:

The test can be undertaken at any of the Partners' sites even though they may not be operating within that Borough, e.g. a Tunbridge Wells' applicant could undertake a test at Maidstone Borough Council or Sevenoaks District Council offices. The applicant may only then apply to the respective authority for a licence once he/she has passed this initial test. All applicants will be required to provide photographic evidence e.g. a drivers licence, therefore reducing the risk of someone else taking the test.

39.1 and 39.2 Criminal record checks (this is now Disclosure and Barring Service check). These paragraphs appear to be contradictory .

Officer comment

These paragraphs relate to Private Hire Operator requirements where they are not a licensed driver.

Private Hire Operators do not appear within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended and do not seem likely to have contact with vulnerable people and therefore a basic disclosure can be obtained, allied to a statutory declaration. This view is supported by The Department for Transport Best Practice Guidance "*PHV operators (as opposed to PHV drivers) are not exceptions to the Rehabilitation of Offenders Act 1974, so Standard or Enhanced disclosures cannot be required as a condition of grant of an operator's licence. But a Basic Disclosure, which will provide details of unspent convictions only, could be seen as appropriate, after such a system has been introduced by the Criminal Records Bureau*".

39.3 Inadequate security – a Certificate of Good Conduct must be backed up by other documentation from other sources.

Officer comment:

There is no statutory requirement in this regard, however the requirement that an overseas applicant provides evidence of their criminal record from other countries in which they have resided is an important public safety measure and ensures that applicants that have not lived in the UK for a period of less than five years have their criminal history checked as substantively as those who have lived in the UK for that period of time.

As Standard or Enhanced disclosures cannot be required as a condition of grant of an operators licence, then the Basis Disclosure, signed declaration (assuming that it is completed correctly) which has the advantage of revealing any convictions that do not appear on the Police National Computer and a Certificate of Good Conduct assists the authority in its checks

Record Keeping: The requirement for the operator to keep records for 12 months is not included in Appendix 9 as stated.

Officer response:

The requirement for the operator to keep records is included at Appendix 9, paragraph 2.10.

FIT AND PROPER PERSONS:

5.5 New and Renewal Applications: *For all Applicants who have lived in the UK for less than 5 years continuously, a certificate of good conduct from the appropriate Embassy is required (for new applicants only). We suggest an amendment that sees taxi operators also bearing some responsibility for their drivers being of good character and they should be held to account for their performance.*

Officer response:

The majority of driver's lease the vehicles from Proprietors and Operators. Where the proprietor or operator is made aware of incidents/concerns involving the driver, appropriate action is taken.

8.1 Age and Experience : *Minimum age of 21 with at least 12 months' experience; and 8.3 An applicant who meets the licensing requirements by virtue of an acceptable non-UK driving license must obtain a full UK driving licence within 12 months of the issue of the hackney carriage/private hire driver's licence. This could mean inexperienced drivers are licensed and/or they can drive on a non-UK/EU license for several months risking passengers and other road users.*

Amend and strengthen 8.1 and 8.3 as follows (based on Rotherham): *Applicants must be aged over 21 and have a minimum 2 years of holding a full driving licence issued in the UK, in the EU or one of the other countries in EEA. In addition, licensed drivers who hold an EC/EEA licence will obtain a GB counterpart document. This must be produced before the initial licence is issued.*

Officer response:

These drivers have been deemed suitable to have passed a test and meet the required driving standards. In addition, all applicants are required to undertake and pass a driving standards assessment (DSA) undertaken by the Council's approved provider, prior to being granted a licence.

It is proposed to insert the following:

Applicants must be aged over 21 and have a minimum 1 year of holding a full driving licence issued in the UK, in the EU, or one of the other countries in EEA. In addition, licensed drivers who hold an EC/EEA licence will obtain a GB counterpart document. This must be produced before the initial licence is issued.

Currently, licensed drivers who hold an EC/EEA licence will be required to obtain a GB counterpart when they apply to be re-licensed.

9.1 Medical Fitness: The document states that *drivers 'are on the road for longer hours than most drivers'* but does not place a sensible limit on hours driven or length of shift, nor does it require operators to monitor, record or limit hours spent driving, nor are operators held to account. To ensure the safety of passengers, some limits must be included.

