

REGULATORY COMMITTEE: 27 NOVEMBER 2018

HACKNEY CARRIAGE AND PRIVATE HIRE POLICY AMENDMENTS AND UPDATES

Cabinet Member(s): Colin Slade, Cabinet Member for Community Well-being
Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

REASON FOR REPORT:

Mid Devon District Council has an adopted policy and set of conditions setting out how hackney carriage and private hire operations are regulated. This report puts forward an updated policy as the current one is due for review, having been in place for three years.

RECOMMENDATIONS:

- 1. It is recommended that the revised policy (attached as Annex 9) is adopted and has effect from 1 January 2019.**
- 2. That the Regulatory Committee permit the Specialist Lead (Licensing) Officer or the Team Leader (Commercial Team), in conjunction with the Group Manager for Public Health and Regulatory Services to decide which safeguarding awareness training shall be acceptable. This will ensure alternative arrangements can be made for training if necessary.**
- 3. That the Regulatory Committee permits the following officers to decide if a driver can be exempt from duties required under the Equality Act 2010; the Group Manager for Public Health and Regulatory Services; Team Leader (Commercial Team); Specialist Lead (Licensing); and Specialist Officers (Licensing).**
- 4. That the Regulatory Committee permits the Specialist Lead (Licensing) Officer or the Team Leader (Commercial Team), in conjunction with the Group Manager for Public Health and Regulatory Services to decide which speaking and listening English test shall be used to assess applicants and licence holder's level of English. This will ensure alternative arrangements can be made for training if necessary.**

Relationship to Corporate Plan: This proposal links directly to the licensing function with the aim of ensuring the safety and wellbeing of our community.

Financial Implications: It is proposed that future safeguarding awareness training be funded by either those attending and subsidised, if possible, from other sources such as the Community Safety Partnership. Funding from other sources cannot be guaranteed. Additionally, the proposed speaking and listening English exam will be recharged to the applicant or licence holder if required.

Legal Implications: A policy can be judicially reviewed.

Risk Assessment: In the event of a successful challenge, the Council could be liable for costs.

Equality Impact Assessment: This assessment has been carried out and is attached to this report as **Annex 1**.

Consultation: Consultation was carried out with various people / organisations, including:

- Devon and Cornwall Constabulary
- Devon County Council - Local Safeguarding Children's Board / School Transport Services / Multi-Agency Safeguarding Hub Public Health (Mid Devon)
- Community Safety Partnership (Mid Devon)
- Existing licence holders
- Residents / businesses of Mid Devon through the Council website
- Town and Parish Councils within Mid Devon
- Department for Transport
- Driver and Vehicle Standards Agency
- Age UK

1.0 Introduction

- 1.1 Mid Devon District Council is responsible for the licensing of the Hackney Carriage and Private Hire trade in Mid Devon. Accordingly, the Council has adopted a policy setting out a number of issues, including:
 - The requirements of applicants
 - Processes for applications
 - The requirements of licence holders
 - How legislation is enforced
 - How decisions are made
- 1.2 This existing policy is due to expire on 28 February 2019 and the licensing team have carried out a consultation on a proposed new policy. This consultation took place between 23 July 2018 and 30 September 2018.
- 1.3 A list of those consulted is available above. It should be noted that the consultation was also published on the Council's website and also circulated via the Council's 'e-bulletin'.
- 1.4 As part of the consultation, a document outlining the main proposed changes was completed and circulated to all relevant parties. This document was also placed on the consultation webpage and is attached as **Annex 2**. Additionally, the actual policy consulted on was completed as a tracked changes document and this is attached as **Annex 3**.

2.0 Changes to policy

2.1 As **Annex 2** documents the main amendments, what follows is a brief rationale for some of the proposals, along with some additional information that members may find of interest. This is not a complete overview of all the proposals and the draft policy (**Annex 3**) must still be referred to for all amendments.

Safeguarding

- 2.2 Members have been informed previously of a number of safeguarding issues that have come to light in recent years across the country. Rotherham was one of the areas highlighted and that specific case resulted in the publication of the Jay report (2014), followed by the Casey report (2015). These reports identified the prominent role that the licensed trade played in safeguarding issues, very much bringing the matter to the fore for local authorities. If members are interested, these reports are available from the following links:
- http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham
 - <https://www.gov.uk/government/publications/reflections-on-child-sexual-exploitation-a-report-by-louise-casey-cb>
- 2.3 Because of this it seems prudent for Mid Devon District Council to review the current arrangements in place for hackney carriage and private hire licensing and ensure that controls and procedures regarding safeguarding are as robust as they can be.
- 2.4 It is important to highlight that this issue cannot be ignored or neglected and if the recent events nationally have taught us anything, it is that these problems can and do occur anywhere and everywhere.
- 2.5 Members will be aware that a number of existing measures are in place for safeguarding, including a Disclosure and Barring Service (DBS) check for drivers (carried out prior to the grant of a licence and then repeated every 3 years); a Basic Disclosure requirement for Private Hire Operators; a requirement to notify the licensing team within 72 hours of a range of matters (i.e. if arrested or charged); and the fact that the Police can notify us of relevant information in certain circumstances (under the Common Law Police Disclosure Scheme).
- 2.6 In addition to this, in 2017 licensing officers arranged four free safeguarding training sessions for existing drivers, with a turnout rate of 56%. This is the proposed training that individuals will attend in the future and it is the same training conducted by other authorities across Devon, which helps to ensure that regionally, a consistent approach is taken. The session takes approximately 2 hours to complete and is interactive, allowing drivers to ask questions and share experiences.

