

For publication

Hackney Carriage and Private Hire Licensing Policy -

Amendments (A410)

Meeting: Appeals and Regulatory Committee

Date: 3 AUGUST 2016

Cabinet portfolio: Health and Wellbeing

Report by: Trevor Durham, Licensing Manager

For publication

1 PURPOSE OF REPORT

- 1.1 To propose necessary amendments to the Hackney Carriage and Private Hire Licensing Policy in relation to:
- 1.2 Non Chesterfield hackney carriages being used as private hire vehicles within the controlled district of Chesterfield Borough Council together with subsequent changes to the requirements for new drivers and a trade proposal to defer DSA driving tests; and
- 1.3 Training in child sexual exploitation.

2 RECOMMENDATIONS

- 2.1 A voluntary code of practice for private hire operators is adopted in line with Appendix A.
- 2.2 Schedule 7 of the hackney carriage and private hire licensing policy is amended to allow the use of non-chesterfield hackney carriages as private hire vehicles within the controlled area of Chesterfield Borough Council.

- 2.3 The Council offers applicants the option of a separate drivers licence for a private hire or hackney carriage vehicle. A private hire driver's licence permits the holder to drive only private hire vehicles; a hackney carriage driver's licence permits the holder to drive both hackney carriage and private hire vehicles.
- 2.4 Applicants for a private hire driver's licence do not take the written paper on geographical knowledge but must pass a simplified practical test of their geographical knowledge.
- 2.5 The process of obtaining a hackney carriage driver's licence is unchanged.
- 2.6 Officers are given authority to defer the requirement to pass a DSA driving test for a maximum of three months, during which time the applicant can drive a licensed vehicle. This decision to be based on the availability of a test centre, the efforts made to obtain a test appointment and the driving history of the applicant. It should not be based on the inability of the applicant to pass the test.
- 2.7 If a licensed driver fails, without reasonable excuse, to attend a child sexual exploitation awareness session within a reasonable time period they may be issued with 12 penalty points and referred to the Appeals and Regulatory Committee for determination as to whether they remain a fit and proper person.
- 2.8 All amendments to commence on 1 September 2016.

3.0 REASON FOR RECOMMENDATIONS

- 3.1 The amendments will safeguard public safety while balancing the requirements for Chesterfield drivers against those from other authorities.

4.0 BACKGROUND

4.1 Non Chesterfield Hackney Carriage

- 4.2 The Hackney Carriage and Private Hire Licensing Policy states that a private hire operator licensed by Chesterfield Borough Council can only use drivers and vehicles licensed by the same council (schedule 7 paragraph 2.2).
- 4.3 A local operator has challenged this element of the policy, prompting consideration by the council's solicitor on a number of legal precedents, principally the High Court judgement in the case of 'Stockton-On-Tees Borough Council v Fidler and others (2010)'.

- 4.4 The above case confirms that once a licence is issued to a proprietor to use a vehicle as a Hackney Carriage the proprietor is entitled to use the vehicle to stand and ply for hire within the controlled district that issued the licence. The proprietor is also entitled to use the vehicle to undertake journeys booked with them in advance, wherever that journey commences or terminates. In other words, a hackney carriage can operate as a private hire anywhere in England and Wales.
- 4.5 The council's solicitor has advised that the council should comply with this ruling and allow non-Chesterfield hackney carriages to operate as a private hire within the controlled area of Chesterfield Borough Council. This position has been adopted since January 2016, since when other non-Chesterfield drivers and vehicles have appeared.
- 4.6 The presence of non-Chesterfield hackney carriages has caused some friction within the taxi trade as the licensing requirements of their home council are often different to Chesterfield and the drivers do not have to pass the various tests of geographical knowledge that are required of local drivers.
- 4.7 Chesterfield Borough Council currently issues a combined driving licence for both hackney carriage and private hire vehicles. To obtain a licence applicants must complete a series of requirements, including:
- Pass a DSA driving test;
 - Pass a group 2 medical;
 - Pass a written knowledge test covering the law, customer care and local geography;
 - Pass a driven knowledge test of their geographical knowledge;
 - Consent to their DVLA driving licence being monitored; and
 - Obtain a current enhanced DBS check.
- 4.8 Some private hire operators have argued that the level of regulation in Chesterfield means they are being forced to go elsewhere to recruit drivers.
- 4.9 Chesterfield Borough Council has no enforcement powers over non-Chesterfield hackney carriages used within our area unless a criminal offence is committed. Further, the non-Chesterfield hackney carriage is not subject to the same policy and conditions as Chesterfield vehicles.