Officer response:

Working Time Regulations 1998

There are no direct controls over the hours that a taxi driver can work. This only applies to drivers who are employed and working under a contract of employment, and does not apply to self employed drivers. It is therefore of limited application in relation to taxi drivers, where the vast majority of driver are self employed. Therefore we are unable to impose any restrictions.

In addition, allowance must be given for Drivers with a disability. Specialist equipment may be necessary to enable the driver to carry out his/her duties.

Officer response:

TWBC currently has an adapted vehicle within the fleet for a disabled driver.

36.3 Disability access : Given the recent case of some Tunbridge Wells based taxi drivers refusing to accept passengers with dogs, including guide dogs, it is imperative that this updated licensing process makes these requirements absolutely clear in future. Amend the text by adding prior to the medical conditions exemption the following which reflect a stronger safeguarding position taken by Rotherham (5.6 Medical Assessment) as follows: *Licensed drivers are under a legal duty to carry guide, hearing and other prescribed assistance dogs in their vehicles without additional charge*

Officer response: No change.

7.5 states "If a driver fails to carry out the duties imposed upon them under the Equality Act 2010 without the appropriate exemptions they will be subject to appropriate enforcement action by the Council".

In addition the driver's obligations regarding the Equality Act 2010 forms part of the new online knowledge test.

36.6 Disability Access: In the Town Forum's Consultation response to the 'Unmet Demand' survey we noted that the "TWBC's website's *Getting Around* section is particularly inadequate on this topic. It lists a number of individuals with wheelchair accessible vehicles. This list should be constantly updated and include all companies and vehicles. On the list were 5 individuals and 2 companies with no information or links to websites where these exist to enable customers to make an informed choice." Amend the document as follows: *The authority will keep a current list of wheelchair accessible vehicles. This will be publicly available on the TWBC website.*

Officer response:

The current list was placed on the website (2015) prior to the statutory guidance being issued in February 2017. The Licensing Officer was required to obtain permission from the proprietors/operators to publish their details in the public domain as this was not a statutory requirement.

The commencement of Sections 165 and 167 of the Equality Act 2010. Section 167 of the Equality Act 2010 permits, but does not require local authorities to maintain a designated list of wheelchair accessible taxis and Private Hire Vehicles.

Section 167 of the Act provides local authorities with the powers to make lists of wheelchair accessible vehicles and Section 165 of the Act then requires the drivers of those vehicles to carry passengers in wheelchairs provide assistance to those passengers and prohibits them from charging extra.

The requirement of Section 165 does not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act.

Section 166 of the Act provides local authorities with the power to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for him or her to comply with the duties.

This authority is currently in the process of reviewing the latest guidance to ensure compliance with the legislation and the duties on drivers take effect.

Appendix 1 2.5 Honesty and Trustworthiness . Amend text to make it clear that it is a serious offence to divulge information about a customer that leads to a criminal offence, e.g. passengers burgled while away on holiday, as well as the other abuses of trust cited.

Officer response: No change.

3. 2 Public Safeguarding : We note that whilst drivers and operators have a duty of care to children and vulnerable people, they must also have a responsibility to report concerns/suspicions about perpetrators amongst their fellow drivers to Operation Willow. Not to do so could be deemed collusion.

Officer response: No change.

ZERO TOLERANCE Given the nature of the role of a taxi driver and the vulnerability of their passengers we insist that nothing less than zero tolerance is acceptable when considering safety of passengers in Tunbridge Wells.

7. Motor Insurance Offences: We have grave concerns over statements in **7.1 and 7.2** particularly “ *More than one conviction for motor insurance offences will be considered to raise serious doubts as to an applicant’s suitability to hold a ...licence .*” We believe only one conviction should be enough to cast doubt! However some period of good behaviour over an extended period of time may be taken into account.

Officer response:

One, failure would raise a flag that would cause the applicant to be carefully considered and two failures being likely to be unacceptable is as close to ‘zero tolerance’ as the authority can actually be in practice whilst giving the application consideration on its own merits, on this basis no change.

12.3 Conviction of violent offences: These are serious offences attracting a significant jail sentence. Therefore there should be a zero tolerance approach to offenders. The document states “*The Council considers all violence related offences as a serious risk to the public.*” Whilst we would prefer that conviction for Violent Offences should rule out any applicant, we consider counting the period ‘free of convictions’ from the date of conviction rather than the date of release from the sentence as unacceptable. Also the calculation should always be a minimum of 10 years otherwise an offender would be considered for a licence too soon after release.

