

**WILTSHIRE COUNCIL**

**LICENSING COMMITTEE**

**26TH MAY 2010**

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**Harmonisation of Hackney Carriage and Private Hire Licensing**

**Executive Summary**

This report considers a proposed set of harmonised conditions, administrative and enforcement arrangements for licensing hackney carriages (taxis), private hire vehicles, drivers and operators throughout Wiltshire.

The four former district councils which now form Wiltshire Council have operated four separate and different licensing regimes for the purposes of issuing the relevant licences.

The report considers each element of the proposed harmonised conditions, administrative and enforcement arrangements separately and enables the Licensing Committee to endorse the proposals separately.

It should be noted that the approval of one particular proposal may in some cases be linked to or affect the endorsement of another proposal. The report highlights this issue where it is relevant.

The report also considers the proposals in conjunction with the results of the 'taxi' consultation survey questionnaire which includes responses from the public, trade and groups representing disabled users.

**Proposal**

The Licensing Committee is recommended to approve the following harmonised conditions, administrative and enforcement arrangements:

1. The Enforcement Arrangements:- The Licensing Committee is recommended to extend the penalty points scheme throughout Wiltshire from the date of implementation.
2. Conditions:- The Licensing Committee is recommended to adopt the condition that vehicles should be no older than five years old when first licensed as a hackney carriage or private hire vehicle from the date of implementation.
3. Conditions:- The Licensing Committee is recommended:

- to introduce and extend the proposed scheme (1 in 5 wheelchair accessible vehicles) already in existence in the North hub, to the West and East hubs on the date of implementation
- to phase out the existing grand father rights which prevail in South hub with regard to the pre1989 saloon plated vehicles and phase in the proposed scheme (1 in 5 wheelchair accessible vehicles) over a three year period starting from the date of implementation.

This will be achieved in accordance with the Council's proposed age restriction policy. It is recommended that the detail of the phasing in process is delegated to officers in consultation with the Chair of the Licensing Committee and Portfolio Holder.

4. Enforcement Arrangements:- The Licensing Committee is recommended to implement the proposal to ensure all licensed vehicles are subject to a six monthly MOT or a compliance check and a conditions check to be carried out by a licensing officer from the date of implementation.

5. Administrative Arrangements:- The Licensing Committee is recommended to retain four zones.

6. Administrative Arrangements:- The Licensing Committee is recommended to retain the four different existing tariffs (fares) within the harmonised conditions, enforcement and administrative arrangements.

7. Administrative Arrangements:- The Licensing Committee is recommended to agree an implementation date of 1<sup>st</sup> October 2010 with the exception of tariffs and wheelchair accessible vehicles.

### **Reason for Proposal**

Provide a harmonised service with the introduction of consistent conditions, enforcement and administrative arrangements to be applied throughout Wiltshire.

Mandy Bradley, Director of Public Protection.

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### Harmonisation of Hackney Carriage and Private Hire Licensing

#### **1.0 Purpose of Report**

- 1.1 To determine the future provision of a harmonised hackney carriage and private hire licensing service.

#### **2.0 Background**

- 2.1 At present the four former district councils (North Wiltshire District Council, Kennet District Council, Salisbury District Council and West Wiltshire District Council) have four separate and different sets of licensing conditions which are applied to the relevant licences.
- 2.2 The legacy authorities, North Wiltshire District Council, Salisbury District Council and West Wiltshire District Council also regulate hackney carriage licence holders through a set of model byelaws which were adopted in 1975 under the Town Police Clauses Act 1847 and have since been updated.
- 2.3 The model byelaws, produced by the Department for Transport (DfT) are weak in relation to the control of hackney carriage drivers. We are legally obliged to use the model byelaws. The DfT has indicated that it is not intending to issue revised byelaws in the near future.
- 2.4 Caselaw in 2001 has determined that conditions cannot be attached to hackney carriage driver's licences under the legislation. However the legislation does permit licensing authorities to attach conditions to all the other private hire and hackney carriage licences. The DfT opposes the case law and takes the view that the Town Police Clauses Act 1847 implies a power to attach conditions to a licence. The DfT states it is a matter for each licensing authority in conjunction with its legal advisors to determine whether it is proper to attach conditions to a drivers licence. Legal advice has been sought on this matter.
- 2.5 The advice from Wiltshire Council's legal department (see appendix 1) is that the 'conditions' under consideration by Wiltshire Council might be more legitimately described as 'guidance' and should be used to inform a possible assessment of whether a licence holder remains a 'fit and proper' person to hold a licence. This is consistent with the three existing schemes and the scheme which is proposed and the conditions can be rebranded as 'guidelines'.
- 2.6 The Licensing team has drawn up a new set of harmonised guidelines to cover all the Wiltshire Council area and propose to extend an enforcement regime

known as the penalty points scheme, which currently operates in three of the hubs, to the East hub.