4.10 At the moment, most of the non-Chesterfield hackney carriages are licensed by Rossendale Borough Council in Lancashire. In February of this year Rossendale Council introduced an 'Intended use Policy' with the result that applications for a new hackney carriage vehicle licence are refused where there is no intention to use the vehicle predominantly in the Borough of Rossendale. The policy includes a requirement for applicants to reside within 30 miles of the council boundary.

4.11 Rossendale Council will also consider revoking licences where there is clear evidence the hackney carriage is working predominantly outside of their borough. To this end, Chesterfield Council officers have developed an information sharing system with their Rossendale colleagues.

4.12 Child Sexual Exploitation (CSE)

4.13 The involvement of the taxi trade in CSE was highlighted in both the Jay report (into CSE in Rotherham between the years 1997-2013) and the subsequent investigation of Rotherham Metropolitan Council by Louise Casey in 2015.

4.14 A training package has been developed with DCC safeguarding staff on CSE awareness that treats drivers and operators as potential witnesses. Drivers and operators are receiving these sessions now and CSE will form part of the written knowledge test for new drivers.

4.15 Driver Standard Agency Tests (DSA)

4.16 DSA tests have been required for new drivers since April 2011; the intention being to ensure applicants had sufficient driving ability before being licensed as a taxi driver. At first, existing drivers were included but that requirement was removed by committee following trade representation in March 2012.

4.17 Applicants are advised to book their DSA test early as waiting times can be lengthy.

4.18 Mandy Shaw, the proprietor of Shaw's Taxis, had made a representation to defer the DSA tests by issuing a temporary licence for three months during which period the driver has the opportunity to take the test.

4.19 Ms Shaw has experienced delays in getting drivers tested by the DSA and feels the imposition of such a test contributes to operators looking to recruit non-Chesterfield hackney drivers onto their books.

4.20 Ms Shaw's representation is included at Appendix B, it does not address issues of public safety or driving ability.

- 4.21 Most local authorities require a DSA test for new drivers. The two Derbyshire councils that do not, Derbyshire Dales and Derby City, are considering doing so.
- 4.22 Ms Shaw has been invited to address the Committee on this issue.

5.0 OPTIONS

5.1 Non Chesterfield Hackney Carriages

- 5.2 This is an emotive subject for the local taxi trade and was raised at both the January and April meetings of the Taxi Consultative Committee. Trade representatives agreed that private hire operators should be more responsible for the behaviour of a non-Chesterfield hackney carriage driver while working in our area on a private hire basis.
- 5.3 Initially, officers hoped to use section 55 of the Local Government (Miscellaneous Provisions) Act 1976 to impose additional conditions on operators as outlined at Appendix A. Having considered all possible legal angles, however, it is clear this cannot be done. The suggested code of conduct can only, therefore, be voluntary.
- 5.4 Several operators have made representations that local drivers are being disadvantaged by the presence of non-Chesterfield hackney carriage drivers who do not have to pass the same tests required for Chesterfield drivers and that non-Chesterfield hackney drivers are being recruited because it is too hard to obtain a taxi drivers licence in Chesterfield.
- 5.5 A number of private hire operators have suggested creating a more level playing field for Chesterfield drivers by reducing elements of the knowledge tests.
- 5.6 One option is to create separate private hire and hackney carriage driving licences, with different application standards for each.
- 5.7 A private hire licence would allow the holder to drive only private hire vehicles while a hackney carriage licence would allow the holder to drive both hackney carriage and private hire vehicles.
- 5.8 The application process for a private hire driver's licence would include a simplified practical test of their geographical knowledge, for example using landmarks in place of street names, but not the geography paper of the written knowledge test. The application process for a hackney carriage driver's licence would remain the same.

