

**MINUTES OF A MEETING OF THE  
LICENSING AND APPEALS COMMITTEE  
HELD ON 13 NOVEMBER 2018 FROM 7.00 PM TO 8.00 PM**

**Committee Members Present**

Councillors: Barrie Patman (Chairman), Rachel Burgess, Lindsay Ferris, Mike Haines, Abdul Loyes, Malcolm Richards and Rachelle Shepherd-DuBey

**Officers Present**

Luciane Bowker, Democratic & Electoral Services Specialist  
Charlie Fletcher, Acting Lead Officer, Public Protection Partnership  
Sean Murphy, Public Protection Partnership Manager  
Julia O'Brien, Licensing Team Manager

**24. APOLOGIES**

Apologies for absence were submitted from Councillors John Halsall, John Jarvis, Chris Smith, Bill Soane and Oliver Whittle.

**25. MINUTES OF PREVIOUS MEETING**

The Minutes of the meeting of the Committee held on 4 September 2018 were confirmed as a correct record and signed by the Chairman.

Charlie Fletcher, Acting Lead Officer Public Protection Partnership sought clarification on the resolution number two for the Criteria Policy for Licensed Vehicles, which was listed on page nine of the Agenda. He wanted to know if the extension of a period of five years, to existing vehicles, to comply with the policy was in relation to the wheelchair accessibility only or whether this applied to all the other requirements.

Members confirmed that the extension of five years for existing vehicles was in relation to the wheelchair accessibility only, the other changes were to apply immediately.

**26. DECLARATION OF INTEREST**

A declaration of interest was submitted from Councillor Chris Bowring in relation to item 34 on the basis that he was a member of the Constitution Review Working Group. Councillor Bowring did not take part in the discussion of this item or the voting.

**27. PUBLIC QUESTION TIME**

In accordance with the agreed procedure the Chairman invited members of the public to submit questions to the appropriate Members.

**27.1 Mr Asjid Mahmood has asked the Chairman for the Licensing and Appeals Committee the following question.**

**Question**

We drivers are upset about UBER drivers working in Wokingham. This is unfair when the Council is forcing us to buy wheelchair accessible vehicles but don't care how we can afford these types of vehicles. The least the Council can do is help us to stop UBER drivers in Wokingham.

UBER drivers are licensed by TFL and do not have to undergo all of the checks that Wokingham drivers are submitted to.

We pay a lot for our badges but UBER drivers do not pay a penny to Wokingham Council.

Why won't the Council write to Wokingham MP John Redwood, the relevant minister of state and the Local Government Association about the drivers' concern?

This has had an effect on our earnings and we, the licensed drivers, find this unfair and undermining.

This is affecting our living. We drivers believe the Council will take our concern seriously and take action.

### **Answer**

Under the existing legislation, private hire vehicles are not restricted geographically; meaning they are not limited to working in the area in which they are licensed. The legislation, being the Local Government (Miscellaneous Provisions) Act 1976, and subsequent case law, confirms that as long as the driver, vehicle, and operator licence are all issued by the same licensing authority, the actual journey can take place anywhere in the country.

The local authority has no power under the current legislation to 'ban' drivers working in vehicles licensed by another authority from working in Wokingham.

A report is to be presented to the Committee this evening which includes recommendations that the Chairman writes to the local Member of Parliament, as well as other stakeholders to confirm the Council's view that the current legislative framework is unsatisfactory. The full reasons for this recommendation are as outlined within the report, but in summary it is felt that it is not acceptable that officers do not have the authority to test or inspect licensed vehicles working within the Council's area.

It is also noted that this issue is mentioned within the recently published report of the Government's Task & Finishing Group which was reviewing the legislation. The report includes, among other things, a recommendation to government that the law is amended to require taxi or private hire journeys to either start or end within the area for which they are.

### **27.2 Mr Shmraz Akhtar has asked the Chairman of the Licensing and Appeals Committee the following question.**

#### **Question**

I am writing to you today to raise an issue that has been a long term concern for the Hackney Carriage and Private Hire trade in the Wokingham Borough for both independent drivers and company operators alike, and hope that you find the time to review these valid concerns.

Previous similar or the same concerns were aired to the Wokingham Borough Council Licensing department has resulted in no action or response whatsoever in any way.

