

Subject:	Ratification of decisions made by Committee on 15 th November 2016	Status:	For Publication
Report to:	Licensing Committee	Date:	7 th February 2017
Report of:	Licensing Manager	Portfolio Holder:	Legal and Democratic Services
Key Decision:	<input type="checkbox"/> Forward Plan <input type="checkbox"/>	General Exception	<input type="checkbox"/> Special Urgency <input type="checkbox"/>
Community Impact Assessment:	Required: No	Attached:	No
Biodiversity Impact Assessment	Required: No	Attached:	No
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1.	RECOMMENDATION(S)
1.1	That the Licensing Committee consider the report and attached appendices and ratify those decisions made previously at the Licensing Committee meeting on 15 th November 2016

2. PURPOSE OF REPORT

To provide clarification of the evidence considered before recommendations were made to the committee at the meeting of 15th November 2016.

To seek ratification of those decisions previously made by the Committee, in particular those decisions forming the basis of the Letter before Claim submitted by the Rossendale Taxi Association.

3. CORPORATE PRIORITIES

3.1 The matters discussed in this report impact directly on the following corporate priorities:

- **A clean and green Rossendale** – creating a better environment for all.
- **A healthy and successful Rossendale** – supporting vibrant communities and a strong economy.
- **Responsive and value for money local services** – responding to and meeting the different needs of customers and improving the cost effectiveness of services.

4. RISK ASSESSMENT IMPLICATIONS

4.1 The recommendation(s) in this report involve risk considerations as set out below:

The recommendations agreed by Committee on 15th November form an integral part of the council's revised policy on Taxi and Private Hire Licensing.

They were made to ensure continued public safety for all those who work in or use taxi services licensed by Rossendale Borough Council.

5. BACKGROUND AND OPTIONS

On the 28th December 2016 a Letter Before Claim was received by the council from Mr David Wilson of a2z Licensing representing Mr David Lawrie, and on behalf of the Rossendale Taxi Association, challenging the decision of the Licensing Committee dated 15th November 2016 amending the council's policy of licensing Hackney Carriage Drivers and Vehicles, Private Hire Operators, Drivers and Vehicles. A copy of the letter is appended at **Appendix A**.

In particular, the claimant challenged the lawfulness of the following recommendations

contained within appendix C of the original report;

- (1) That the entry age limit for licensed vehicles be reduced from 7 to 5 years.
- (19) The mandatory requirement for CCTV.
- (26) That existing licensed drivers be required to satisfactorily complete the basic skills assessment prior to the renewal of their hackney carriage/private hire driver's licence.
- (31) The maintenance of the Council's current policy on tinted windows.
- (32/33) That a local geographical knowledge test be introduced in respect of new applicant drivers and at renewal for existing licence holders (requirement to pass the knowledge test at next renewal with no requirement to re-sit the knowledge test at subsequent renewal).
- (35) The application process for licensed drivers who wish to apply for another type of licence.

The basis of the challenge is that the council failed to comply with provision 3 of the regulators code by making decisions which were not evidenced based, and where therefore unlawful. The council does not accept this.

Opinion was sought of Legal Counsel and his reasons for rejecting the claims are contained within our letter of response. This is appended at **Appendix B**.

For clarification, in relation to each of the recommendations challenged, evidence as detailed below has been considered in supporting the proposed recommendations and response to the Letter before Claim.

1. Reduction in the maximum age limit for vehicles

Issue 1: The Committee's decision to adopt a recommendation reducing the maximum age of licensed vehicles from 7 to 5 years was "a shot in the dark", not evidenced based and unlawful (Proposal 1)

The Council considers it has evidence to support a reduction in the entry age limit for licensed vehicles.

Examination of Councils records shows 46% of new licensed vehicles fall within the 5-7 year age bracket. Further examination of records shows the vast majority of such vehicles have mileage considerably higher than the average mileage of a car that age. A random sample of 67 vehicles aged between 5 and 7 years which were first licensed between July and October 2016 showed an average mileage of 125000 miles at the time when they were first licensed. This is more than double the average mileage of a private car of similar age. A further check of vehicles first licensed in Dec 2016 showed an average mileage of 138K (**Appendix C**).