5.9 Child Sexual Exploitation

- 5.10 An awareness training programme has commenced for licensed drivers and operators, it is hoped all personnel will have received this training by the end of 2016.
- 5.11 CSE awareness is being incorporated into the knowledge tests that applicants must pass to become a licensed driver.
- 5.12 Involvement in the awareness training is voluntary but a sanction is requested should officers feel an individual is avoiding attendance.

6.0 DSA Tests

- 6.1 There are particular issues with the DSA in our region at the moment and long delays are not uncommon.
- 6.2 Officers could be given authority to defer the requirement to pass a DSA driving test for a maximum of three months, during which the applicant can drive a licensed vehicle. This decision should be based on the availability of a test, the efforts of the driver or operator to obtain a test date and the driving history of the applicant. It should not be based on the inability of the person to pass a test.

7.0 EQUALITIES IMPACT ASSESSMENT

- 7.1 Although a full equalities impact assessment has not been completed at this stage the impact of these changes on minority groups will be minimal.

8.0 RISK MANAGEMENT

- 8.1 A full risk management assessment has not been completed but if these changes are not adopted there is concern that private hire operators will increasingly use non-Chesterfield hackney drivers as private hire drivers, thereby reducing the council's ability to regulate standards and safeguard public safety.

9.0 RECOMMENDATIONS

- 9.1 A voluntary code of practice for private hire operators is adopted in line with Appendix A.

- 9.2 Schedule 7 of the hackney carriage and private hire licensing policy is amended to allow the use of non-chesterfield hackney carriages as private hire vehicles within the controlled area of Chesterfield Borough Council.
- 9.3 The Council offers applicants the option of a separate drivers licence for a private hire or hackney carriage vehicle. A private hire driver's licence permits the holder to drive only private hire vehicles; a hackney carriage driver's licence permits the holder to drive both hackney carriage and private hire vehicles.
- 9.4 Applicants for a private hire driver's licence do not take the written paper on geographical knowledge but must pass a simplified practical test of their geographical knowledge.
- 9.5 The process of obtaining a hackney carriage driver's licence is unchanged.
- 9.6 Officers are given authority to defer the requirement to pass a DSA driving test for a maximum of three months, during which time the applicant can drive a licensed vehicle. This decision to be based on the availability of a test centre, the efforts made to obtain a test appointment and the driving history of the applicant. It should not be based on the inability of the applicant to pass the test.
- 9.7 If a licensed driver fails, without reasonable excuse, to attend a child sexual exploitation awareness session within a reasonable time period they may be issued with 12 penalty points and referred to the Appeals and Regulatory Committee for determination as to whether they remain a fit and proper person.
- 9.8 All amendments to commence on 1 September 2016.

More information about this report is available from Trevor Durham - Licensing Manager on 01246 345203.

Appendix A

VOLUNTARY CODE OF PRACTICE FOR PRIVATE HIRE OPERATORS

Measure	Purpose
1) The hackney carriage must comply with all the requirements of a hackney carriage from the local authority that licences them.	To ensure the vehicle complies with its own licensing policy and regulations.
2) The hackney carriage must be registered on the licence of a Chesterfield private hire operator, with all the implications that brings.	To ensure the operator keeps within the limits of their licence and that bookings are recorded by the operator.
3) This registration to include details of who is driving the vehicle every time it is used.	
4) Private hire operators engaging the services of a non-Chesterfield hackney carriage must satisfy themselves that the driver is licensed by the relevant authority to drive the vehicle.	To ensure drivers are authorised to drive.
5) The vehicle must not have more than one taximeter installed.	To avoid confusion by passengers.
6) Drivers to comply with Schedule 4 of Chesterfield Borough Council's Hackney Carriage and Private Hire Licensing Policy (driver conduct).	To ensure minimum standards of behaviour.
7) Drivers to ensure they do not breach any of the provisions of Schedule 3, Appendix 4, of Chesterfield Borough Council's Hackney Carriage and Private Hire Licensing Policy (penalty points scheme).	To ensure minimum standards of behaviour.
8) Any other serious breaches of Chesterfield Borough Council's Hackney Carriage and Private Hire Licensing Policy.	Ensure public safety.