A very similar issue concerning a neighbouring local authority, Reading Borough Council, was resolved by the concerned body to actively pursue the necessary means to deal with such a situation. In this case UBER, which operates illegally in boroughs in which it is not licensed. I am led to believe Reading Borough Council has stopped UBER operating illegally within its Borough by way of disabling the UBER app.

It is felt by the Hackney Carriage and Private Hire trades that Wokingham Borough Council are not at all supportive of any valid concerns presented to them. If Reading Borough Council can stop illegal activity of this nature then why cannot Wokingham Borough

Council? Drivers and vehicles licensed by outside authorities, in the majority of cases Transport For London (TFL) licence holders, are free to operate unchallenged by any enforcement challenge whatsoever.

The general feeling among operators and drivers alike is why we are paying for driver badges and vehicle plating.

Would you please kindly explain what Wokingham Borough Council intends to do about such illegal activity within its Borough?

**Answer**

Under the existing legislation, private hire vehicles are not restricted geographically; meaning they are not limited to working in the area in which they are licensed. The legislation, being the Local Government (Miscellaneous Provisions) Act 1976, and subsequent case law, confirm that as long as the driver, vehicle, and operator licence are all issued by the same licensing authority, the actual journey can take place anywhere in the country.

The local authority has no power under the current legislation to 'ban' drivers working in vehicles licensed by another authority from working in Wokingham.

A report is to be presented to the Committee this evening which includes recommendations that the Chairman writes to the local Member of Parliament, as well as other stakeholders to confirm the Council's view that the current legislative framework is unsatisfactory. The full reasons for this recommendation are as outlined within the report, but in summary it is felt that it is not acceptable that officers do not have the authority to test or inspect licensed vehicles working within the Council's area.

It is also noted that this issue is mentioned within the recently published report of the Government's Task & Finishing Group which was reviewing the legislation. The report recommends to government that the law is amended to require taxi or private hire journeys to either start or end within the area for which they are licensed.

Reading Borough Council, like Wokingham Borough Council, have no powers to ban any driver licensed by another authority from working within their boundaries. The Council's understanding is that Uber had an application for a private hire operator's licence refused by Reading Borough Council in March 2016. No such application has been made to Wokingham Borough Council, so therefore we are not in a position to make any similar refusal. Should an application be made, it would be considered on its merits as per any other new application.

In March 2018, Uber changed their operating model to only allow drivers to receive bookings from within certain regions. These regions are decided by Uber themselves and it is understood that Wokingham is considered by Uber to be within the Greater London region, whereas Reading is not. This is a decision made by Uber and is not a legal requirement. Further information on this is available on the Uber website - <https://www.uber.com/en-GB/blog/changes-to-where-drivers-can-receive-trips/>.

Numerous assertions are made within the question as to illegal activity. If Mr Akhtar has evidence to support these allegations then they will certainly be investigated. However, it is fact that simply by being within Wokingham and operating as an Uber driver does not constitute an offence. This was found to not constitute plying for hire in a case recently

heard by the Chief Magistrate. Licence holders have previously been encouraged to report any instances of alleged plying for hire to the Council so they can be investigated, but to date no such evidence has been provided to support the allegations that such drivers have been plying for hire.

The Council are in agreement that the current legislation is inadequate to deal with the recent growth of app based operators, as officers do not have the authority to carry out routine enforcement action in relation to vehicles from other areas. However, the Council is also not aware of any illegal activity such as that mentioned within the question.

## **28. MEMBER QUESTION TIME**

There were no Member questions.

## **29. OUT OF AREA OPERATORS**

Charlie Fletcher, Acting Lead Officer, Public Protection Partnership introduced the Out of Area Operators report. He explained that a number of emails had been received from licence holders in relation to the issue of 'out of area' private hire vehicles (vehicles which were not licensed by Wokingham) which were working within Wokingham, in particular vehicles licensed by Transport for London (TfL) working for Uber. He stated that the Licensing department also had concerns in respect of this issue.

Charlie Fletcher explained that under the existing legislation, private hire vehicles were not restricted geographically, meaning that they were not limited to working in the area in which they were licenced. The legislation, being the Local Government (Miscellaneous Provisions) Act 1976, and subsequent case law, confirmed that as long as the driver, vehicle and operator licence were all issued by the same local authority (or TfL), the actual journey could take place anywhere in the country.

