



Committee: LICENSING REGULATORY COMMITTEE

Date: THURSDAY, 5 JUNE 2014

Venue: LANCASTER TOWN HALL

Time: 1.00 P.M.

A G E N D A

1. **Apologies for Absence**

2. **Appointment of Vice-Chairman**

3. **Minutes**

Minutes of the meeting held on 17 April 2014 (previously circulated).

4. **Items of Urgent Business authorised by the Chairman**

5. **Declarations of Interest**

To receive declarations by Members of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting.)

Whilst not a legal requirement, in accordance with Council Procedure Rule 10 and in the interests of clarity and transparency, Members should declare any disclosable pecuniary interests which they have already declared in the Register, at this point in the meeting.

In accordance with Part B, Section 2, of the Code of Conduct, Members are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

Exclusion of the Press and Public

6. **Confidential Items**

The following reports are not for publication because they contain confidential information and will be considered whilst the public are excluded from the meeting. The applicants have been invited to attend and/or be represented at the meeting, but will be asked to leave whilst the committee makes the decisions, as exempt legal advice may be given.

Members are advised that, in accordance with Section 100A(2) of the Local Government Act 1972, the press and public should be excluded for the following items of business on the grounds that they could include the possible disclosure of confidential information.

7. **Application for a Private Hire Driver's Licence - Michael David Johnson** (Pages 1 - 2)

Report of Licensing Manager

8. **Exempt Items**

The Committee is recommended to pass the following recommendations in relation to the following items:

“That, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, on the grounds that they could involve the possible disclosure of exempt information, as defined in paragraph 1 of Schedule 12A of that Act.”

Members are reminded that, whilst the following items have been marked as exempt, it is for Committee itself to decide whether or not to consider each of them in private or in public. In making the decision, Members should consider the relevant paragraph of Schedule 12A of the Local Government Act 1972, and also whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In considering their discretion Members should also be mindful of the advice of Council Officers.

9. **Existing Hackney Carriage and Private Hire Dual Driver's Licence - Raymond Pierce** (Pages 3 - 4)

Report of Licensing Manager

10. **Existing Hackney Carriage Driver's Licence - Dale Kenneth Wilson** (Pages 5 - 17)

Report of Licensing Manager

11. **Existing Hackney Carriage and Private Hire Driver's Licence - Christopher Paul Conway** (Pages 18 - 24)

Report of Licensing Manager

12. **Public Items**

The press and public will be readmitted to the meeting at this point.

13. **Addition of a New Condition to be imposed on all Hackney Carriage Vehicles Licences Upon Renewal** (Pages 25 - 27)

Report of Licensing Manager

14. **Training for Hackney Carriage and Private Hire Drivers** (Pages 28 - 30)

Report of Licensing Manager

15. **Current Vehicle Testing Procedure for Hackney Carriage and Private Hire Vehicles** (Pages 31 - 33)

Report of Licensing Manager

16. **Incentives in Relation to Wheelchair Accessible Vehicles** (Pages 34 - 36)
Report of Licensing Manager
17. **Commencement of Prosecutions** (Pages 37 - 41)
Report of the Chief Officer (Governance)
18. **Local Government (Miscellaneous Provisions) Act 1976 - Proposed Variation of Hackney Carriage Fares** (Pages 42 - 46)
Report of Licensing Manager
19. **Dog Boarding Establishment Licence Condition** (Pages 47 - 50)
Report of Chief Officer (Health and Housing)

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors Margaret Pattison (Chairman), Roger Dennison, Sheila Denwood, Jonathan Dixon, Mike Greenall, Tim Hamilton-Cox, John Harrison, Billy Hill and Tony Johnson

(ii) Substitute Membership

Councillors Tony Anderson, June Ashworth, Chris Coates, Joan Jackson, Terrie Metcalfe, Robert Redfern and Susan Sykes

(iii) Queries regarding this Agenda

Please contact Jane Glenton, Democratic Services - telephone (01524) 582068, or email jglenton@lancaster.gov.uk.

(iv) Changes to Membership, substitutions or apologies

Please contact Members' Secretary, telephone (01524) 582170, or email memberservices@lancaster.gov.uk.

MARK CULLINAN,
CHIEF EXECUTIVE,
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DALTON SQUARE,
LANCASTER, LA1 1PJ

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LICENSING REGULATORY COMMITTEE**Addition of a New Condition to be imposed on all Hackney
Carriage Vehicles Licences upon Renewal
5th June 2014****Report of Licensing Manager****PURPOSE OF REPORT**

To enable Members to consider imposing a new condition on hackney carriage vehicle/proprietor licences, to take effect on next renewal, and as a consequence to approve an amendment to the Rules, Regulations and Procedures for Hackney Carriage and Private Hire Licensing document to reflect this.

This report is public.

RECOMMENDATIONS

Members are requested to approve the proposed new condition in relation to hackney carriage vehicle/proprietor licences, to take effect upon renewal and, as a consequence, to approve the following amendment the Rules, Regulations and Procedures for Hackney Carriage and Private Hire Licensing to reflect this –

The proprietor of the vehicle shall keep a complete and accurate record of the name of the person driving the vehicle at any time. This information must be produced upon request to an authorised officer or constable.

1.0 Report

- 1.1 Under the Local Government (Miscellaneous Provisions) Act 1976 a district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.
- 1.2 Currently there is not a condition attached to a hackney carriage vehicle licence which requires the proprietor to keep records of the person driving the vehicle at any one time.
- 1.3 Clearly there is a public safety issue created by this omission as the information could be crucial if the vehicle had been involved in an incident. It is also vital that the proprietor can show due diligence in case of complaint and that he/she has done the correct checks and assured himself/herself that the person driving the hackney carriage vehicle actually holds a hackney carriage driver's licence issued by this council and is insured to drive the vehicle.