Trevor Durham

From: Shawstaxisltd@aol.com
Sent: 24 May 2016 11:31
To: Trevor Durham
Subject: dsa tests

HI TREVOR, AS DISCUSSED IN OUR TELEPHONE CONVERSATION OF TODAY. 24/05/2016 CONCERNING WAITING TIME FOR DSA TESTS THAT YOU AS A COUNCIL IMPOSED ON NEW DRIVERS SOME YEARS AGO. THIS IS AN ONGOING PROBLEM THAT I KEEP RE-ITERATING BUT TO NO AVAIL. AS YOU ARE AWARE AT EVERY MEETING WE HAVE WITH OURSELVES AND FELLOW COUNCILLORS ON THE TAXI OWNERS ASSOCIATION AS CHAIRMAN OF THE ASSOCIATION I STRONGLY FEEL THAT THIS PROBLEM IS GETTING WORSE. THREE WEEKS AGO I PUT A NEW DRIVER FORWARD FOR HIS BADGE, THIS GENTLEMAN BEING AN EX DRIVER WHO HAD DRIVEN FOR ME NUMEROUS YEARS AGO. AFTER BOOKING HIM IN WITH OURSELVES FOR HIS KNOWLEDGE TEST I IMMEDIATELY TRIED BOOKING HIM IN FOR HIS DSA TEST, THE EARLIEST BEING A WAIT OF 8 WEEKS IN SUTTON. CHESTERFIELD, DERBY AND SHEFFIELD HAD WAITING TIMES UNTIL MID TO LATE AUGUST.

THIS IS NOT ACCEPTABLE, WE PUT FORWARD DRIVERS WHO DESPERATELY WANT TO COME OFF BENEFITS AND START WORK, BUT BECAUSE OF YOUR CONDITIONS, WE HAVE TO INFORM THEM THAT AFTER NUMEROUS TESTS ETC WE ARE IN NO POSITION TO EMPLOY THEM FOR A MINIMUM OF THREE MONTHS.

I ALSO STRONGLY FEEL THAT THIS IS WHY CERTAIN OPERATORS IN CHESTERFIELD ARE EMPLOYING DRIVERS FROM ROSSENDALE AND OTHER AREAS BECAUSE THE WORK WE AS OPERATORS HAVE NEEDS TO BE COVERED, AND YOU AS A COUNCIL CONTINUE TO PUT OBSTACLES IN OUR WAY. THESE DRIVERS FROM ROSSENDALE ETC DONT HAVE TO UNDERTAKE DSA TESTS OR KNOWLEDGE TESTS OF OUR AREA, SO I DONT SEE HOW YOU CAN IMPOSE SUCH TESTS ON LOCAL DRIVERS WITHIN THE AUTHORITY, SURELY THIS IS SOME SORT OF VICTIMISATION?

SURELY THERE IS A FEASIBLE WAY AROUND THIS THAT CAN HELP THE OPERATORS AND FUTURE DRIVERS. THE WAIT FOR THESE DSA TESTS IS HORRENDOUS AND I SUGGEST THAT IF YOU STILL NEED TO IMPOSE THIS TEST, WHICH IM SURE YOU AS A COUNCIL ARE, SURELY NEW DRIVERS COULD BE GIVEN A TEMPORARY BADGE AS SOON AS THEY HAVE GONE THROUGH THEIR CRB CHECKS, PERHAPS WITH A THREE MONTH TIME LIMIT, TO GIVE THEM TIME TO BOOK WITH THE DSA AND COME OFF BENEFITS IMMEDIATELY AND START EARNING A LIVING.

OTHERWISE I FEEL THAT MORE AND MORE DRIVERS FROM OUT OF THE AREA, WITH NO KNOWLEDGE OF CHESTERFIELD, WILL TAKE OVER AND US OWNERS WHO HAVE WORKED HARD TO PROVIDE A SAFE, AND WELL RUN SERVICE, IT WILL HAVE ALL BEEN TO NO AVAIL.

AWAITING YOUR RESPONSE

MANDY SHAW

OWNER SHAW'S TAXIS,

CHAIRPERSON OF CHESTERFIELD HACKNEY OWNERS ASSOCIATION.