

MINUTES OF A MEETING of the Licensing Committee held on Thursday 16 December 2021 at 4 pm in the Guildhall.

**Present**

Councillors Claire Udy (Chair)  
Scott Payter-Harris (Vice-Chair)  
Dave Ashmore  
Kimberly Barrett  
Stuart Brown  
Tom Coles  
Charlotte Gerada  
Hannah Hockaday  
Ian Holder  
George Madgwick  
Lee Mason  
Robert New  
Daniel Wemyss

**5. Apologies for Absence (AI 1)**

Apologies for absence were received from Councillors Jason Fazackarley and Benedict Swann.

**6. Declarations of Members' Interests (AI 2)**

There were no declarations of interest.

**7. Minutes of the Previous Meeting (AI 3)**

**RESOLVED that the minutes of the previous meeting held on 15 October 2021 be approved.**

**8. London Road taxi rank update (AI 4)**

Hayley Chivers, Strategic Transport Lead, introduced the report

Members agreed that North End needs a taxi rank. Although they acknowledged the considerable work officers had done on where best to place the rank they requested that officers engage further with the taxi trade to find a solution which they prefer. Officers explained locating the rank further north along London Road closer to the junction with Laburnum Grove was deemed unsuitable because of the bus lane. However, they could carry out a formal road safety audit and obtain an independent opinion. Members requested further consultation with the bus companies and that an independent opinion be brought back to the Cabinet Member for Traffic & Transportation.

**The Licensing Committee noted the report.**

**9. Trial to allow Portsmouth City Council licensed Private Hire Vehicles in bus lanes in Portsmouth (AI 5)**

Felicity Tidbury, Transport Planning Manager, introduced the report.

Peter Sutherland made a deputation in favour of the report. Deputations are not minuted but can be viewed on the council's website at

[Agenda for Licensing Committee on Thursday, 16th December, 2021, 4.00 pm Portsmouth City Council](#)

In response to questions from members, officers explained the trial is for a minimum of three months but can be extended in case further evidence is needed. There have been no previous trials in Portsmouth but officers are looking at other areas, for example, Southampton, who have a permanent scheme. A trial will show if there is any impact on bus journey times.

The working group will be established in the New Year and will invite representatives from the taxi trade and all other current Portsmouth bus lane users, including cyclists and bus operators. Officers will work closely with the working group to monitor the trial and assess the impact on existing bus lane users. The trial is due to start in March 2022. It has a dedicated project manager who is formulating the working group's terms of reference.

Members thought extending the trial was important as normal travel habits have been severely impacted due to Covid. They looked forward to the trial and noted that taxis and PHVs are a form of public transport.

**The Licensing Committee noted the report.**

**10. Town Police Clauses Act 1847 and Part II, Local Government (Miscellaneous Provisions) Act 1976 - Hackney Carriage and Private Hire Matters - Amendments to Adopted Statement of Licensing Policy (AI 6)**

Bruce Hall of Aqua Cars made a deputation in favour of the report.

Peter Sutherland, Mahala Dyer, Tamas Bodolai, Mugurel Alin Coltea and Bogdan Alexandru Ungureanu made deputations against the report.

Written deputations from Tofayel Ahmed and Andrew Brown against the report were read out by the Chair.

Nickii Humphreys, Licensing Manager, introduced the report, noting that airport and executive services are exempt from the requirements for livery as recommended in the report. With regard to the summary of non-compliance with livery, she explained that Licensing Enforcement Officers have had to spend time dealing with drivers who are not using it correctly. In view of the severe impact of Covid on the taxi trade and the council's resources, enforcement officers have spent time in the last year where the demand is most required rather than driving around looking for non-compliant vehicles. The summary is based on verified data. If there were a similar number of compliance failures with alcohol and entertainment licence conditions it would be a concern for public safety. Correct use of livery is a mandatory condition applied to licences and it is not being used in accordance with members' instructions.

The Licensing Manager summarised the four tests the licensing authority must apply with regard to competition: will the proposed measures affect directly or indirectly the number of suppliers; will they affect the ability of suppliers to compete; will they limit suppliers' incentives to compete; will they limit choice and information for consumers?