- 1.5 Members may recall that this item was on the agenda for this committee on the 27th March at which time it was deferred due to an email which members had received from Mrs Donna Short from the National Private Hire Association suggesting that any such condition would be unlawful.
- 1.6 Mrs Short states in her email, 'Whilst I can see why the licensing department wishes to put forward this condition of licence, they cannot impose the condition on the hackney carriage **vehicle** licence – quite simply, the vehicle cannot keep records; only the proprietor or driver.'
- 1.7 If this were the case, in officers' opinion no condition could be attached to a vehicle/proprietor licence, as clearly the vehicle cannot apply signs to itself or ensure that there is a first aid kit or fire extinguisher available; this would have to be done by the proprietor. A vehicle licence and a proprietor's licence are not separate licences; they are one and the same thing. There is no difference between a proprietor ensuring that the vehicle has the correct signs, or that a first aid kit and a fire extinguisher are in the vehicle, and ensuring that an up to date log of who is driving the car at any time is in the vehicle.
- 1.8 Mrs Short goes on to say, 'The fact of the matter is that hackney carriage proprietors (or drivers, come to that) do not need to hold an operator licence (please see **Brentwood –v- Gladen** attached); therefore they cannot be required to keep records. To our knowledge there is no other licensing authority in the UK that has been able to uphold this requirement, as the legislation does not allow them to impose it'.
- 1.9 This, in officers' opinion, is incorrect, as the case law referred to is in relation to whether a person using a hackney carriage vehicle to carry out private hire bookings would require an operator's licence, clearly they do not, and this condition would not require them to have one. The condition is not requiring proprietors to keep a log of journeys; just of any person driving the vehicle at any given time.
- 1.10 The Local Government (Miscellaneous Provisions) Act 1976 Section 47 provides that:-
 - (1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.
 - (2) Without prejudice to the generality of the foregoing section a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.
 - (3) Any person aggrieved by any conditions attached to such a licence may appeal to a magistrates' court.
- 1.11 Mrs Short seems to be suggesting that only conditions in relation to vehicle appearance and condition etc. can be attached to the vehicle/proprietors licence; however, that in officers' opinion would make a nonsense of the 2 separate provisions set out in section 47 above.
- 1.12 Members are therefore requested, in the interest of public safety, to approve the new condition to be attached to hackney carriage vehicle licences upon renewal and the

amendment to the Rules, Regulations and Procedures for Hackney Carriage and Private Hire Licensing to reflect this as set out above.

- 1.14 If members are minded to approve the amendment the condition would apply upon first renewal of the vehicle licence.

2.0 Conclusion

Members are requested to approve the new condition to be attached to hackney carriage vehicle licences upon renewal and the proposed change to the Rules, Regulations and Procedures for Hackney Carriage and Private Hire Licensing to reflect this.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The Rules, Regulations and Procedures are in place to protect the public.

The proposed changes do not have the potential to cause negative impact or discriminate against different groups in the community based on age, disability, gender, race/ethnicity, religion or religious belief (faith), sexual orientation, or rural isolation.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

LEGAL IMPLICATIONS

Anyone aggrieved by a condition attached to a licence can appeal to the Magistrates' Court.

BACKGROUND PAPERS

None.

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Ref: WP

LICENSING REGULATORY COMMITTEE**Training for Hackney Carriage and Private Hire Drivers
5th June 2014****Report of Licensing Manager****PURPOSE OF REPORT**

The report is to seek members' approval of proposals to introduce new training arrangements for all new applicants for hackney carriage and private hire drivers' licences.

This report is public.

RECOMMENDATIONS

Members are recommended to approve that with immediate effect a new condition be attached to applications for the grant of hackney carriage and private hire drivers' licences requiring applicants to attain an NVQ Level 2 in Transporting Passengers by Taxi and Private Hire before the first annual renewal of their licence.

1.0 Report

- 1.1 As members will be aware, at a meeting of the Licensing Regulatory Committee held in April 2014 an urgent report was considered in relation to new driver training.
- 1.2 Members approved a recommendation from officers that the requirement for all new applicants for a hackney carriage or private hire driver's licence to complete a BTEC course 'Transporting Passengers by Taxi and Private Hire' or hold an equivalent qualification be removed.
- 1.3 It was reported that since September 2008 it had been a prerequisite that all new applicants for a hackney carriage and private driver's licence must pass the BTEC course in Transporting Passengers by Taxi and Private Hire before the grant of a licence.
- 1.4 Members were informed that the cost of the course when introduced was £198; in fact it had remained at that price since that time although negotiations did take place with the college approximately 2 years ago when they considered increasing the cost to just over £300.
- 1.5 Members will recall that recently an applicant had contacted the licensing department and told them that the cost of the course was now £675. This was then confirmed by the college after being contacted by licensing officers. There had been no prior warning of this increase in cost.

- 1.6 Members considered it too onerous on new applicants to have to pay the large sum of money in order to attain the qualification, and agreed that the condition should be removed with the proviso that licensing officers source some other form of training to replace the BTEC.
- 1.7 Officers can now report that they have been in contact with a company called GKC Training who can offer an NVQ Level 2 in Transporting Passengers by Taxi and Private Hire free of charge to all applicants. Blackpool College can also offer the NVQ free of charge at the moment. Lancaster and Morecambe College have also indicated that they may be able to offer the NVQ.

The course programme includes: -

- Ensuring the health & safety of the taxi and private hire driver and passengers
 - Driving a taxi or private hire vehicle in a professional manner
 - Providing professional customer services in the taxi and private hire industries
 - Providing a safe and legal vehicle for transporting passengers by taxi and/or private hire
 - Carriage of luggage and parcels by taxi and private hire
 - Plan routes in the taxi and private hire industries
 - Transporting children and young persons by taxi, private hire or chauffeuring
 - Provide a transport service in the taxi and private hire industries for people who require assistance
 - Provide a service to customers using a wheelchair in an accessible taxi or private hire vehicle
- 1.8 The course will be delivered in the working environment and drivers will be assessed accordingly throughout the programme. There will be up to 15 hours classroom work required.
- 1.9 GKC have assured the licensing manager that the funding will be available for the foreseeable future to provide the course free of charge although it is difficult to say with any certainty whether this is the case. Blackpool College have confirmed that funding is available at least until August and after August they will know if there is further funding. In any case if the proposal is accepted and the funding be removed at some time in the future making the course too expensive, officers would report back to this Committee so that the matter can be reconsidered.

