

LICENSING COMMITTEE

Temporary Private Hire/Hackney Carriage Drivers Licences 6 June 2024

Report of Licensing Manager

PURPOSE OF REPORT

The purpose of the report is to explore the current application process and the viability of introducing “temporary licences”. Members are to consider the pros and cons and determine whether to adopt an alternative position to current policy.

This report is public.

RECOMMENDATIONS

- (1) **Members are asked to note the contents of the report and determine whether to introduce a “without prejudice” licence provision.**
- (2) **Amend the scheme of delegation accordingly and approve the Licensing Manager to determine requests made for a “without prejudice” licence.**

1.0 Introduction

- 1.1 Following a request from the licensed trade and Chair of Licensing Committee, the Licensing Manager has been asked to provide a briefing, including options on the pros and cons of issuing “temporary” private hire, hackney carriage or dual driver licences.
- 1.2 The legislation relating to Private Hire and Hackney Carriage drivers’ licences does not make provisions for the administration and issuing of “Temporary Licences”, the determination on application is based on whether an applicant is a “fit and proper person”.
- 1.3 There is however an opportunity to amend current application policy and issue a short term “without prejudice” licence. This would allow the Licensing Authority to issue a short-term licence to enable a driver to continue to work, pending the determination of their renewal application. This could only be considered if a valid renewal application has been received prior to expiry of the current licence.

2.0 Background

- 2.1 The current position of the Licensing Authority is that an application to renew a driver licence must be submitted prior to expiry, there has been occasion where an applicant has required to attend Licensing Committee for determination of an application; as a result has not been permitted to work during this period of time.
- 2.2 Generally, this occurs when a licensed driver has not disclosed convictions or

endorsements in line with licence conditions and has delayed such disclosure until renewal of their licence. The licence may have expired before Licensing Committee have convened. This would be a clear case for considering the introduction of a “without prejudice” licence, to cover the short-term gap between expiry of the current licence and determination, by members of the renewal application.

- 2.3 The problem arises when invalid renewal applications are submitted, and a case made by the applicant for the Licensing Authority to issue a “temporary licence” as the expiry of the current licence is imminent. This could be for many reasons but has historically included the applicant waiting for a disclosure and barring certificate to be returned, awaiting a medical examination appointment or a claim of loss of documents or failings made by the Licensing Service in administering the renewal in a timely manner.
- 2.4 It is for members to determine, whether to consider adopting a “without prejudice” licence, set out the guidelines for Officers when considering the renewal application including what weight to place on aggravating factors/mitigating circumstances and subsequently, amend the Officer scheme of delegation.
- 2.5 It is important to note that this will not apply to new applicants and may only be applicable to renewal applications. The reason for this is that the Licensing Authority has already determined the applicant a fit and proper person on initial application, furthermore, the licensing history, driver complaints, endorsements and/or other matters may be considered when reaching a decision; with new applicants, no such information is available.

3.0 Legislative and Policy Position

- 3.1 Driver licences are issued under S46 of Town, Police, Clauses Act 1847 (hackney carriages) and s51 of Local Government Miscellaneous Provisions Act 1976 (private hire). Legislation requires that private hire and hackney carriage drivers are “fit and proper” but does not provide a definition as to what constitutes fit and proper.
- 3.2 Section 4 of the private hire and hackney carriage policy sets out criteria and standards for new and renewal applications for drivers’ licences (private hire/hackney carriage and dual). **Attached at Appendix 1.**

Application standards were reviewed earlier this year by members of Licensing Committee, with changes and efficiencies being made to streamline processes and ensure applications can be completed in a timely manner. eg. new disclosure and barring service (DBS) and interim check provider; response times have been significantly reduced.

- 3.3 It is hoped that the changes to application criteria will reduce the likelihood of applications for a “without prejudice” licence, any decision taken by members can be reflected in the private hire and hackney carriage policy when it is reviewed by members at the next Licensing Committee.

4.0 Options

- 4.1 There are pros/cons in considering introducing a “without prejudice” licensing process, for both the Licensing Authority and the licensed trade it has a duty to regulate. Details are provided in the table below.