Some local authorities (usually larger ones like Southampton, Eastleigh, Wolverhampton, Leeds, possibly Manchester) have recently implemented policies requiring vehicles to show the livery of the operator they work for. These developments reflect the changes nationally in the taxi trade and safety standards. Vehicles can come from other areas to Portsmouth but this allows for different standards, for example, some local authorities may have different standards for CCTV. No identification on vehicles can impinge on the public's safety and vulnerability, especially at night.

### Members' Questions

In response to questions officers clarified the following points:

Section 3.4; recommendation 6 - Officers agreed the wording could be made clearer to show that a grace period is permissible in line with the DfT's Statutory Guidance if a policy review results in a review of existing licences. It is reasonable to review a licence at the latest on its renewal. A private hire vehicle (PHV) or Hackney carriage driver licence can be issued for between 12 months and three years. A PHV operator's licence can be for 12 months or five years. PHV and Hackney carriage vehicle licences all have a maximum of 12 months. Five years could be too long to review existing licence holders but under 12 months could be too short.

The Legal Advisor advised that the report is a consultation document and that no decision is being taken today. He recommended the Committee notes the issues raised and that they be addressed in the Licensing Officer's report together with other responses from the consultation.

Section 4.6; recommendation 7 - Using the Disclosure and Barring Service (DBS) Update Service will reduce the cost for drivers from about £35 every six months to £13 pa for a registration fee. The Update Service means the local authority can check automatically and drivers do not need to come into the office.

Section 4.8; recommendation 16 - With regard to certificates of conduct to cover residence overseas, members noted that even if someone was abroad for one day they could still have committed a crime and so criminal record information should be required. Officers said members were ahead of their time in asking for certificates of good conduct. It is proposed to increase the age for which a certificate is required from ten to 18 in line with the DfT's Statutory Guidance. Whether information on criminal records as well as good conduct can be obtained depends very much on the country where someone lived. The Home Office provides useful information for local authorities and applicants about the information embassies can provide on criminal records and will be incorporated into the report.

Section 5.4; recommendation 21 - In response to comments that some convictions listed in the DfT Statutory Guidance are not in PCC's proposed policy, officers

explained the guidance has a broad remit and there are many considerations members will want to take into account. There are local policies, the DfT Statutory Guidance, and guidance from the Institute of Licensing, who work with the DfT and the Local Government Association, so there may be a combination of different policies. Members can make additions during the consultation. Other agencies such as the police and safeguarding will be consulted.

Section 6.0; recommendation 23 - Officers confirmed that an enhanced DBS check is mandatory every six months and the recommendation concerns the type of information sought, for example, vetting and barring. The DBS Update Service is about a more efficient way of checking rather than the content of the check.

Section 8.1; recommendation 31 - Officers acknowledged it was a very valid question about who exactly an operator is for organisations like Uber as it could be the app or the driver. They have considered this question and will seek further advice from the DfT and other local authorities. All licensing authorities have to give feedback on the DfT Statutory Guidance.

Section 10.0 - Members noted that the policy on age limits for wheelchair accessible vehicles had changed a year ago and was now changing again which could be annoying and unfair for the trade.

Section 11.1 - Officers said the summary of non-compliance with livery requirements was compiled purely from data supplied by licensing enforcement officers on patrol. The PHV trade used to be very localised with not many vehicles coming from outside the area but this has changed since de-regulation as bookings can be subcontracted. A customer in Portsmouth can request a PHV on an app but there is no guarantee it will be licensed with Portsmouth. If a vehicle is involved in an accident and has no livery to distinguish it then officers have to establish where it is licensed. Livery could state a car is an Uber vehicle but a Portsmouth Uber.

Covid has had a significant impact on the trade both locally and nationally and there is a shortage of drivers. As drivers can use multiple apps to find work they can "cherry pick" jobs so could cancel a less profitable job meaning vulnerable people could be left waiting late at night for drivers who do not appear. Public safety and customer satisfaction are relevant considerations for members.