2.0 Conclusion

- 2.1 Members are asked to approve the proposal requiring with immediate effect all new applicants for a hackney carriage and private hire drivers licence to complete an NVQ Level 2 in Transporting Passengers by Taxi and Private Hire before the first annual renewal of their licence.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None applicable to this report.

FINANCIAL IMPLICATIONS

There are no financial implications as a result of this report.

LEGAL IMPLICATIONS

Legal Services have been consulted and have no further comment.

BACKGROUND PAPERS

None

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LICENSING REGULATORY COMMITTEE**Current Vehicle Testing Procedure for Hackney Carriage
and Private Hire Vehicles
5th June 2014****Report of Licensing Manager****PURPOSE OF REPORT**

To inform members of the current vehicle testing procedure in relation to hackney carriage and private hire vehicles and ask them to consider whether any other options should be explored.

The report is public

RECOMMENDATIONS

Members are asked to consider whether they are happy to endorse the current vehicle testing procedures for hackney carriage and private hire vehicles, or whether other options should now be explored and reported back to this Committee at a later date.

1.0 Introduction

- 1.1 At the February meeting of the Licensing Regulatory Committee, members resolved that a report be brought to a future meeting of the Committee in relation to the revenue raised through MOTs carried out by the Vehicle Maintenance Unit (VMU).
- 1.2 The cost of the test is set to recover the recharge from VMU to Licensing. This is incorporated in the licence/test fees charged, and the current cost of the test works out at £51.50. Vehicle owners are charged £51.50 within the licensing fee for the test, and as such, revenue is not raised through MOT's carried out by the Vehicle Maintenance unit (VMU)
- 1.3 Members will be aware that all hackney carriage and private hire vehicles that are licensed by this authority are subject to a test at the council's Vehicle Maintenance Unit (VMU) at White Lund, before a licence can be issued. The vehicles are then issued with a compliance certificate which exempts them from requiring an MOT certificate whilst the vehicle is a licensed vehicle.
- 1.4 Members may also be aware that the frequency of the required test varies dependent on the age of the vehicle. Any vehicle over the age of 2 years is subject to 2 tests per year and any vehicle over the age of 10 years is subject to 3 tests per year. This works very well at the moment as the VMU can issue certificates in accordance with

the above timescales, so there is no ambiguity as to whether a licence has expired or is still in force. The VMU centre contact the licensing department to let them know which vehicles have passed and which have failed, thus ensuring that plates and signage can be made as quickly as possible. It also ensures that licensing officers are aware that a vehicle has failed its test and should therefore not be used to transport members of the public.

- 1.5 The mechanics at the VMU are also aware of the conditions in relation to vehicle specifications required and will fail a vehicle if it does not meet the required vehicle specification or contact licensing to clarify any queries they may have.
- 1.6 Recently the Chair of the Lancaster City Hackney Carriage Proprietors Association has questioned whether having the vehicles all tested at the council VMU is the most efficient and cost effective way of dealing with vehicle tests. In particular the fee charged has been questioned and comments have been made that other garages could do the test for a lower cost. The figure quoted by the association was £45 per test, a saving of £6.50.
- 1.7 In officers' opinion this would not result in a saving as it would lead to further administrative work and officer time the cost of which would have to be reflected in the licence fee.
- 1.8 As set out above there is a very good process in place at the moment which works extremely well due to the knowledge of the mechanics and the co-operation between the VMU centre and the licensing department. The vehicle testing is currently consistent and all vehicles are tested to the same high standard.
- 1.9 The representation from the LCHPA was in relation to cost cutting. However the licensing authority must consider public safety as a priority and ensure that the vehicle tests are consistent and reliable.
- 1.10 If the vehicles were tested at independent garages they would be required to be presented to the Council's VMU following that MOT test to ensure that they complied with the vehicle specification as required by this council. There would be a cost associated with this. The MOT certificate may not reflect the licence length and this would lead to extra administrative work to ensure that the vehicle was covered by an MOT at all relevant times.
- 1.11 Because the compliance certificate issued by the VMU centre is not registered on line with VOSA, there is currently an issue that has been raised by some members of the trade, as they cannot tax their vehicles on line. Although there are plans to scrap the paper tax disc which is displayed in a car windscreen, vehicle owners will still be able to go to the Post Office and tax their vehicles. This issue has only been raised by a very small minority of the trade. In any case officers feel that this problem is not insurmountable and options of registering the compliance certificate should be explored.
- 1.12 Any decision should be based on public safety rather than convenience.
- 1.13 In 2010 when the Rules, Regulations and Procedures were updated, consideration was given to changing the procedure for vehicle testing and to allowing the proprietors to take the vehicle for an MOT to a garage of their choice. It was pointed out at that time that the vehicles would still need to be checked at the council's VMU centre.

1.14 This matter was discussed at the Taxi Liaison Group and those present indicated at that time that they would not be happy with this change as it could lead to a drop in standards and no consistency, with some people possibly having below standard tests carried out.

1.15 Members at that time considered the representations and the comments made and resolved that there would be no change to the vehicle testing.

2.0 Conclusion

2.1 Members are asked to consider whether they are happy with the current system in place for vehicle testing or whether other options should be explored

2.2 Officers would not recommend any change at this time as the current system works well and ensures that standards are consistent. The standard of vehicles licensed by this authority is very high.