Analysis of MOT pass rates demonstrates that 3 year old vehicles have an 80% pass rate, 5 year old vehicles 74% and a 7 year old vehicle 66%. These further declines to 53% when 10 years of age. These figures are based on all MOTs including private vehicles. (**Appendix D**).

It is clear that licensed vehicles accrue higher than average mileage and therefore more wear and tear on component parts than private vehicles of a similar age. Whilst the MOT provides a check of standards this is only at the time of test. The Council's primary concern is public safety and therefore seeks to balance the standard of vehicles against the reasonableness of financial impact.

At the trade workshop on 20th October the claimant stated the additional cost associated with the 5 year entry age limit was £10,000.

Officers subsequently compared costs of 5 and 7 year old Toyota Avensis and Skoda

Octavia, two of the most popular cars used as licensed vehicles. A motoring guide book identified the average cost difference was approximately £1,200

A used vehicle search has been undertaken on auto trader. A 5 and 7 year old Skoda Octavia 1.6 TDi CRSE Plus 5 door saloon were identified with similar mileages of 55,000 and 60,000 miles. The newer vehicle was priced £900 higher than the older vehicle. **(Appendix E Auto trader adverts).**

Over the 5 year licensed span of the newer vehicle (i.e. 5-10 years), the capital costs of the vehicle equate to £1,250 per annum.

The older vehicle with a 3 year licensed span (7-10 years) had capital costs equivalent to £1,783 per annum.

This suggests that the longer term financial burden is reduced by the purchase of a newer vehicle.

19. Mandatory CCTV

Issue 2: Does the requirement for CCTV impose an additional burden on the trade that is not supported by any evidence? (Proposal 19)

The Dept. of Transport best practice guidance Taxi and Private Hire Vehicle licencing 2010 states "The aim of local authority licensing of the Taxi and Private Hire trades is to protect the public".

In recent years there have been several well documented instances of criminality associated with the taxi/private hire trade. An increasing number of local authorities are introducing policy requirements in respect of CCTV as a preventative tool to protect both drivers and the public. **(Appendix F)**

The Council acknowledges that there is currently little intelligence that suggests a CSE issue within Rossendale's taxi trade; however the Council has one of the largest fleets of licensed vehicles in the country. A large proportion of the vehicles work outside the borough of Rossendale and therefore opportunities for gathering of local intelligence and monitoring of licence holders is reduced. The Council receives significant numbers of complaints regarding driver conduct, some of which are of a serious sexual nature. **(Appendix G)**

The provisions regarding CCTV requirements will assist in the investigations of complaints. Although the claimant has repeatedly stated that the size of the licensed fleet will reduce because of the introduction of the hackney carriage intended use policy, the Council has seen a dramatic increase in private hire provision since the introductions of new provisions in the Deregulation Act 2015. This has increased from 4 vehicles in 2015 to 387 in Jan 2017. It is noted that within the consultation responses there was significant support for the introduction of mandatory CCTV.

In terms of reducing the financial impact, the minutes of the Licensing Committee meeting 15th November 2016 detail that the Council will explore opportunities for financial assistance in respect of this matter.

31. Vehicle tinted windows

Issue 3: Is the prohibition of tinted window vehicles evidence based? (Proposal 31)

The Letter Before Claim identifies that the tinted window policy was introduced in January

2016. The letter suggests that the policy was subsequently postponed. The Council does not consider that it was. **(Appendix H)**

The report to the Licensing committee dated 12th July 2016 (Para 5.7 ix) detailed that the trade continue to have concerns following the Licensing Committees decision to amend the policy. The trade were invited to provide further information. **(Appendix J)**

a2z's response to the taxi consultation makes reference to "opposing the current policy which was only adopted earlier this year (i.e. January 2016).

Having regard to the above, the Council considers any challenge on the current tinted window policy i.e. adopted January 2016 is now outside the time limits of the JR process which must be within 3 months of the policy being made.

The decision of the Licensing Committee on 15th November 2016 was to continue with the existing policy adopted in January 2016 i.e. no change.