Officer response:

The council is not in a position to rule out any applicant and always being a minimum of 10 years is a fetter on the discretion to consider all cases on their merits. Violent offences cover an enormous spectrum of bad behaviour and so a one size fits all approach is bound to lead to unfairness. On this basis no change.

PRIVACY 27.2 Security/CCTV: Where CCTV/dash cam equipment is installed this document states “*it will be incumbent upon the operator to handle relevant data gathered in an appropriate and secure manner.*” This assumes that the video information will only be for evidence purposes in the event of an accident or offence by or against the driver. It is possible, however, that video of passengers or other road users could be uploaded to social media without the persons involved giving consent. There should be an explicit statement that such actions are unacceptable and will lead to action by the police and TWBC on the driver and operator alike. (NB. *Rotherham 9(.13) requires all taxis to be fitted with CCTV equipment and it has a detailed statement in its policy*).

Officer response:

We are mindful of the fact that there are data protection concerns arising from the use of such surveillance, therefore it is proposed to add the following to paragraph 27:

If CCTV is installed in a licensed vehicle, proprietors of that vehicle are personally responsible for ensuring that installed CCTV conforms to the Data Protection Act 1998 and the proprietor will ensure that the appropriate person is responsible for the camera and is registered as the Data Controller under the Data Protection Act 1998, and is responsible for ensuring compliance with that Act and associated legislation.

The use of the camera and the footage must comply with the relevant guidance issued by the Information Commissioners Office (ICO).

TWBC RESPONSIBILITIES:

The Town Forum believes that TWBC Licensing officers should take a more proactive approach to monitoring and enforcement, and ensuring that drivers and operators are Fit and Proper persons. Among our concerns are the following:

Officer response:

Licensing Officers are proactive in monitoring compliance and enforcement. Our performance indicators (PI's) have been exceeded in relation to enforcement; this has included working in partnership with other agencies including the Police and Immigration compliance and enforcement teams. Officers regularly meet with the Police where intelligence is exchanged.

5.5 New and Renewal Applications: The document states that applicants without British/EU Passports must have the right to work in the UK etc. We suggest amendment in respect of zero tolerance as follows: *The Licencing Authority will (not may) also contact the Home Office to carry out immigration checks.*

Officer response:

In addition to the checks at new and renewal stage, this authority may carry out further checks with the Immigration department where relevant. In addition all new and renewal checks in relation to Immigration status are undertaken in accordance with the Immigration Act 2016 and its related guidance.

19.6 Quantity Restrictions on Hackney Carriages: The total number of hackney carriage licenses issued by TWBC is 107. There does not appear to be a requirement that these be spread across the Borough, with the result that there appear to be too many at the RTW railway station. Operators should be obliged to service the whole borough and community and this should be monitored by TWBC.

Officer response:

Taxis are able to ply for hire throughout the whole of the borough. It is not within the authority's powers to require a Hackney Carriage to ply for trade within a designated location within the borough. Furthermore, Hackney Carriages are able to act as Private Hire Vehicles and pick up pre-booked fares anywhere.

22.1 Taxi meters are required to be fitted but there is no mention of regular testing of these meters.

Officer response:

A Certificate of Compliance is required at new and each subsequent renewal.

23.6: Fare Tariff . An official copy of the Council's fare tariff " *shall be clearly displayed and legible in the vehicle...*" Passengers also need this information before they get into the taxi. This register of standard fares should be placed on the TWBC website, and displayed prominently at the RTW station (both ranks) and elsewhere in the town where appropriate such as the library, Gateway, etc.

Officer response:

Fare tariffs are located in accordance with the Hackney Carriage Byelaws at all taxi ranks/bays where feasible. In light of the comment we will arrange for a copy of the current fare tariff to be placed on the website.

49 Taxi ranks: At the RTW station there are 7 (Vale Road) and 12 (Mount Pleasant) taxi ranks allocated but frequently many more than that are parked awaiting fares. Furthermore, they are parked against the traffic flow requiring passengers to get in and out on the driver's side which is dangerous. The congestion and traffic hazard caused by the abundant taxis at the station is well known and needs to be changed and monitored by TWBC. This situation is contrary to 51.1 in this document. An efficient taxi call system of lights should be installed to ensure taxis that are needed go to the correct side of the station.