- 2.7 The proposal is to have all new licence holders attend this training within 12 months of being granted a licence. All existing licence holders will have until 28 June 2019 to complete the training.
- 2.8 In summary, the training will help to ensure that licence holders can:
- Recognise and report a vulnerable person at risk
 - Be aware of what human trafficking is
 - Be aware of what child sexual exploitation is
 - Understand how child sexual exploitation and human trafficking can relate to their work
- 2.9 In relation to the training, it is requested that the Regulatory Committee permit the Specialist Lead (Licensing) Officer or the Team Leader (Commercial Team), in conjunction with the Group Manager for Public Health and Regulatory Services to decide which safeguarding awareness training shall be acceptable. When doing so, the learning points outlined in Paragraph 2.8 of this report will be used as the criteria for selection, as well as anything else that may be considered relevant, including cost.
- 2.10 To build on this training a code of conduct for safeguarding has also been drafted which sets out the expectations of licence holders. This is attached as Appendix M of the draft Hackney Carriage and Private Hire licensing Policy, which is attached to this report as **Annex 3**.

Equality Act 2010

- 2.11 In April 2017, Sections 165 and 167 of the Equality Act were commenced. Accordingly, the Hackney Carriage and Private Hire Policy should be updated to reflect the following:
- a. Section 167 of the Equality Act permits the local authority to maintain and publish a list of wheelchair accessible vehicles. This is not a legislative requirement but the Government recommends it is done. Accordingly, the Licensing Team have compiled this list and it is published on the Council's website.
 - b. Section 165 of the Equality Act applies and this means that drivers of wheelchair accessible vehicles on the list produced under Section 167, have a number of duties that must be complied with.
- 2.12 These duties are as follows:
- To carry the passenger while in the wheelchair

- Not to make any additional charge for doing so
- If the passenger chooses to sit in a passenger seat to carry the wheelchair
- To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort
- To give the passenger such mobility assistance as is reasonably required.

- 2.13 Drivers can apply for an exemption to the above requirements if they have a medical condition, a disability or a physical condition which would make it impossible or unreasonably difficult to comply. Mid Devon District Council have a process for this whereby a driver can apply for an exemption and the proposed form is attached to this report as **Annex 4**. Part of this application must be completed by the drivers GP, confirming that in their opinion, the driver is unable to carry out the required duties. This assessment will be at the applicant's own expense.
- 2.14 It is recommended that the decision to accept or refuse an application for exemption be made by one of the following officers; Group Manager for Public Health and Regulatory Services; Team Leader (Commercial Team); Specialist Lead (Licensing); and Specialist Officers (Licensing). As part of the decision process, officers may request a further independent medical assessment to decide if the driver is:
- a) Fit for work;
 - b) Temporarily unfit to carry passengers in wheelchairs
 - c) Permanently unfit to carry passengers in wheelchairs
- 2.15 If an applicant is ever considered fit for full duties, an exemption certificate will not be issued and the applicant will be informed of the decision in writing. The driver then has an opportunity to appeal the decision to the Magistrates Court.
- 2.16 If a driver is declared temporarily unfit then an exemption certificate will be issued for a period of time considered reasonable, taking into consideration the advice given on the medical assessment form. Prior to the expiry of the temporary exemption, the driver must contact the licensing team to either confirm that they are fit for full duties or alternatively, that they remain unfit. If they remain unfit, they would be required to complete a further exemption application form and submit this to the licensing team prior to the existing exemption expiring. A decision will then be made on whether or not the exemption should be extended or refused. If the decision is to refuse it, then the driver will have the ability to appeal to the Magistrates Court.
- 2.17 If a driver is declared permanently unfit then an exemption certificate will be issued reflecting this fact. The exemption however, can be reviewed at any time and each

case will be reviewed on its own merits. Further medical assessments may be requested to enable this assessment. Once again, these will be at the applicant's / licence holders own expense.

- 2.18 When an exemption has been issued, the licensing team will produce a notice that the driver must display prominently in the relevant vehicle.
- 2.19 As an additional point, exemptions may also be provided to drivers from the duty to carry assistance dogs under the Equality Act 2010. The existing medical form that applicants must complete covers this point. Should a driver request an exemption from these requirements, the licensing team propose to carry out the same process as outlined above.