Charlie Fletcher stated that one of the issues was that standards varied among different local authorities. Additionally, local authorities did not have the power to stop and inspect vehicles. He pointed out that this issue was not unique to Wokingham, and it had been raised in other areas.

Charlie Fletcher informed that a report published by the Task and Finish Group commissioned by the Minister of State at the Department of Transport had identified various issues and included in its report a recommendation that taxi/private hire journeys should either begin or end within the area in which the driver, vehicle and operator were licensed.

During the discussion of the item the following comments were made:

- Members pointed out that there were four Members of Parliament in the Wokingham Borough constituencies, and the recommendations should reflect that;
- Members stated that the report should refer to Wokingham Borough and not just Wokingham;
- Councillor Ferris believed that a driver should not be precluded from crossing the border, he felt it was reasonable that drivers should be permitted to bring back passengers on their way back from the airport for example;
- Councillor Richards was of the opinion that booking a taxi with Uber was equivalent to booking a private hire vehicle;
- Councillor Burgess was of the opinion that local authorities should be empowered to carry out checks to make sure that conditions were being complied with; she also

stated that TfL should be asked to carry out checks to make sure their vehicles were compliant with national standards;

- Councillor Burgess agreed with the recommendations but felt they could be stronger;
- Councillor Patman was of the opinion that national standards should be introduced;
- Councillor Bowring was concerned that local drivers were being discriminated against because of the current legislation;
- It was noted that the Police was not involved in setting out the rules around licensing drivers and vehicles;
- Sean Murphy, Public Protection Partnership Manager stated that the legislation had not kept up with the current situation and there was an urgent need to review it;
- In response to a question Charlie Fletcher informed that the courts had determined that Uber was not considered plying for hire. If someone was found to be illegally plying for hire, this could be checked, but there was no evidence that this was occurring in Wokingham at the moment.

Members concluded that the recommendations contained in the report needed amending slightly to reflect the discussions at the meeting. In particular, Members wished to include a recommendation for the introduction of national standards. It was noted that the recommendations from the Department for Transport Task and Finish Group should be reflected in the revised recommendations produced by this Committee.

Members decided to agree the final wording via email correspondence to the whole Committee.

**RESOLVED** That:

- 1) The recommendations contained in the report be amended to reflect the points raised during the discussion of the item; and
- 2) The final wording would be agreed by the Committee via email correspondence.

**30. CRITERIA POLICY FOR LICENSED DRIVERS**

The Committee considered the Criteria Policy for Licensed Drivers report which was set out in agenda pages 19-21. Charlie Fletcher stated that the amendments aimed to provide greater flexibility for drivers and to ensure the Council's policy reflected advice from central government.

Charlie Fletcher stated that it was proposed to remove Section 1.1.1 of the Council's Hackney Carriage and Private Hire Licensing Policy, this was intended to allow more flexibility to drivers.

Charlie Fletcher stated that a request had been received from an operator asking for the creation of a new licence for chauffeur service, and that this licence exclude the knowledge test. He explained that Officers were of the opinion that this would create a lot of extra work to implement and therefore were not in favour of introducing it.

After a brief discussion Members agreed with the Officer's recommendations.

**RESOLVED** That:

- 1) The Committee agrees with the proposed amendments to the criteria policy for licensing drivers as outlined in the report; and

- 2) The Committee does not agree to the creation of new driver licence type for drivers only driving vehicles with dispensation certificates.

### **31. FEES AND CHARGES**

The Committee received the Fees and Charges 2019-20 report which was set out in agenda pages 23-38. Charlie Fletcher stated that the proposed fees reflected a move towards aligning the fees of the three local authorities in the Public Protection Partnership.

Charlie Fletcher emphasized that fees and charges relating to licences and registrations were based on cost recovery and there was no profit was made. He also stated that the Officers were seeking approval to round the proposed fees to the nearest whole pound.

