
Meeting: Extraordinary Regulation Committee Meeting
Date: 13th January 2010
Subject: Hackney Carriage/Private Hire Driver Conditions
Report of: Gary Alderson - Director of Sustainable Communities
Summary: This report seeks a decision from members in relation to those conditions they wish to adopt and subsequently apply to this type of licence.

Contact Officer: Margaret James, Licensing and Enforcement Officer
Public/Exempt: Public
Wards Affected: All
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

Supporting and Caring for an ageing population – provision of safe public transport supports independent living.

Educating protecting and providing opportunities for children and young people - provision of safe public transport allows children and young people to travel to educational and other activities in a safe environment.

Creating safer communities – the provision of regulated public transport helps ensure a vibrant and safe night time economy.

Financial:

Fees are payable for this type of licence, the fees being charged represent the cost to the Council of producing this type of licence.

Legal:

Local Government (Miscellaneous Provisions) Act 1976.
Town Police Clauses Act 1847.

Risk Management:

Ensuring that private hire vehicles operating in central Bedfordshire are safe and properly regulated.

Staffing (including Trades Unions):

There are no staffing implications.

Equalities/Human Rights:

The Council has a legal duty to proactively promote race, gender and disability equality and to tackle discrimination experienced by other vulnerable groups. In order to ensure accessibility for disabled people and to ensure the personal safety of all vulnerable groups wishing to use this form of transport, conditions have been proposed to ensure that this duty is met.

Community Safety:

Contributes to a safer public transport system and a safer night time economy. The Council has a statutory duty under Section 17 of the Crime and Disorder Act to do all that it reasonably can to reduce crime and disorder in its area. The provision of safe, well regulated transport contributes to this duty and in order to ensure that drivers of Private Hire and Hackney Carriages are 'fit and proper' to hold a licence rigorous checks must be undertaken.

Sustainability:

By regulating this service area we can ensure that those businesses who are compliant can be supported, and resources can be focused at those businesses that will not comply.

RECOMMENDATION(S):**That the Regulation Committee:**

- 1. decide which conditions they wish to apply as indicated in Recommendations A to D contained within the report;**
- 2. approve the amended conditions;**
- 3. recommend that Full Council adopts these conditions;**
- 4. That the Assistant Director Community Safety and Public Protection, in consultation with the Portfolio Holder for Safer and Stronger Communities, be given delegated authority to undertake any necessary minor amendments to the conditions prior to publication.**

Background

1. This Council is the Licensing Authority for hackney carriage and private hire drivers, vehicles and operators and is responsible for providing a licensed service to the community that is safe and accessible.
2. The hackney carriage and private hire trade have a right to expect a fair and reasonable licensing regime.

3. The policies and conditions attached to the former South Bedfordshire District Council (S.B.D.C.) licences, differ to those attached to the former Mid Bedfordshire District Council (M.B.D.C.) It is necessary, therefore, to agree on new policies and conditions for Central Bedfordshire Council.
4. Regulations exist which provide for the continuity of existing legislation until new policies and conditions are adopted.
5. During this transition period, it has been necessary to zone Central Bedfordshire into two areas to reflect the policies and regulations previously adopted by SBDC and MBDC.
6. The new policies and conditions must be in place by 1st April 2010.
7. In matters where interested parties have opposed the draft conditions, Members will be given options to either keep the draft conditions or amend them.

The Consultation Process

8. Before a local authority can make a decision on policies and conditions affecting the hackney carriage and private hire trade, they must consider the views of all interested parties.
9. In March 2009, all hackney carriage and private hire proprietors, operators and drivers were informed of the need for consultation. A copy of the letter sent to the trade is attached at Appendix 'A'.
10. In April 2009, all hackney carriage and private hire proprietors, operators and drivers, together with other interested parties, were informed of the consultation process and sent draft copies of new application forms, conditions and policies relating to hackney carriage and private hire matters. A copy of the letter sent to the trade is attached at Appendix 'B'.

Response to the consultation

11. A good response to the consultation was received from the trade. Approximately 85 licence holders attended the 'drop in' meetings and numerous comments were made by letter, fax and in person. The views of the trade and other interested parties are attached at Appendix 'C'.

Combined Hackney Carriage / Private Hire Drivers

12. A hackney carriage is always a hackney carriage and can only be driven by a person who holds a valid hackney carriage driver licence issued by the same local authority that licensed the vehicle.
13. A private hire vehicle is always a private hire vehicle and can only be driven by a person who holds a valid private hire driver licence issued by the same local authority that licensed the vehicle.

14. The draft combined hackney carriage/private hire driver conditions are attached at Appendix 'D'.

Views of Interested Parties

15. There are two main objections from the trade regarding the conditions attached to driver licences: Duration of Licences, and Medicals.