Requirement for speaking and listening English test

- 2.20 The existing policy was open to interpretation in this requirement and said that the council would 'assess' communication skills during the application process. This wording is problematic in its subjective nature and although the policy mentioned that an assessment may be undertaken, it did not give specific details.
- 2.21 The licensing team have looked at the tests available and have found that a number of other authorities use a telephone based assessment (outlined in **Annex 2**). An example of some test questions and the score report that will be produced after the test is attached as **Annex 5**.
- 2.22 The test produces a score within a given range, which correlates to certain language proficiency levels. The levels also correlate to the Common European Framework of Reference for languages (CEFR), which allows the results to be accurately compared against other language-based qualifications. For the purposes of driver licensing, it is believed that candidates should have to achieve a minimum score of 58 on the Versant test. This will mean candidates achieve a B2 or above and **Annex 6** contains a brief overview of what this standard means in real terms.
- 2.23 This is the proposed test that the licensing team will use and it will be a pre-application requirement, with the applicant being recharged the fee for the test. The intention is to exempt people from this requirement if they already hold a relevant qualification and can provide proof of this.
- 2.24 In a similar fashion, if there are concerns about existing licence holder's standard or level of English, evidence can be requested to demonstrate that they have passed a relevant English test and if such evidence is not forthcoming, they may have to undertake an assessment at their own cost.
- 2.25 In relation to the specific test that the licensing team will use, although one has been selected, it is requested that the Regulatory Committee permit the Specialist Lead (Licensing)or the Team Leader (Commercial Team), in conjunction with the Group Manager for Public Health and Regulatory Services to decide which speaking and

listening English test shall be used to assess applicants and licence holders level of English. This will ensure alternative arrangements can be made for assessment if necessary.

Policy on determining the suitability of applicants and licensees (Appendix B)

- 2.26 The Institute of Licensing has recently released guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades. This guidance is available to view here:

<https://www.instituteoflicensing.org/NewsJobsArticle.aspx?NewsOrJob=news&NewsID=11318>

- 2.27 It is proposed to adopt this document in almost its entirety, with just some minor amendments to reflect specific practice in Mid Devon. The guidance was produced to try and ensure that at a national level, a consistent approach is taken across authorities with the ultimate aim of ensuring that the public are kept safe.

3.0 Responses to consultation

- 3.1 With regards to the proposals within the policy, one response was received from the Guide Dogs for the Blind Association. This is attached in full as **Annex 7**. The relevant points from it, along with an officer recommendation as to whether the policy should be updated in light of the comment(s) received, are attached as **Annex 8**.
- 3.2 For clarity, the policy has been updated to reflect the amendments proposed as a result the consultation responses and the final proposed policy is attached as **Annex 9**. Some slight updates may however be required to reflect new page numbers once the tracked changes have been approved.
- 3.2 Additionally, licensing officers also asked the hackney carriage trade if they believed the current tariff should be reviewed. It was last reviewed in 2010 and 3 people responded that it should be (it should be noted that there are a total of 129 drivers but not all drive hackney carriages). Officers will now be looking at this in further detail and a report will be brought to the licensing committee in the early part of 2019.

4.0 Recommendations

- 4.1 It is recommended that the revised policy (attached as **Annex 9**) is adopted and has effect from 1 January 2019.
- 4.2 That the Regulatory Committee permit the Specialist Lead (Licensing) or the Team Leader (Commercial Team), in conjunction with the Group Manager for Public Health and Regulatory Services to decide which safeguarding awareness training shall be acceptable. This will ensure alternative arrangements can be made for training if necessary.

- 4.3 That the Regulatory Committee permits the following officers to decide if a driver can be exempt from duties required under the Equality Act 2010; the Group Manager for Public Health and Regulatory Services; Team Leader (Commercial Team); Specialist Lead (Licensing); and Specialist Officers (Licensing).
- 4.4 That the Regulatory Committee permits the Specialist Lead (Licensing) or the Team Leader (Commercial Team), in conjunction with the Group Manager for Public Health and Regulatory Services to decide which speaking and listening English test shall be used to assess applicants and licence holders level of English. This will ensure alternative arrangements can be made for training if necessary.

List of Annexes

- Annex 1: Equality Impact Assessment
- Annex 2: Additional information circulated with consultation letter
- Annex 3: Draft policy initially proposed
- Annex 4: Equality Act 2010 – Exemption form
- Annex 5: Information relating to English test
- Annex 6: Test levels
- Annex 7: Guide Dogs for the Blind Association - response
- Annex 8: Table of responses with officer recommendation
- Annex 9: Proposed final policy

Contact for any more information	Tom Keating, Specialist Lead (Licensing)- 01884 244618 or tkeating@middevon.gov.uk. Simon Newcombe, Group Manager for Public Health and Regulatory Services – 01884 244615 or snewcombe@middevon.gov.uk.
Background Papers	Previous HC & PH Policies, DFT's Best Practice Guidance, Public Authority Transport Network Technical Officer Group's National Inspection Standards Best Practice Guidance, Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades
File Reference	Licensing/Taxi/Mid Devon Policies
Circulation of the Report	Regulatory Committee / Consultees