

REPORT: Regulatory Committee

DATE: 12 October 2022

REPORTING OFFICER: Operational Director – Legal and Democratic Services

PORTFOLIO: Resources

SUBJECT: Taxi Licensing Matters

WARDS: Borough-wide

1. PURPOSE OF REPORT

To progress adopted changes to the Vehicle Licensing Policy and to consider an amendment to the Policy on Professional Standards.

2. RECOMMENDATION

That the Committee agree:-

- 1. The introduction of a vehicle licence condition requiring the display of a customer feedback notice in vehicles licensed with the Council.**
- 2. An amendment to the Policy on Professional Standards to reflect the correct legal position on the burden of proof.**

3. INTRODUCTION AND DISCUSSION

3.1. Introduction of a vehicle licence condition

- 3.1.1. Members will recall that on 18 November 2021, the Executive Board approved an amendment to the Vehicle Licence Policy which required that:-

“Every licensed hackney carriage and private hire vehicle is required to permanently display in a prominent location for the customer a feedback notice (compliments and complaints) as provided by the licensing section”.

- 3.1.2. The change of policy should have been accompanied by a vehicle licence condition so that it could be enforced by the Licensing Department. As such, it is now recommend that the following condition is inserted into the Hackney Carriage Vehicle Licence

Conditions and the Private Hire Vehicle Licence Conditions under the heading “Signs and Advertisements”:-

“The Licence Holder shall ensure that before driving a licensed hackney carriage [or private hire vehicle] or renting a vehicle to a licensed hackney carriage driver [or private hire vehicle] that the customer feedback notice, issued by the Council, is displayed in the vehicle in a prominent location so that it can be seen by all passengers.”

3.2. Amendments to the Policy on Professional Standards

3.2.1. According to the Statutory Standards, policies should be reviewed on an annual basis in order to assess their performance. The Council's Policy on Professional Standards was adopted on 16 September 2021 and a review has recently been carried out.

3.2.2. Officers have noted that paragraph 10 on page 2 of the Policy on Professional Standards misstates the law in respect of who has the burden of proof when a licence is being reviewed. It is incorrectly asserted that in these circumstances the burden shifts from the licence holder to the Council to prove that the licence holder is a fit and proper person.

3.2.3. Significant confusion has resulted from a High Court decision which failed to take into account the leading case of R (Hope & Glory Public House Limited) v Westminster Magistrates' Court and Another [2011] EWCA Civ 31. Whilst this case concerned matters under the Licensing Act 2003, appeals against decisions made under that Act lie, at first instance, to the Magistrates' Court and are subject to the Magistrates' Court Rules 1981. This is the same procedure that applies in appeals of taxi licensing decisions and it is widely accepted by the courts that the case applies to taxi licensing appeals. In that case, the court held that the licence holder bears the burden of proof.

3.2.4. An advice has been received from a Barrister which has confirmed this position.

3.2.5. It is proposed that the offending part of the sentence “except when reviewing a licence then the burden of proof reverts to the Council” is removed so that the sentence reads:-

“It is the requirement of the applicant to prove that they are a fit and proper person”.

3.2.6. A copy of the Policy can be found at Appendix A to this report.

4. CONSULTATION AND DECISION MAKING

- 4.1. A consultation exercise is normally carried out where there is a change of policy and the law requires that any resulting policy decisions are made by the Executive Board as per the case of R (On the application of 007 Stratford Taxis Limited v Stratford on Avon District Council 2011.
- 4.2. No changes of policy are being made by these proposals. The vehicle licence condition implements an already adopted policy which was properly consulted on and decided by the Executive Board as detailed in paragraph 3.1.1. The outcome of the consultation is detailed further in the Regulatory Committee report dated 6 October 2021. As such no further consultation is required.
- 4.3. Whilst there is a slight amendment to the Policy on Professional Standards, this is to the “background” information and not the substantive policy itself. It does not have a significant impact on passengers and/ or the trade. The amendment restates the law which the Council is bound to follow and trumps any policy. As such, it is considered that there is no duty to consult on the amendment, whether express or implied. There is equally no requirement to refer this matter to the Executive Board for a determination.

5. OPTIONS

- 5.1. The options available to the Committee are therefore:-
 1. To agree to the vehicle licence condition and amendment to the Policy on Professional Standards.
 2. To amend the wording of the condition and or the amendment to the Policy on Professional Standards;
 3. To refuse the condition and the amendment to the Policy on Professional Standards.
- 5.2. Any refusal or significant change to the wording of the condition or Policy on Professional Standards would require approval of the Executive Board since it would not accord with the adopted policy and/or be a change to the substantive policy.

6. POLICY IMPLICATIONS

- 6.1 There is no change of policy as this has already been agreed and adopted by the Executive Board. The insertion of the proposed vehicle licence condition is in conformity with that policy and the amendment to the Policy on Professional Standards does not change the substance of that policy.

7. OTHER IMPLICATIONS

None

8. IMPLICATIONS FOR THE COUNCILS PRIORITIES

8.1 Children and Young People in Halton

N/A

8.2 Employment Learning and Skills in Halton

N/A

8.3 A Healthy Halton

N/A

8.4 A Safer Halton

N/A

8.5 Halton's Urban Renewal

N/A

9. RISK ANALYSIS

There are no associated risks which have been identified with this item.

10. EQUALITY AND DIVERSITY ISSUES

There are no equality or diversity issues related to a review

11. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document

1. Current policies
2. Regulatory Committee Agenda dated 6 October 2021.

Place of Inspection

Legal Services

Contact Officer

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