Duration of licences.

16. The former SBDC permitted three year licences to licence holders when they had held three consecutive annual licences. The former MBDC did not permit three year licences.

17. The Department for Transport Best Practice Guide states:-

‘it is not necessarily good practice to require licences to be renewed annually. That can impose an undue burden on drivers and licensing authorities alike. Three years is the legal maximum period and is in general the best approach. One argument against 3-year licences has been that a criminal offence may be committed, and not notified, during the duration of a shorter licence.....However, an annual licence may be preferred by some drivers. This may be because they have plans to move to a different job or a different area. Or because they cannot easily pay the fee for a three-year licence, if it is larger than the fee for an annual one. So it can be good practice to offer drivers the choice of an annual licence or a three-year licence.’

The hackney carriage/private hire driver licence condition 1 that was consulted on contains a restriction on licence duration:

The normal duration of a Licence will be 12 months.

18.

<p>Recommendation A:</p> <p>Condition 1:</p> <p>That Members decide if they wish to keep the current licence duration,</p> <p>Or;</p> <p>if they wish to allow applicants to be issued three year licences and replace condition 1 with:</p> <ol style="list-style-type: none"> 1. The normal duration of a licence will be 12 months. 2. Applicants who have held a licence with this authority for at least one full year have a choice of applying for a one year or a three year licence.
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Medicals

19. The requirement to provide medical certificates as shown in condition 22 has been taken from the conditions attached to the former SBDC driver conditions. It is based on the Group 2 (heavy goods vehicle and public service vehicle licence holders) medical standards.
20. The former MBDC allowed driver applicants to self certify that they were fit to drive. New applicants aged 65 or over were required to provide a medical declaration from a BMA registered medical practitioner and existing licensed drivers were asked to produce a Medical Certificate upon the first licence renewal following their 65 birthday and upon each subsequent renewal.
21. The Department for Transport Best Practice Guidance states:-

'it is clearly good practice for medical checks to be made on each driver before the initial grant of a licence and thereafter for each renewal. It is common for licensing authorities to apply the 'Group 2' medical standards – applied by DVLA to the licensing of lorry and bus drivers – to taxi and PHV drivers. This seems best practice.'
22. The Health and Safety Executive guidance states:

'all existing and potential workplace transport operators should be screened for fitness before employment. Group 2 licences are renewable five-yearly from age 45. A workplace transport operator who continues after age 65 should have annual assessments for fitness.'
23. The hackney carriage/private hire driver licence condition 22 that was consulted on stated:

A medical certificate shall be produced within seven days of the request by the Council for such certificate. Medical Certificates are required:
- Upon first application for a licence;
 - Every five years between the ages of 45 and 64;
 - Annually upon attaining the age of 65

24. **Recommendation B:**

Condition 22:

In view of the Department for Transport's Best Practice Guide, and the Health and Safety Executive guidance, officers would recommend that the medical criteria for drivers as shown in condition 22 taken from the former SBDC conditions be retained. It is noted, however, that the 'Group 2' medical standards preclude the licensing of drivers with insulin treated diabetes and officers would suggest that driver applicants and licence holders with this condition also submit a letter from their consultant stating that they are fit to drive.

Knowledge Tests

25. Both the former SBDC and MBDC required driver applicants to pass a knowledge test. In each case, the test consisted of twenty written questions. Ten questions based on the rules and regulations regarding hackney carriage and private hire matters and ten questions based on topographical knowledge of their respective areas.
 26. Some of the trade have raised concerns that, if the Central Bedfordshire area is treated as one zone, drivers may not be familiar with the area as a whole and have suggested having two different knowledge tests, one for the former SBDC area and one for the former MBDC area.
 27. The Department for Transport Best Practice Guide states:-

‘Taxi drivers need a good working knowledge of the area for which they are licensed, because taxis can be hired immediately, directly with the driver, at ranks or on the street. So most licensing authorities require would-be taxi-drivers to pass a test of local topographical knowledge as a pre-requisite to the first grant of a licence (though the stringency of the test should reflect the complexity or otherwise of the local geography, in accordance with the principle of ensuring that barriers to entry are not unnecessarily high).