During the discussion of the item the following comments were made;

- Councillor Burgess believed that if objections were received they should be brought back to the Committee rather than them being considered by the Chairman only;
- Sean Murphy informed that the fees and charges would be submitted to Council in December for final approval;
- Councillor Burgess was concerned that some fees in relation to vehicle licensing had increased significantly and questioned the rationale for the increase if this was a cost recovering service. Charlie Fletcher stated that previously the fees were not covering the cost of processing the applications. He also stated that if the fees were too different from those set at Bracknell, this was likely to create issues;
- Councillor Richards stated that if the fees were set too high there was a risk that people would not register their applications;
- Councillor Ferris stated that the cost of the services was not clear and suggested that the Chairman and Vice-Chairman should be ask to review objections to fees and charges;
- The Chairman stated that there was a desire to align the fees and charges across the three authorities who were part of the Public Protection Partnership;
- Sean Murphy stated that the PPP had undertaken a review of the whole fees and charges structure and that the proposed fees and charges were more realistic, taking into account the hourly rate;
- Councillor Burgess felt uncomfortable with some of the proposed increases, she suggested staggering the increase where the fees were going up significantly;
- Councillor Shepherd-DuBey was concerned that if the fees were not agreed, cuts would have to be made somewhere else to cover the deficit;
- In response to a question Sean Murphy stated that Wokingham could set different fees and charges to the other PPP authorities;
- In response to a question Charlie Fletcher stated that licensing functions were supposed to be self-funding, and all authorities worked out their fees and charges on a cost recovery basis;
- In response to a question Julia O'Brien, Licensing Team Manager stated that the new fees and charges would affect approximately 700 - 800 vehicles and 1000 drivers;
- It was noted that the proposed fees and charges would be submitted to the next Council for approval;
- Some Members expressed concern that the proposal showed a big increases in one year.

The Committee agreed to move forward with the recommendations contained in the report.

**RESOLVED** That:

- 1) Save for the vehicle and private hire operator licence fees, the Committee recommends to the Executive the new fees and charges detailed in Annex A, for public consultation;
- 2) The Committee agrees that the proposed charges for operators and vehicle licence fees are:
  - a) advertised;
  - b) if no objections are received, implemented for any licences commencing from 1 April 2019; or
  - c) if objections are received they be considered by the Chairman, who will then set those fees and charges for any licences commencing from 1 April 2019
- 3) That the Committee uses its discretion to round the proposed fees to the nearest whole pound.

**32. POLICY FOR STREET TRADING**

Charlie Fletcher presented the Policy for Street Trading report which was set out in Agenda pages 39-43.

Charlie Fletcher stated that the proposed policy detailed and formalised the process for new applications as well as how existing consents may be amended or revoked should the need arise.

During the discussion of the item the following comments were made:

- Charlie Fletcher stated that the proposed policy introduced the right of appeal;
- Members asked that paragraph 2.2 of the proposed policy be amended to make it clearer;
- In response to a question Charlie Fletcher stated that the local authority had the power to revoke a licence at any time if there was a reason for it;
- In response to a question Julia O'Brien stated that in Wokingham street trading licences were renewed yearly;
- In response to a question Charlie Fletcher clarified that a review would only be triggered if there were reasons to justify it.

Members were concerned that applications were currently being reviewed by only one officer. They suggested that when an application was received, this should be reviewed by an officer and the manager.

**RESOLVED** That:

- 1) The Committee agreed to adopt the Street Trading Policy;
- 2) The wording in paragraph 2.2 be amended to 'Officers would only move forward with an application if they considered it to be suitable'; and
- 3) Street trading applications would be reviewed by either two Officers or an Officer and a manager.

### **33. LICENSING AND APPEALS COMMITTEE TERMS OF REFERENCE**

Councillor Bowring did not take part in the discussion of this item.

The Committee received a report proposing changes to the Terms of Reference of the Licensing and Appeals Committee. Charlie Fletcher stated that it was import to undertake periodical reviews of the Terms of Reference to ensure that they continued to be relevant and up to date.

Members noted that grievance and disciplinary matters were dealt with via Personnel Board.

Members were in favour of the proposed amendments as detailed in the report.

**RESOLVED** That:

- 1) The Committee agreed to the suggested changes; and
- 2) The report be submitted to the Constitution Review Working Group for approval.

### **34. LICENSING COMMITTEE FORWARD PLAN**

The Committee considered the Forward Plan which was set out in agenda pages 51-52 of the Agenda.

Charlie Fletcher stated that the following items were listed for the next meeting of the Committee on 19 March 2018:

- Animal Licensing
- Adoption of Institute of Licensing Guidance on suitability of applicants for taxi licences
- Investigation of introducing an Institute of Fundraising Site Management Agreement (to regulate direct debit transactions)

In response to a question Charlie Fletcher stated that currently there were no regulations in respect of direct debit collections for fundraising.

**RESOLVED** That the report be noted.