2.3 If members are minded to consider other procedures in relation to vehicle testing officers would recommend that a full consultation is carried out with all vehicle proprietors before any such change is seriously considered.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

There are no financial implications of continuing to use the VMU as the cost of the test is recharged to the vehicle owner within the licensing fee. If other options were to be explored the costs of administering these would need to be identified and reported back as part of a future report.

LEGAL IMPLICATIONS

None arising from this report

BACKGROUND PAPERS

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LICENSING REGULATORY COMMITTEE**Incentives in Relation to Wheelchair Accessible Vehicles
5th June 2014****Report of Licensing Manager****PURPOSE OF REPORT**

This report has been prepared following members' request for officers to look at the possibility of financial incentives through reduced licence fees for proprietors who voluntarily license a wheelchair accessible vehicle.

This report is public.

RECOMMENDATIONS

Members are asked to consider whether it is feasible to offer any sort of incentive which would encourage vehicle proprietors to voluntarily provide wheelchair accessible vehicles.

1.0 Report

- 1.1 At a meeting of the Licensing Regulatory Committee held on 27th March 2014 members asked officers to present a report to a future meeting in relation to possible incentives being offered to proprietors who agree to license a wheelchair accessible vehicle with this authority and then agree that the vehicle will remain wheelchair accessible throughout the lifetime of the licence.
- 1.2 It was suggested that some sort of financial incentive be offered in the form of a reduction in the licence fee.
- 1.3 It was not made clear whether members would expect this reduction to be offered in respect of the vehicle licence fee, or, through the driver's licence fee, to drivers of the vehicles (who might include the proprietors). Officers would suggest that it would be almost impossible to administer any arrangement whereby a driver of the vehicle is offered a financial incentive through the licence fee, as drivers can move from vehicle to vehicle. In any case the current cost of a driver's licence is already set very low and barely covers the cost of administration.

- 1.4 Members should be aware that the licensing of hackney carriage and private hire vehicles aims to recover as far as possible the full cost of administering the scheme and some enforcement costs, as permitted by the legislation. If a reduction was offered to some proprietors there would be a shortfall in the fees that would be recovered and the cost would possibly have to be recovered by inflating the fees throughout the rest of the licensing regime, unless the Council was prepared to stand the shortfall. However, there is no budget for such a shortfall.
- 1.5 In any event, officers do not consider that a small reduction in fees would serve to encourage proprietors to convert to wheelchair accessible vehicles as the cost of the vehicle would far outweigh any reduction that could be offered.
- 1.6 Officers have discussed this matter with some owners of wheelchair accessible vehicles that are not currently required to be wheelchair accessible, and asked them if they would be prepared to add them to our list of mandatory wheelchair accessible vehicles if an incentive were to be offered. The reaction to this suggestion was negative as the proprietors who were asked stated that they want to keep the flexibility and the option of changing the vehicle at any time to a non-wheelchair accessible vehicle. For example one proprietor said that whilst he can manage to push a wheelchair up a ramp now, as he is getting older he will probably want to change the vehicle to a saloon. He also commented that when he wants to sell the vehicle he would probably have more interest if the options remained open.
- 1.7 If members are minded to increase the number of wheelchair accessible vehicle within the hackney carriage fleet officers would recommend that more time be spent on this matter and discussions with the trade should take place to consider what, if any incentives would encourage the trade to change a non-mandatory wheelchair accessible vehicle to a mandatory wheelchair accessible vehicle.
- 1.8 One option which would be cost free would be to advertise all of the mandatory wheelchair accessible vehicle on the Council's website, and to publicise via a press release that anyone who would like a list of such approved vehicles should refer to our web site.
- 1.9 Some members of the trade have asked about allowing advertising on vehicles. The advertising is known as bubble wrap advertising and members may have seen vehicles in other areas which are completely covered in advertising. This option could be considered as another possible incentive in relation to the provision of more wheelchair accessible vehicles, e.g. if such advertising was permitted only on purpose built wheelchair accessible vehicles there would be a financial benefit to the proprietor who could raise revenue through the advertising. However, careful consideration would need to be given as to how this would affect the overall appearance of the hackney carriage fleet, and how members of the public would be able to identify licensed vehicles.

2.0 Conclusion

- 2.1 Clearly there are various options that can be considered and members are asked to consider the report and to allow more time for full discussions to take place with hackney proprietors before any decision is made in relation to incentives being offered.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None applicable to this report.

FINANCIAL IMPLICATIONS

Any reduction in fees would have a financial impact and would need to be considered as part of the fee setting / budget process.

LEGAL IMPLICATIONS

Legal Services have been consulted and have no further comment.

BACKGROUND PAPERS

None

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Ref: WP

LICENSING REGULATORY COMMITTEE**Commencement of Prosecutions
5th June 2014****Report of the Chief Officer (Governance)****PURPOSE OF REPORT**

As requested at the last meeting, to enable the Committee to consider the practical, legal and financial implications of the Committee determining whether a prosecution should take place when recommended by officers.

This report is public

RECOMMENDATIONS

- (1) **That in view of the legal and practical risks identified in the report, the commencement of prosecution proceedings remain delegated to officers.**

1.0 Introduction

- 1.1 At its meeting on the 9th January 2014, the Committee referred the Licensing Enforcement Policy and Scheme of Delegation to the Taxi Task Group. The Taxi Task Group at its meeting on the 11th February 2014 concluded that there was no need to amend the Enforcement Policy or Scheme of Delegation. This was reported back to the Committee on the 27th March 2014, when it resolved that the Committee receive a report detailing the practical, legal and financial implications of Committee determining whether a prosecution should take place when recommended by officers. Minute 105 refers.
- 1.2 Matters that may lead to prosecution arise in different ways; they may be observed by officers, reported by the police or another authority, or be the subject of a complaint from a passenger, other member of the public or from within the trade. Investigations will generally require the taking of statements by Licensing officers. If there is reasonable cause to suspect that a criminal offence has been committed, any interview of the individual responsible will need to be a recorded, PACE (Police and Criminal Evidence Act) interview. This stage is required whoever is to take the decision on the appropriate action.
- 1.3 Once all the evidence has been obtained, if prosecution is being considered, advice is obtained from Legal Services, and if appropriate, legal proceedings are currently issued by Legal Services in accordance with the Scheme of