However, private hire vehicles are not legally available for immediate hiring in the same way as taxis. To hire a private hire vehicle the would-be passenger has to go through an operator, so the driver will have an opportunity to check the details of a route before starting a journey. So it may be unnecessarily burdensome to require would-be private hire driver to pass the same knowledge test as a taxi driver, though it may be thought appropriate to test candidates’ ability to read a map and their knowledge of key places such as main roads and railway stations’.
 28. Some of the trade have asked that applicants should have the choice of taking the test orally and that the test should also include an English speaking test.
 29. The main advantage of the current written test is the confirmation that applicants can read, and write, English. Drivers, many of whom go on to be proprietors, must be able to read and understand the conditions attached to their licences, complete all relevant forms during the licensing period, and understand all relevant correspondence sent from the licensing offices. If the Council accepts, by allowing an oral test, that a driver/proprietor cannot read, the enforcement of the conditions attached to the licence may become impossible.
 30. Any applicant refused a hackney carriage / private hire driver licence has a right of appeal.
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31. **Recommendation C:**

Officers would recommend that the current format for knowledge tests be retained and that all new driver applicants be required to pass the same test. The ten questions relating to topographical knowledge could include key places in Central Bedfordshire such as main roads and railway stations in the first instance but would, in time, be widened to include other more localised places.

School Transport Drivers

32. Some members of the trade are concerned that the draft conditions attached to drivers do not include a provision for School Transport Drivers.
33. The former MBDC did not have a separate provision of School Transport Drivers. The former SBDC did have a provision for School Transport Drivers. Applicants for a School Transport Driver licence did not have to take a knowledge test and their licence could only be used when transporting children to and from school during term time.
34. Officers believe that the criteria for deciding whether or not an applicant is 'fit and proper' to hold a combined hackney carriage/private hire driver licence should be the same for all applicants. Furthermore, discussions are currently being carried out with the former Bedfordshire County Council, who currently issue their own School Transport Driver licence, with a view to the licensing section taking over this function. For this reason, officers would not recommend issuing a separate school transport licence and badge because it is anticipated that, eventually, only one licence will be necessary.

Further matters to be noted

35. No further comments were made by the trade regarding the draft hackney carriage/private hire driver licence application and conditions but I should like to draw your attention to the following matters.

Criminal Conviction Policy

36. An Authority may only grant a driver licence where it is satisfied that the applicants are 'fit and proper' people to hold such licences. Further powers exist to suspend, revoke or refuse to renew the licence of those who are no longer considered 'fit and proper'
37. An Authority is entitled to consider both current convictions and those that would otherwise be considered as 'spent' under the Rehabilitation of Offenders Act 1974.

38. The Department for Transport Best Practice Guidance states;

'A criminal record check is an important safety measure and is widely required. Taxi and PHV drivers can be subject to an Enhanced Disclosure through the Criminal Records Bureau; this level of disclosure includes details of spent convictions and police cautions. In considering an individual's criminal record, local licensing authorities will want to consider each case on its own merits, but they will doubtless take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence'.

39. The draft Criminal Conviction Policy is based on the policy currently used by the former S.B.D.C. The former M.B.D.C. did not have a Criminal Conviction Policy.

40. Mr Richard Ricks, a Barrister from St Albans Chambers, was consulted on the Draft Criminal Conviction Policy. He made a series of recommendations as detailed in point 42 and Recommendation D below.

41. **Recommendation D:**

The insertion of the following paragraph setting out the Council's aim in adopting a Criminal Conviction Policy:

Policy Aim

To promote and maintain the highest professional standards of hackney carriage and private hire drivers by the continuous monitoring of services and to ensure that each driver is a fit and proper person to hold a hackney carriage or private hire driver licence.

The addition of the following to the end of General Policy Guidelines No. 4.

Applicants will be invited to make representation to the appropriate officer or Committee before a final decision on whether an applicant is considered fit and proper persons to hold a licence.

Members may wish to delegate this function to a named officer post of to the Head of Public Protection

The addition of the following to the end of General Policy Guidelines No. 5.

The period of post convictions before applications will be considered are based on the Home Office Guidelines.

The amendment of the wording referring to Drunkenness with a motor vehicle:

- b. In addition, applications will normally be required to show a period of at least 5 years following successful completion of any rehabilitation course imposed as part of a community penalty.**

Officers would recommend correcting a typing error by amending paragraph b. relating to Motoring Convictions – Disqualification to read:

- b. Where several motor traffic offences have resulted in the applicant being disqualified from driving for a period of time, this will normally be taken as reflecting seriously on the applicant's driving standard. Generally a period of 3 years free from conviction must have elapsed from the restoration of the DVLA licence.**

Conclusion and Next Steps

- 42. Members recommendations will be put before a meeting of the Full Council on 25th February 2010.

Appendices:

Appendix A - letter sent to the trade dated March 2009
Appendix B - letter sent to the trade dated April 2009
Appendix C - Views of the trade and other interested parties
Appendix D - Draft Driver licence conditions

Background Papers: N/A

Location of papers: The Council Offices, Dunstable