Members thought that as the trade was facing difficult times "cherry picking" jobs was understandable though they noted safety concerns. Mr Sutherland said that as self-employed workers drivers can choose where they place their labour inconvenient though it might be. Fixed operator livery would restrict drivers' ability to take jobs. Sometimes drivers have to change a booking on an app which then automatically searches for another driver; this appears as a cancellation to the customer. Uber drivers are not required to show any operator livery. One of the deputies said people can raise a complaint with the council if they feel they have been left vulnerable because of a cancelled booking. Mr Hall said that regardless of who drivers work for, customers must know whose car they are getting into and where it is licensed. Magnetic or adhesive livery can be used but it must be visible.

### Members' Comments

Members asked if there were complaints from the public and reported issues as a result of livery not being displayed correctly. It is unfair to penalise all self-employed drivers who may then choose to work in other areas and exacerbate the shortage of drivers. Those who break the rules will just work somewhere else and still break the rules. If drivers work for one company they become employees and will have employment rights. The council does not pay them an hourly wage so there is no need for them to conform with its regulations.

Officers explained that once a vehicle is a PHV or a taxi it is always one. The Licensing Act 1976 stipulates that if a vehicle is licensed then a plate has to be affixed to it; its status does not change whether it is used privately or professionally. Hackney carriages used to have their own taxation class and needed an MOT every 12 months as opposed to every three years. They cannot be one or the other; they are licensed vehicles until the licence is revoked or renewed. The Legal Advisor referred to the cases of *Benson v Boyce* for PHVs and *Edwards* for Hackney carriages which confirmed this principle.

Officers confirmed that the summary of non-compliance checks were separate incidents, not repeat offences, witnessed by impartial officers. Officers had seen at least three instances of magnetic signage in the wrong place on vehicles. Some signage does not adhere to aluminium so instead of using adhesive drivers put them on the wrong part of the vehicle. Officers had recently seen two instances of vehicles with no livery.

Members felt the lack of evidence was apparent and felt uncomfortable making a decision that would make life very difficult for the trade. They expected to see a breakdown with figures of compliance versus non-compliance. There was also some concern about the way the recommendations were written as they were not sufficiently neutral. A trial of more severe penalties for not displaying livery correctly might be more effective together with a more inclusive approach with local firms. They felt evidence of vulnerable passengers being left waiting was weak. If members considered more detailed accounts of incidents then the Committee may have to meet in closed session to protect people's identities. Officers advised they would need to consult the Chief Constable as to what information could be made available about offences.

The Chair said that although she was in favour of fixed livery at the back of vehicles and magnetic at the front she recognised other members' views, but the report is currently a consultation at this stage. She encouraged engagement with the consultation.

Officers explained that if members wished enforcement officers to focus on issues with livery, the Licensing Office could do this but will have to consider how it uses its resources and perhaps move focus away from other areas. Members suggested the Licensing Office should be adequately funded.

Officers apologised for the design of the magnetic livery, which some members felt was unattractive, but there are very few suppliers. However, it can be changed. Operator livery is a proposal for consultation but it is a pre-requisite for a vehicle to

have council livery. Depending on the result of the consultation, there could be separate reports on the DfT Statutory Guidance and the issue of livery as a whole.

The Legal Advisor reiterated that the report is a consultation document and that no decision is being taken today. The Committee's strong views that the recommendation for permanent livery is removed could be noted but the consultation should still proceed. If the recommendation is removed at this stage then it cannot be part of the consultation and would remove the opportunity for comment on it. Correspondence has already been sent to interested parties informing them they can make a representation when the consultation starts. Today's meeting is the start of the consultation and will not restrict or bind the Committee in any way.

Members felt that even though the report is a consultation document it cannot be used in its current form. They felt the evidence in Section 11 on non-compliance with livery was not strong enough to proceed to consultation. A revised document could include information on a stronger penalty system and options such as magnetic signage that could be placed on top of other signage. Members requested that a revised report be brought back to another meeting in March, which would allow time for extra evidence to be made available.

**The Licensing Committee resolved to reject / defer the report in relation to item 6 on the agenda.**

The meeting concluded at 6.20 pm.

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Signed by the Chair, Councillor Claire Udy