Delegation to officers. Legal Services will consider the relevant offence that may have been committed, the elements of that offence which would need to be proved in court in order to secure a conviction, the evidence available, and any possible defence. A qualified solicitor will consider, in accordance with the Code for Crown Prosecutors, whether there is sufficient evidence to provide a realistic prospect of conviction, and will consider whether the evidence is admissible, reliable and credible. Where there is sufficient evidence to justify a prosecution, Legal Services will consider whether a prosecution is required in the public interest. In this respect, the principles set out in the Code for Crown Prosecutors are applied. The Licensing Enforcement Policy, approved by this Committee, also sets out the factors that will be relevant in considering whether to deal with a matter by way of prosecution or formal caution.

- 1.4 Consideration of the relevant offence, the evidence available and the prospects for success are a legal matter. Cases are referred to one of the Council's solicitors, who has the relevant knowledge and experience to form a view as to whether prosecution is appropriate. This is consistent with the approach taken by the Crown Prosecution Service, where the decision to prosecute is taken by legally qualified officers.
- 1.5 The Committee now wishes to consider the implications of a change to the current arrangements whereby the decision to prosecute would be made by the Committee, on the recommendation of officers. In preparing this report it has been assumed that the Committee would not wish to consider cases where the officer recommendation would be not to prosecute.

2.0 Detailed Implications

- 2.1 A report would need to be prepared in each case, explaining the circumstances and presenting the available evidence and setting out the officer recommendation to prosecute. The draft report would need to be approved by the Chief Officer (Governance) and then be considered at a Committee meeting. Depending on the number of cases, this could considerably lengthen a scheduled Committee meeting, or might necessitate the calling of a special meeting, either because of the number of cases, or because there is no convenient scheduled meeting. Over the last two years, there have been 28 matters that would have had to be considered by Committee if this arrangement had been in place. Recently a Committee meeting overran because of two particularly complex individual matters that were on the agenda. This meant that other items had to be deferred. There is a risk that this situation could recur, which could delay the commencement of a prosecution. Detailed consideration of a prosecution at a meeting could equally result in the deferral of other items of business, causing delay to the consideration of those items or the need for additional meetings.
- 2.2 The financial implications of Committee considering prosecutions are difficult to quantify. It is impossible to quantify the cost of member time. The report writing, agenda preparation, servicing of the meeting and minute writing would all impose an added burden on officer time, (and the more so if additional meetings were required) which would mean that that time could not be spent on other work. The amount of that time would however depend on the number of cases referred, and the time taken to consider each. The estimated cost of preparing a report for a Committee meeting and discussing

an item such as this, with officer attendance to administer and advise is estimated in round terms at £800 per item. If bulky prosecution files had to be copied for each member of the Committee, there would be some additional paper and printing costs.

- 2.3 However, aside from the costs, the legal and practical implications of such a change are of more concern. Given that the decision whether or not to prosecute should be based on an assessment of the strength of the evidence, which is, as set out above, a matter for legal expertise, it is difficult to understand how the Committee would approach its consideration of an officer recommendation to prosecute. If this were to be simply a “rubber-stamping” exercise, there seems to be no point whatsoever in the referral to Committee. If the exercise is to be a genuine exercise to consider the evidence and decide whether to prosecute, it is difficult to understand in what circumstances the Committee would feel it appropriate to reject the recommendation of legally qualified officers. It would be necessary for the Committee to consider in detail all the evidence available, and take a view on the prospects of success at court. With all due respect, this is not something that lay members are qualified to do, and it is unfair to ask a Committee of Council to demonstrate the legal expertise required to undertake such a review of evidence.
- 2.4 In previous discussions on this subject, there has been some suggestion from some members that the potential “defendant” should be present when the decision whether to prosecute is made by the Committee. Officers are firmly of the view that this would be wholly inappropriate, as it would be improper for the evidence to be discussed with the defendant or in the defendant’s presence, or for the defendant to be asked to comment unless under caution. If Committee were to consider an officer recommendation to prosecute, such consideration should be based only on the papers. Even this approach would not be free from risk, as, if the Committee decided not to authorise prosecution, it would be open to claims of predetermination if, having already considered the evidence, it decided to ask to see the “defendant” at a future meeting for possible warning, or suspension or revocation of the licence. Further, it is not unusual following conviction for a driver to be referred to the Committee to enable members to consider whether, in the light of the conviction, the driver is a fit and proper person to hold a licence. If the Committee had made the initial decision to prosecute, there could be claims of predetermination if the same Committee considered the matter again following conviction. With these risks of legal challenge at all stages, and the possibility that such challenges might be pursued through the courts, there is an inherent risk of increasing legal costs to the Council quite substantially .
- 2.5 Another risk of the Committee approving prosecutions would be that some individuals would become aware of when their case was to be considered, and would contact some or all members by telephone, email or letter, seeking to influence the outcome. This would put undue pressure on members, might cause particular difficulties when an individual is known to some or all members, and might mean that all members might not be in possession of the same information and might take account of irrelevant or inaccurate information. The process might also prejudice those individuals who are less able to “lobby”. It is also likely that after taking any decision to prosecute, members would receive further contact and questions from the relevant individuals. This would be unfair to members, and there is a risk that any responses given could prejudice any proceedings Given that individual

members of the Committee have in the past attended court to give evidence on behalf of licence holders who have appeared before the Committee, the possibility of this happening in the context of a prosecution would also be a concern if the Committee were to discuss the merits of a case in full and take a majority decision to prosecute.