- 2.7 The three existing schemes are broadly similar and operate on the basis that a transgression attracts a number of points. The scheme is analogous to the concept of points on a DVLA driving licence. An accumulation of points can trigger a sanction being applied which could include suspension or revocation of the licence. However, this must be considered within the legislative test of whether a person is 'fit and proper' to hold a licence.
- 2.8 CONSULTATION: All current licence holders (1290) in the taxi and private hire licensing trade in Wiltshire, were sent a survey questionnaire and a full set of the proposed conditions as part of the consultation process (see appendix 2 for details of the questionnaire and full set of conditions).

The consultation also included a cross section of 600 members of the public (randomly selected from Peoples' Voice). A number of bodies representing disabled users were also sent the survey questionnaire and signposted to a full set of the proposed conditions via the Council's website. These included Wiltshire and Swindon Users Network, Carer's Association, Wiltshire People First, Age Concern Wiltshire and Wiltshire Passenger Transport Unit.

The consultation period commenced on the 14<sup>th</sup> January 2010 and respondents were given 8 weeks within which to complete the questionnaire and add any comments.

As part of the consultation process all licence holders were also invited to a trade meeting held at one of the four hubs. The two following tables summarise the trade meetings and number of completed survey questionnaires received:

2.9 Trade Meetings.

<b>Trade Meeting</b>	<b>Date</b>	<b>No. of Attendees</b>
<b>South</b>	8 <sup>th</sup> March 2010	45
<b>East</b>	3 <sup>rd</sup> March 2010	20
<b>North</b>	9 <sup>th</sup> December 2009	35
<b>West</b>	2 <sup>nd</sup> February 2010	56

## 2.10 Survey Questionnaires.

	<b>Total No. of Surveys Sent</b>	<b>Returned</b>	<b>%</b>
<b>Four Hub TOTAL</b>	1290	352	27%
<b>Public</b>	600	199	35%
<b>South</b>	370	134	36%
<b>East</b>	195	70	36%
<b>North</b>	320	80	25%
<b>West</b>	405	67	17%

## 2.11 Numbers of Licence Holders in Wiltshire

	<b>Total No. of Licence Holders</b>	
<b>Four Hub TOTAL</b>	1290	
		<b>Percentage of Overall Trade</b>
<b>South</b>	370	29%
<b>East</b>	195	15%
<b>North</b>	320	25%
<b>West</b>	405	31%

2.12 Appendix 3 gives the results, implications, conclusions and recommendations for each question in the survey questionnaire.

2.13 All the comments provided by the trade and the public have been collated and summarised. They are available for inspection in the Members' room.

2.14 Officers attending the trade meetings made notes of the significant issues concerning the trade and these have been included in the background information, results and conclusions where appropriate.

## **3.0 Main Considerations for the Council**

3.1 Appendix 3 details the main considerations for the Council in conjunction with the results. It also gives the implications, conclusions and recommendations for each proposal.

3.2 Members' attention is drawn to the potential complications which arise as a result of the proposed changes, namely the provision of wheelchair accessible vehicles and a common tariff. This is because of the diversity of the current conditions which prevail in each of the four former district councils or hubs.

The following table provides a summary of Appendix 3.

<p style="text-align: center;"><b>SURVEY QUESTION/ PROPOSAL</b></p>	<p style="text-align: center;"><b>CONSULTATION RESULTS and MAIN CONSIDERATIONS</b></p>	<p style="text-align: center;"><b>RECOMMENDATION</b></p>
<p>1.0 PENALTY POINTS SCHEME</p>	<p>Strong support from trade and public in support of the scheme</p>	<p>Endorse proposed scheme</p>
<p>2.0 VEHICLE AGE ( under 5 years )</p>	<p>Strong support from public and 50% support from trade overall</p>	<p>Endorse proposed age restriction</p>
<p>3.0 WHEELCHAIR ACCESSIBLE VEHICLES ( 1 in 5 vehicles )</p>	<p>Strong support from public. Reasonable support from trade. There are specific concerns in South hub which currently provide 100% wheelchair accessible vehicles</p>	<p>Endorse in three hubs (West, North and East).  Phase in proposal in South hub over 3 years and delegate arrangements to officers in consultation with Chair of licensing Committee and portfolio holder.</p>
<p>4.0 VEHICLE CHECKS ( 6 monthly )</p>	<p>Strong support from public and trade</p>	<p>Endorse 6 monthly MOTs or compliance test</p>
<p>5.0 ZONING  (Four zones or one zone)</p>	<p>Strong support from trade to retain 4 zones. The public response was evenly split. There are potential legal and administrative problems with creating one zone</p>	<p>Endorse four zones</p>
<p>6.0 Tariffs  (One tariff scheme)</p>	<p>Strong support from public. Support from some hubs. Negative responses at all trade meetings regarding the proposed tariff. Existing tariffs are very different. Trade meetings in favour of retaining existing tariffs. One zone necessitates one tariff.</p>	<p>Endorse retaining four different tariffs and undertake further consultation with the trade to introduce a harmonised tariff.</p>
<p>7.0 Proposed Implementation date  ( 1<sup>st</sup> October 2010 or 1<sup>st</sup> April 2011 )</p>	<p>Most support from the public for 1<sup>st</sup> October 2010. The trade responses were evenly split</p>	<p>Endorse an implementation date of the 1<sup>st</sup> October 2010</p>