26, 32,33 Basic Skills Assessment and Geographical Knowledge Test

Issue 4: Is the introduction of a basic skills assessment and a geographical knowledge test supported on renewal by evidence or otherwise arbitrary and unreasonable? (Proposals 26, 32 and 33)

All drivers licensed prior to July 2016 were not required to demonstrate any competency in English or maths. The Council's experience is that some licensed drivers cannot communicate effectively with officers or customers; this experience has been gained through telephone conversations with drivers, investigation of complaints, conversations at the one stop shop, feedback from colleagues in other authorities and the extensive use of interpreters during investigations and hearings. To date this financial year, the authority has spent over £6000 on interpreter fees when dealing with taxi drivers. This demonstrates that not all existing drivers develop language skills over time.

Having regard to the above the Council now consider that basic skills must be incorporated as part of the assessment of the "fit and proper test", as identified within the Local Government (Miscellaneous provisions) Act 1976.

The test cannot be discriminatory against any particular group. The provision of a grandfather rights period was considered, but was likely to be discriminatory in favour of white males, with the profile of the trade changing over time to become predominantly made up of drivers of South Asian origin.

The Letter Before Claims details case law for the Council to consider. The Council is not routinely considering revoking licences but requiring the standard be met at renewal. Having regard to that case law the Council does not consider its policy disproportionate. Some consultation responses sought policies changed with immediate effect. Such an approach has not been adopted.

For the purpose of clarity, comments made at the Licensing Committee on 15th November stated that in its present form the basic skills test requires improvement and should be made more relevant to the everyday needs of the taxi industry

The Council has already advised the taxi trade of the timescales involved in the formulation and procurement process for a revised basic skills, knowledge and conditions test.

The Council does not consider that it is an "arbitrary" requirement for all drivers to meet the standard required by the basic skills and knowledge test. The Council considers that this is a reasonable requirement in assessment of the "fit and proper" test referred to earlier.

A geographical knowledge test is deemed relevant as in accordance with the Council's Intended Use Policy, hackney carriage drivers will be predominantly working in Rossendale. The use of Sat Navs is recognised, however there are occasions where customers do not know postcodes/Sat Navs fail/ temporary road closures/accidents/floods etc., all

circumstances where local knowledge would be an asset in terms of alternative routes. It is deemed reasonable for taxi drivers to have a working knowledge of the geographical area in which they work.

The majority of North West Local Authorities have such tests in place. It is acknowledged that the absence of driver assessments has contributed to the current level of drivers licensed by Rossendale and the difficulties arising from this.

Licensing Committee minutes show that in 2006 the taxi trade requested on two occasions, the introduction of a knowledge test. **(Appendix K, L)**

35. Application Process

Issue 5: Was the process to be adopted for dealing with new applications from existing licensed drivers who wish to apply for another type of licence subject to consultation? (Proposal 35)

13. The allegation in this case is that in breach of paragraph 2.1 of the Code the Council failed to consult on the procedure it will adopt for dealing with applications by existing licensed drivers for another type of licence. The Council agrees it did not consult. However, it did not need to: the change of practice concerns an administrative process not a change of policy. Accordingly, there is no breach of the Code.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

6.1 Financial implications were previously noted in the 15th November 2016 report to the Licensing Committee.

The Council will continue to ensure that income and expenditure are matched.

7. MONITORING OFFICER

7.1 The Council must make a decision based on all relevant information and following consideration of all relevant Council policies.

8. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

8.1 There are no specific human resources implications.

9. CONSULTATION CARRIED OUT

9.1 All of the recommendations in this report relate to outline proposals approved by the Committee at its meeting on 15th November 2016, and no formal consultation has taken place since then

10. CONCLUSION

10.1 The report is in response to the Letter Before Claim submitted by the Rossendale Taxi Association and is submitted to seek ratification by the Committee of those decision made at the Committee meeting of the 15th November 2016.

Appendices

Document	Appendix Number
Letter Before Claim	<i>Appendix A</i>
Letter of Response	<i>Appendix B</i>
Vehicle Mileages on licensed vehicles	<i>Appendix C</i>
MOT pass rates	<i>Appendix D</i>
Auto Trader adverts	<i>Appendix E</i>
Press coverage	<i>Appendix F</i>
Driver Complaints	<i>Appendix G</i>
Minutes of Committee Meeting 25 th January 2016	<i>Appendix H</i>
Report to Committee 12 th July 2016	<i>Appendix J</i>
Report to Committee 17 th October 2006	<i>Appendix K</i>
Report to Committee 16 th March 2006	<i>Appendix L</i>