- 2.6 These legal and practical risks and difficulties are such that, as previously reported to the Committee and to the Task Group, officers remain firmly of the view that the decision to commence prosecutions for matters within the remit of the Licensing Regulatory Committee should remain delegated to officers, as it has been for at least the last 25 years, and as it is across the whole range of the Council's other enforcement functions, including Planning. There are close analogies between Planning and Licensing, with the relevant Committee determining applications, and enforcement being an operational matter delegated to officers.

3.0 Options and Options Analysis (including risk assessment)

- 3.1 The Committee requested a report detailing the practical, legal and financial implications of the Committee determining whether a prosecution should take place when recommended by officers. These are set out in the report above, and, whilst it would be open to Committee to take on the role of determining whether a prosecution should be commenced, the clear recommendation from officers, in the light of the implications and risks set out in the report, is that that decision should remain delegated to officers.
- 3.2 Should the Committee decide otherwise, the Chief Executive has indicated that he will refer the matter to full Council.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None directly arising from this report.

LEGAL IMPLICATIONS

The legal implications are set out in the report.

FINANCIAL IMPLICATIONS

Referring prosecutions to Committee for consideration would place an additional burden on officer time through report writing, agenda preparation, minute writing and the servicing of meetings, estimated at a notional figure of around £800 per item. As this would be met from existing staff resources there would be no direct financial cost as such, but, rather, less time for officers to undertake other duties. There would be additional costs both in terms of officer time and possible legal costs as and when any decisions are tested in the courts. There would be additional direct costs in printing bulky prosecution files as part of the agenda, but it is impossible to quantify this cost, as it would depend on the number of cases to be considered.

OTHER RESOURCE IMPLICATIONS

Human Resources:

None

Information Services:

None

Property:

None

Open Spaces:

None

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has been consulted; she is in support of the recommendation given the resource implications and risks associated with moving away from existing delegations to Officers.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has prepared this report in her capacity as Chief Officer (Governance). The Monitoring Officer would emphasise that the Council's role as licensing authority is a regulatory one, and that the principles of licensing enforcement are not, and should not be, any different from those which apply to all the other regulatory functions of the Council. The Monitoring Officer is firmly of the view that where there is evidence that a criminal offence has been committed, it is an operational matter for officers to determine how to proceed, and that it would be inappropriate for such cases to be referred to members for decision.

BACKGROUND PAPERS

None

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Ref:

LICENSING REGULATORY COMMITTEE**Local Government (Miscellaneous Provisions) Act 1976 –
Proposed Variation of Hackney Carriage Fares
5th June 2014****Report of Licensing Manager****PURPOSE OF REPORT**

The report is to enable Members to consider the results of the consultation with hackney carriage proprietors in relation to the proposed variation of the current level of hackney carriage fares in line with the current Retail Price Index (RPI) rate and to determine whether to approve the new table of fares as set out in the attached appendix 1 to this report.

This report is public.

RECOMMENDATIONS:

1. **The Committee is requested to consider the results of the consultation which has just taken place with hackney carriage proprietors in relation to a fare increase as set out in the attached appendix 2, and to determine whether to approve the new table of fares, and authorise the Chief Officer (Governance) to advertise the new table of fares as required by the legislation.**

1.0 Introduction

- 1.1 The current Hackney Carriage Table of Fares initially came into effect from 18th October 2013 with a slight amendment to allow booking fees coming into force on the 7th February 2014. A copy of the current fare card is attached as appendix 1 to this report. A copy of the proposed table of fares is attached at appendix 2 to this report.
- 1.2 Members will recall that, at the meeting of the Licensing Regulatory Committee in February, they approved an amendment to procedure in relation to the variation of hackney carriage fares,
- 1.3 Members agreed that they would recommend in March each year a proposal taking account of the current annual RPI rate and that hackney carriage proprietors would then be asked to vote on whether an increase is required during that year.
- 1.4 With regard to the current rate of inflation, Financial Services have confirmed that the latest available (January) RPI rate is 2.8%.
- 1.5 The table below shows the effects of the proposed variations for the first mile at tariff 1.

A comparison with other local authorities has also been included. The comparison shows the fares at tariff one for 2 miles as this is the lowest common denominator.

2014

1st Mile	
Lancaster City (current)	£3.46
Proposal	£3.57

Neighbouring authorities for the first 2 miles compared to this proposal

Lancaster	£5.33
South Ribble	£5.40
Fylde	£5.80
South Lakeland	£6.26

- 1.6 A ballot has now taken place with hackney proprietors. All proprietors were informed of the proposed variation, and were sent ballot papers. Ballot boxes were placed on the 14th April at both Lancaster and Morecambe Town Hall and at the VMU garage where the vehicles are tested. Proprietors were asked to respond by the close of business on the 20th May. Ninety-eight papers were sent out to the owners of the 108 hackney carriage vehicles currently licensed and fifteen ballot papers were returned. The proprietors were asked if they agreed that an increase in hackney carriage fares in line with the RPI is appropriate for the financial year 2014/15. Of the 15 papers returned 8 said yes and 7 said no.

2.0 Conclusion

- 2.1 Members are asked to consider whether to approve the amended table of fares to have effect from 1st July or any other date as determined by the committee and if so to authorise the Chief Officer (Governance) to advertise the table of fares as required by the legislation.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None applicable to this report.

FINANCIAL IMPLICATIONS

Financial Services have advised on the relevant RPI rate.

LEGAL IMPLICATIONS

The legal requirement to advertise any proposed change is covered in the report.

BACKGROUND PAPERS

None.