Officer response:

The taxi rank on the Mount Pleasant Road side of the station has been extended and reconfigured to accommodate more vehicles to try to alleviate obstruction to the highway. The ranking of taxis and use of the Mount Pleasant Avenue feeder is highlighted in the current Civic Complex Draft Planning Framework consultation and we are seeking views on viable options. In relation to call system of lights – officers will make further enquires to explore the feasibility of this potential option.

21. Environmental considerations: Air quality is poor in parts of the town, including at RTW station where so many taxis park awaiting fares. Drivers must be required to turn off their engines while waiting. Given recent concerns about pollution from diesel engines, diesel powered vehicles should be phased out. The preferential terms given to petrol/electric/hybrid vehicles are welcomed

Officer response:

Appendix 6, Code of Good Conduct for Licensed Drivers, drivers are required to switch off the engine if required to wait.

Environmental Considerations – at paragraph 21, to help consider the environmental impact, any petrol electric vehicle with an engine size under 1400cc will be considered to be licensed on a case by case basis.

22. Drivers with a disability : TWBC should encourage where possible drivers that have a disability with suitably adapted vehicles. This has proven very valuable for other towns to increase understanding of other individuals' needs.

Officer response:

Applications are welcomed from all individuals. We currently have a disabled hackney carriage driver with an adapted vehicle within the fleet.

DRIVER TRAINING

1. This Hackney Carriage and Private Hire Licensing Policy document is 90 pages long and daunting to read let alone to learn. We recommend that TWBC provides some personal and group training to new operators and drivers and refresher sessions for existing drivers to emphasis the key issues of safeguarding, fraud and crime, care of the disabled, elderly and children, and any other issues deemed relevant.

Officer response:

Licensing Officers currently undertake seminars for all new drivers and in conjunction with officers from Kent Police deliver safeguarding training for all new drivers. In addition the policy is available to download via the TWBC website.

2. Each driver should be supplied with a short version in booklet form highlighting the key obligations they have to the public to keep for reference, while hard copies of the full document should be provided to all operators and be kept available in their taxi offices. Digital copies should be provided to all drivers when training.

Officer response:

All documents are available to download via the TWBC website – copies are only given out when requested. It is a requirement for all drivers to read and familiarise themselves with the policy prior to them being able to undertake the online knowledge test. They are required to complete a module specifically to establish their understanding of the policy requirements.

3. Hard copies should be publicly available in libraries and Gateway, and digital copies available on the TWBC website together with FAQs and other useful guidance.

Officer response:

Policies and guidance are accessible via the website. Computers can be accessed for use by the public both at the library and Gateway.

4. For those potential and licensed drivers for whom English is not their first language, additional help with language and understanding cultural differences is advisable to ensure they fully understand and embrace the important role they have in the community.

We suggest that the Rotherham approach in [5.8 Qualifications](#), is one that TWBC should follow: *The council believes that passenger transport drivers whose role demands high standards in driving and customer service would benefit from a nationally recognised qualification that includes customer care, meeting the needs of people with disabilities, road safety, handling of emergencies, and how to diffuse difficult situations and manage conflict.*

Officer response:

We could explore the feasibility of introducing this requirement; nevertheless initial investigation has indicated the fee for this type of qualification for training is £387. Due to the cost of this it is likely to preclude some applicants on the basis of affordability.

Rochdale is now requiring a BTEC Level 2 certificate in the introduction to the role of professional taxi and private hire driver, and/or an approved course in training and awareness in safeguarding children and vulnerable people.

Officer response:

Licensing Officers in conjunction with officers from Kent Police deliver safeguarding training for all new drivers. This is likely to become a mandatory requirement. Further training initiatives are being developed across Kent Licensing Community to continue to raise the profile of this area.

Whilst this might seem an additional barrier to entry into the taxi driving and private hire 'profession', the ability to understand and embrace the complexities of their role will also be a comfort to customers and passengers who might otherwise consider a cheaper but less professional Uber-type service.

Finally, this **Hackney Carriage and Private Hire Licensing Policy** needs to be kept under constant review in the light of the changing market for taxis.

Officer response:

The Policy will remain in existence for a period of five years, during which time it shall be kept under review and revised as appropriate or after any significant legislative change.

ends

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