	Licensing Authority	Individual/Trade
Advantages	<ul style="list-style-type: none"> • It will provide Officers with clear guidelines and parameters in which to respond to requests made by the trade for a “without prejudice” licence. • Keeps drivers on the road, maintaining the service provision locally and meeting the needs of local people. 	<ul style="list-style-type: none"> • Clear guidelines for drivers will reduce the likelihood of disappointment if requests are refused. • Allows for swift re-licensing, reduces the amount of time drivers may be unable to work.
Disadvantages	<ul style="list-style-type: none"> • Excessive late renewals submitted, with drivers having a reliance on the provision. • Drivers may rely on the provision and put increased pressure on the Licensing Authority to issue a “without prejudice”. 	<ul style="list-style-type: none"> • A “without prejudice” licence is on the basis that in at the time of determination there is no additional relevant information to consider. eg. Convictions, driving offences the renewal application. • The licence renewal may be refused, suspended or revoked at a later date by members of the Licensing Committee.
Risks	<ul style="list-style-type: none"> • Public Safety may be compromised by issuing a without prejudice licence; The Licensing Authority is relying on the driver being honest and transparent. • Legal Challenge - if after determination the individual is found to not be fit and proper and an appeal is lodged. 	<ul style="list-style-type: none"> • There is no appeal process in determining the merits of issuing a “without prejudice” licence, the Officer with the appropriate delegation is the final decision-maker. The determination of the renewal could be appealed, protecting the rights of the individual.

4.2 It is proposed that members consider some general guidelines in which to assess the eligibility for requests for a “without prejudice” licence. They could include;

- Is the application complete/valid?
- Is the driver awaiting determination of a renewal by Licensing Committee?
- Has the driver been compliant with licence conditions? (disclosed convictions, motoring endorsements, investigations/cautions etc)
- Is the Licensing Authority at fault, has the application been delayed through no fault of the driver?
- Could the situation have been avoided if the applicant had submitted their application in a timely manner?
- Can evidence of document submission/payment be provided?
- Are there exceptional circumstances?

5.0 Options available to members

- a) Introduce a “without prejudice” provision for private hire/hackney carriage and dual driver licences (renewal only) and amend the officer scheme of delegation to allow the Licensing Manager, to determine requests for a “without prejudice” licence on a case-by-case basis.
- b) Set the general guidelines that requests will be considered against, or.
- c) Note the content of the report and continue to determine timely, valid applications in line with current application policy.

6.0 Conclusion

- 6.1 The subject of “temporary licences” is raised from time to time by members of the licensed trade, anecdotal comments from members of current licensing team have stated that they have been issued previously; although no guidance or policy position is currently in place.
- 6.2 The chair of Licensing Committee requested a report/briefing on the subject matter, it has been identified that some local Licensing Authorities issue “without prejudice” drivers licences, which seems a more appropriate term.
- 6.3 If members wish to adopt a policy position on “without prejudice” licences, they are requested to consider the points highlighted in the report and provide applicants and officers determination guidance.
- 6.4 Members are reminded of the primary consideration when considering licensing matters, public safety in the widest context. Whilst consideration can be given to individual mitigating circumstances when reaching a decision, members must, above all other information; protect public safety when considering changes to policy and application procedures.
- 6.4 Any change in Officer decision-making needs to be reflected in the scheme of delegation/Officer authorisation.

CONCLUSION OF IMPACT ASSESSMENT (including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):
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The primary consideration when determining licensing matters is public safety.
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LEGAL IMPLICATIONS

Legal have been consulted. Although there is no statutory right to appeal a decision to grant / refuse a temporary ‘without prejudice licence’, the decision could be the subject of a judicial review. All decisions should be properly documented, with reference to the relevant policies.

FINANCIAL IMPLICATIONS

None identified.

OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces

None Identified

SECTION 151 OFFICER'S COMMENTS

None.

MONITORING OFFICER'S COMMENTS

Protection of the public is the paramount concern for this Committee and not the livelihood of the applicant for a renewal. However, there may well be circumstances which would allow a badge to be issued on renewal, for a short time, pending determination by the licensing authority.

BACKGROUND PAPERS

Not applicable.

Contact Officer: Jennifer Curtis

Telephone: 01524 582732

Email: jcurtis@lancaster.gov.uk

Ref:TempLic2024