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Ref: WP

HACKNEY CARRIAGE TABLE OF FARES
Applicable from 7th February 2014*Promoting City, Coast & Countryside***Tariff 1**

For hirings commenced between 07.01 and 23.59	
If the distance does not exceed 660 yards for the whole distance:	£2.40
For each of the subsequent 310 yards or uncompleted part thereof:	30p
Waiting Time: For each period of 40 seconds or uncompleted part thereof	10p

Tariff 2

For hirings commenced between midnight and 07.00 For hirings commenced between 19.00 and midnight on the 24 th December For hirings commenced between 19.00 and midnight on the 31 st December For hirings commencing on any Bank Holiday or Public Holiday	
If the distance does not exceed 660 yards for the whole distance:	£3.60
For each subsequent 220 yards or uncompleted part thereof:	30p
Waiting time: For each period of 40 seconds or uncompleted part thereof	10p

Tariff 3

For hirings commenced between 00.01 25 th December and 07.00 27 th December For hirings commenced between 00.01 1 st January and 07.00 2 nd January	
If the distance does not exceed 880 yards for the whole distance:	£4.80
For each subsequent 220 yards or uncompleted part thereof:	40p
Waiting time: For each period of 40 seconds or uncompleted part thereof	10p

For each passenger in excess of one [for the purpose two children aged 11 or under to count as one passenger for the whole distance]	20p
For each perambulator or article of luggage carried outside the passenger compartment of the vehicle	20p
Soiling Charge: A charge may be requested if the passenger[s] soils the vehicle. This will not exceed £75.00	

The driver may at his/her discretion require the payment of an agreed amount in advance of the journey. A receipt will be given. The amount will be set against the metered fare.

A booking fee up to a maximum of £4.00 may be charged where:

- (a) The Hackney carriage is booked in advance; and
- (b) (i) The Customer shall be told the cost of the booking fee at the time that the booking is taken and the amount recorded in the booking log; and
(ii) The customer shall be told that the booking fee is in addition to the fare for the journey; and
- (c) The hiring involves a separate journey of at least one mile, starting from the taxi rank or the operator's premises, to the pick up point.

Any complaints regarding the vehicle and/or driver should be addressed to the Licensing Section, Governance, Town Hall, Dalton Square, Lancaster, LA1 1PJ. Telephone [01524] 582033. Email licensing@lancaster.gov.uk

Sarah Taylor, Chief Officer, Governance

HACKNEY CARRIAGE PROPOSED TABLE OF FARES
Tariff 1
Promoting City, Coast & Countryside

For hirings commenced between 07.01 and 23.59	
If the distance does not exceed 660 yards for the whole distance:	£2.46
For each of the subsequent 310 yards or uncompleted part thereof:	31p
Waiting Time: For each period of 40 seconds or uncompleted part thereof	10p

Tariff 2

For hirings commenced between midnight and 07.00	
For hirings commenced between 19.00 and midnight on the 24 th December	
For hirings commenced between 19.00 and midnight on the 31 st December	
For hirings commencing on any Bank Holiday or Public Holiday	
If the distance does not exceed 660 yards for the whole distance:	£3.70
For each subsequent 220 yards or uncompleted part thereof:	31p
Waiting time: For each period of 40 seconds or uncompleted part thereof	10p

Tariff 3

For hirings commenced between 00.01 25 th December and 07.00 27 th December	
For hirings commenced between 00.01 1 st January and 07.00 2 nd January	
If the distance does not exceed 880 yards for the whole distance:	£4.93
For each subsequent 220 yards or uncompleted part thereof:	41p
Waiting time: For each period of 40 seconds or uncompleted part thereof	10p

For each passenger in excess of one [for the purpose two children aged 11 or under to count as one passenger for the whole distance]	20p
For each perambulator or article of luggage carried outside the passenger compartment of the vehicle	20p
Soiling Charge: A charge may be requested if the passenger[s] soils the vehicle. This will not exceed £75.00	

The driver may at his/her discretion require the payment of an agreed amount in advance of the journey. A receipt will be given. The amount will be set against the metered fare.

A booking fee up to a maximum of £4.00 may be charged where:

- (a) The Hackney carriage is booked in advance; and
- (b) (i) The Customer shall be told the cost of the booking fee at the time that the booking is taken and the amount recorded in the booking log; and
(ii) The customer shall be told that the booking fee is in addition to the fare for the journey; and
- (c) The hiring involves a separate journey of at least one mile, starting from the taxi rank or the operator's premises, to the pick up point.

Any complaints regarding the vehicle and/or driver should be addressed to the Licensing Section, Governance, Town Hall, Dalton Square, Lancaster, LA1 1PJ. Telephone [01524] 582033. Email licensing@lancaster.gov.uk

Sarah Taylor, Chief Officer, Governance

LICENSING REGULATORY COMMITTEE

**Dog Boarding Establishment Licence Condition
5 June 2014**

Report of Chief Officer (Health & Housing)

PURPOSE OF REPORT

For Members to consider changing a condition attached to commercial dog boarding establishment licences prohibiting dogs from different households being exercised together.

This report is public

RECOMMENDATIONS

- (1) **That Members consider allowing commercial dog boarding establishments to exercise dogs from different households together. Should Members approve the change, a number of additional conditions should be attached to the licences.**

1.0 Introduction

- 1.1 Under the Animal Boarding Establishments Act 1963 no person can keep a boarding establishment for animals unless they have a licence granted by the local authority. In granting a licence the local authority can stipulate a number of conditions to secure the following objectives:
- i) that dogs are kept in accommodation suitable in respect of construction, size, temperature, lighting, ventilation and cleanliness;
 - ii) that dogs are adequately supplied with suitable food and drink, and are visited at suitable intervals;
 - iii) that dogs are kept secure;
 - iv) that reasonable precautions are taken to prevent the spread of infectious diseases;
 - v) that appropriate steps are taken in the event of emergency;
 - vi) that a suitable consistent level of management is maintained.

The Chartered Institute of Environmental Health (CIEH) published comprehensive guidance and model licence conditions to ensure that a consistent approach was maintained both in the issuing of licences and in the enforcement of the legislation by local authorities. Lancaster City Council adopted these model standards in full some years ago.

- 1.2 The CIEH document states in its guidance 'Communal exercise areas should generally be discouraged' and 'Communal facilities must not be used by more than one dog at any one time unless they are from the same household'. In line with this Lancaster City Council's conditions require that dogs from

different households must not be exercised together.