In summary, in order to achieve a consistent level of service across Wiltshire Council it is necessary to implement a harmonised set of conditions, underpinned by a single transparent scheme for enforcement.

#### **4.0 Environmental Impact of the Proposal**

- 4.1 The proposed age restriction (less than 5 years old) for vehicles licensed for the first time will contribute to the national air quality targets by mitigating carbon and nitrogen emissions at a local level. It is not anticipated the proposed changes will encourage additional licence applications for vehicles.

#### **5.0 Equalities Impact of the Proposal**

- 5.1 The current hackney carriage and private hire licensing scheme discriminates between existing license holders working in different hubs because they are required to adhere to different conditions, some of which are enforced through a penalty points scheme. A harmonised set of conditions which are applied through a consistent scheme of enforcement throughout the County provides a fair, consistent and transparent service.

#### **6.0 Risk Assessment**

- 6.1 There are a number of risks relating to this report which have been highlighted in detail in the background information and addressed separately in relation to each proposal. These are addressed in the Risk Assessment and Legal Implications sections of this report:
- 6.2 Wheelchair Accessible Vehicles

If the Council does not introduce a standard for wheelchair accessible vehicles, it may risk legal challenge from those licence holders in the South hub who are required to ensure all new hackney carriages are wheel chair accessible and therefore buy more expensive vehicles to meet this requirement. It could be construed as unreasonable for the Council to expect the standard of wheelchair provision to be different in different parts of the County. Nevertheless there is a need to phase in the requirement of 1 in 5 wheelchair accessible vehicles in the South hub to protect the current licence holders from an influx of cheaper non wheelchair accessible vehicles.

Similarly licence holders in the North hub where the requirement is to provide one in five wheelchair accessible vehicles could object to the fact there is no requirement to provide wheelchair accessible vehicles in either the West or East hubs.

## **7.0 Financial Implications**

It is not anticipated that the proposed harmonisation of the four hackney carriage and private hire licensing services which existed in the four former district councils will require additional resources to implement. The harmonisation of the service as outlined in the proposals may lead to future efficiency savings by simplifying administrative systems.

## **8.0 Legal Implications**

### **8.1 Driver Conditions**

Case law has determined that conditions cannot be attached to drivers' licences as proposed and the Council's legal opinion has been sought. Whilst that advice concludes that it is possible for those conditions to be challenged through Judicial Review the advice concludes that the matter can be addressed through more legitimately describing the conditions as guidance and in effect the guidance will inform the assessment of whether the licence holder remains a fit and proper person to hold such a licence. This is consistent with the penalty points scheme proposed.

### **8.2 Zones and Tariffs**

Advice was sought from the Council's legal department regarding the creation of one zone. The risk of creating one zone is that one tariff must apply throughout the zone. The Council is not recommended to endorse the creation of one zone and if it does so it must endorse application of a single tariff which is also not recommended.

## **9.0 Conclusions**

Licensing Committee is recommended to endorse the proposal as outlined in the Executive Summary.

Mandy Bradley, Director of Public Protection.

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Report Author: Samantha Colley, Licensing Manager (South and East), 01380 734883

### **Background Papers**

Button on Taxis Licensing Law and Practice 3<sup>rd</sup> edition James. T.H. Button.

Department for Transport. Taxi and Private Hire Vehicle Licensing Best Practice Guidance March 2010

## **Appendices**

### APPENDIX 1

Legal Advice Roger Hodgkinson Senior Solicitor Wiltshire Council .20<sup>th</sup> April 2010.

### APPENDIX 2

'Taxi' consultation survey questionnaire. Wiltshire Council. Public Protection. Licensing Department. 2010

Proposed set of conditions for hackney carriage and private hire licences. Wiltshire Council. Public Protection. Licensing Department. 2010

### APPENDIX 3

Report detailing results of the consultation survey questionnaire and main considerations for Council.

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