- 1.3 However, one of the licensees has requested that they be allowed to exercise dogs from different households together, in secure paddocks on their premises. They claim that this ensures the dogs have adequate physical exercise in a stimulating environment and that it results in dogs being less stressed.
- 1.4. Currently such a practice would constitute a breach of the council's conditions and hence an offence under the legislation. The licensee could however appeal to the magistrates' court against this condition being attached to next year's licence which commences 1 January 2015.
- 1.5 Members will recall that in April 2013 Lancaster City Council introduced licences for home boarding of dogs. Subject to compliance with specific conditions, home boarders are allowed to board up to 3 dogs maximum from different households at the same time, and in these circumstances dogs will normally be exercised together. Changing the commercial boarding condition as detailed in this report would result in consistency between commercial boarders and home boarders.

2.0 Proposal Details

- 2.1 The CIEH model standards state 'If variations to the model conditions are made local authorities should bear in mind that the principal aim must still be met' i.e. that the conditions in 1.1.above are still met. Therefore should Members approve communal exercising of dogs from different householders in commercial boarding establishments, it is proposed that the following additional conditions should apply:
 - i) Minimum ratio of one responsible person to be in attendance to every three dogs.
 - ii) A maximum of six dogs at any one time, including any resident dogs.
 - iii) Owners of dogs must agree in writing to their dogs being exercised with dogs from different households and to their dogs being exercised off lead.
 - iv) The proposed exercise area to be approved by Environmental Health as regards security and suitability.
 - v) Any faecal matter must be disposed of immediately to minimise risk of cross-infection.
 - vi) Dogs must be assessed by experienced and competent staff prior to communal exercise, and dogs suspected of aggressive / dominant behaviour must be exercised separately.
 - vii) Unneutered male dogs must not be exercised together.
 - viii) Bitches in season must not be exercised with unneutered male dogs and must not be exercised in communal areas.
 - ix) Puppies under six months old must not be exercised with adult dogs.
- 2.2 Any licensee wishing to exercise dogs from different households together, would have to apply to Environmental Health and, subject to compliance with the additional conditions above, would have their licence reissued with the additional conditions attached.

3.0 Details of Consultation

- 3.1 The other six commercial dog boarding establishments currently licensed have been contacted for their views on exercising dogs from different households together. Of the five responses received, four licensees disagree with the suggestion on the grounds that, in their view, fighting between strange dogs in a strange environment would be inevitable. They exercise dogs individually and would not consider exercising dogs from different households together. The fifth licensee would welcome the proposal, particularly for their dayboarder dogs, as many of these dogs are referred to the kennels by dog behaviourists with a recommendation that they interact with other dogs. However, this licensee has concerns that not all boarding kennel operators are trained and experienced in dog behavioural problems and the proposal could potentially put the safety of dogs at risk.
- 3.2 An enquiry has been sent out on the Environmental Health online forum asking if any local authorities allow dogs from different households to be exercised together in commercial boarding kennels. At the point of preparing this report few responses had been received, however further efforts will be made to survey local authorities and the results will be reported at Licensing Regulatory Committee.

4.0 Options and Options Analysis (including risk assessment)

	Option 1: Communal exercising be approved subject to the additional licence conditions in 2.1.	Option 2: Communal exercising not approved
Advantages	<ul style="list-style-type: none"> • Potential improvements in animal welfare due to increased amount of exercise in more stimulating environment • Potential for dogs to suffer lower degree of stress and other behavioural issues • Consistent with home boarding standards. • Responds to needs of local business 	<ul style="list-style-type: none"> • No increased risks to health or safety of dogs • No need to issue new licences
Disadvantages	<ul style="list-style-type: none"> • Risk of aggression, dominance and cross-infection – although compliance with additional conditions should minimise this • Officer time in applying additional conditions and issuing new licences 	<ul style="list-style-type: none"> • Risk of unnecessary restriction on local businesses – appeal to magistrates' court could be costly. • Potential opportunity to improve animal welfare • Home boarders could have unfair advantage

5.0 Conclusion

- 5.1 Members will wish to consider the information provided in this report, both for

and against changing the licence condition relating to the exercising of dogs from different households together in licensed boarding establishments.

The officer preferred option is Option 1, subject to compliance with the conditions listed in 2.1.

<p>CONCLUSION OF IMPACT ASSESSMENT (including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</p> <p>None identified.</p>	
<p>LEGAL IMPLICATIONS</p> <p>Section 1(4) of the Animal Boarding Establishments Act 1963 allows any person aggrieved by any condition subject to which a licence is proposed to be granted, to appeal to a magistrates' court. The court may give such directions with respect to the conditions subject to which a licence is to be granted as it thinks proper.</p>	
<p>FINANCIAL IMPLICATIONS</p> <p>If the Licensing Regulatory Committee approves the recommendation within this report, any costs, including officer time, will be met from within existing budgets.</p>	
<p>OTHER RESOURCE IMPLICATIONS</p> <p>Human Resources: None identified.</p> <p>Information Services: None identified.</p> <p>Property: None identified.</p> <p>Open Spaces: None identified.</p>	
<p>SECTION 151 OFFICER'S COMMENTS</p> <p>The Section 151 Officer has been consulted and has no further comments to add.</p>	
<p>MONITORING OFFICER'S COMMENTS</p> <p>The Monitoring Officer has been consulted.</p>	
<p>BACKGROUND PAPERS</p> <ul style="list-style-type: none"> • Animal Boarding Establishments Act 1963 • Chartered Institute of Environmental Health Model Licence Conditions and Guidance for Dog Boarding Establishments • Lancaster City Council Dog Home Boarding Standards 	<p>Contact Officer: Sue Clowes Telephone: 01524 582740 E-mail: sclowes@lancaster.gov.uk Ref: LRC8</p>