

Licensing Committee

20 November 2019



Title	Revision of Hackney Carriage and Private Hire Licensing Policy		
Purpose of the report	To make a decision		
Report Author	Rob Thomas, Principal Licensing Officer		
Cabinet Member	Councillor Richard Barratt	Confidential	No
Corporate Priority	Clean and Safe Environment		
Recommendations	It is recommended that the Licensing Committee approves the revised Hackney Carriage and Private Hire Licensing Policy, as attached at Appendix A.		
Reason for Recommendation	Spelthorne Borough Council's Hackney Carriage and Private Hire Licensing Policy (hereafter referred to as 'the Policy') was revised in line with draft updates to the DFT's best practice guidance. Committee members agreed at their September 2019 meeting that the revised Policy be consulted on and a public consultation was carried out over the course of four weeks. Comments received have been included within the body of this report and its appendices for consideration.		

1. Consultation

- 1.1 At the Licensing Committee held on 4th September 2019 members approved an amended draft version of the Policy (**attached as Appendix A**) for consultation.
- 1.2 The Policy was sent out to interested parties on 6th September 2019, with a covering message advising that responses should be received by 4th October 2019. It was also published on Spelthorne's website for consumption by the wider public, and advertised via Spelthorne Licensing's social media channels.
- 1.3 During the consultation, comments were received from 17 interested parties.

2. Summary of key matters for consideration

Amendments to the Policy which the Council received comments on during the course of the consultation are as follows: -

- amendments to the criminal record checking process (via the Disclosure and Barring Service [DBS]);
- provisions of wording to give clear direction in respect of applications from app-based Private Hire Operations;
- requirement for all Private Hire Operators (PHOs) and their controllers to

complete Barnardos' safeguarding vulnerable adults and CSE online training module;

- consideration to imposing restrictions on window tinting in licensed vehicles; and
- the implementation of a joint warranting scheme in conjunction with other Surrey authorities.

3. Comments received on the adoption of NAFN's National Register of Refusal and Revocations (NR3)

3.1 Although no comments were received about the adoption of the NR3, 14 drivers historically refused or revoked a Private Hire or Hackney Carriage driver licence were written to in order to pre-emptively advise them that it was Spelthorne Borough Council's intention to put their data onto the register.

3.2 Of these 14 drivers: -

- three contacted the office with a view to re-applying,
- one queried whether it was really necessary for his details to be added to the register and
- one formally objected in writing to the addition of his details.

The written objection is being considered by Spelthorne's Legal department at present.

3.3 The consensus from conversations with existing licensees is that the addition of this measure is a welcome one.

4. Comments received on amendments to the criminal record checking process (via the DBS)

4.1 A couple of drivers appeared to misunderstand proposed amendments to the DBS criminal record checking process and highlighted that they did not think it was fair for Spelthorne Borough Council to insist that licensees born overseas return to their native embassy or high commission for subsequent checks covering time spent living abroad before they entered the UK.

4.2 There is no mention of such a measure in the draft consultation document.

4.3 For clarity, no changes have been made to requirements for new applicants to submit criminal record checks or certificates of good conduct from their native embassy or high commission; and existing licensees who have already complied with this requirement will not be obliged to do so again unless they have subsequently lived abroad for a year or more during their licensable tenure (as per page 5 of the existing policy).

4.4 Requiring all existing licensees to sign up to the DBS' online update subscription service as agreed in principle by the Committee in August will have no impact on requirements for overseas criminal history checks.

- 5. Comments received on provisions to account for app-based Private Hire Operations**
- 5.1 One licensed operator utilised the consultation period as an opportunity to express distaste for Uber's operation. Uber are not presently licensed by Spelthorne Borough Council and, in spite of contact with Spelthorne's Licensing Department dating back a couple of years, do not appear to be in a position to lodge an application at the present time.
- 6. Comments received on the requirement for all Private Hire Operators and their controllers to complete Barnardos' safeguarding vulnerable adults and CSE online training module**
- 6.1 One driver who has already sat and passed the Barnardos module also doubles-up as a Private Hire Operator and questioned whether he would be required to sit the module again accordingly. Obviously, this is not our intention – though it was stressed that, if his business expands and he needs to employ controllers to work for him, then new employees *will* need to sit the module.
- 7. Comments received on amendments to window tinting criteria**
- 7.1 Subsequent to the comments included in the last report, 13 drivers sent in a letter (attached as **Appendix B**) objecting to the proposed changes to window tinting criteria.
- 7.2 The letter appears to misunderstand the proposed changes, citing that it is unreasonable to expect drivers to change factory fitted glass. This is not what was agreed at the Licensing Committee in September or consulted on – members moved to agree that Grandfather rights would be awarded to the owners of vehicles already licensed with Spelthorne Borough Council for the remainder of their licensable tenure. The new measures are not retrospective and it is intended that they will be applied to *new* vehicles being submitted for licensing going forward.
- 7.3 Members are however asked to consider whether they think a midway measure requiring the removal of adhesive tint is appropriate. This would be far less costly to drivers and easy to rectify; but could be considered unfair on those drivers as they will potentially bear a cost burden that those with factory fitted tinted glass will not.
- 7.4 Two further drivers submitted e-mail responses to this item (attached as **Appendix C** and **D** respectively).
- 7.5 Both drivers cite a shortage of vehicles without tinting being available as a reason for the Council not to adopt this measure, and suggest that doing so will force them to incur extra costs.
- 7.6 One driver makes specific mention of a hybrid Mitsubishi Outlander, which he has been intending to buy. He suggests that by imposing new restrictions on window tinting the Council will be forcing him to acquire a vehicle which is less environmentally friendly – as he would not be willing to cover the cost of replacing factory-fitted tinted glass when acquiring a new car.

- 7.7 In response to these comments, Spelthorne's Licensing department would refer the Committee to documentation circulated on the evening of the last meeting (attached to the minutes), which indicate an abundance of vehicles available that *would* comply with the new criteria. With reference to the comments about the Mitsubishi Outlander, this would be a discussion for any prospective buyer to undertake with the car dealership – if buying a vehicle new there *may* be scope to swap out the type of glass the vehicle ships with.
- 7.8 Ultimately, the Committee needs to balance out the interests of the drivers and choices available to them with the safety of the Private Hire and Hackney Carriage-using public; the latter being the primary function of the Licensing Department.

8. Comments received on the implementation of a joint warranting scheme, in association with other Surrey authorities

- 8.1 Subsequent to the comments included in the last report from a member of the trade who felt it was unfair to give other Surrey authorities powers to take enforcement action when they would do nothing to benefit him, nothing else supplementary has been received regarding this item.
- 8.2 With reference to this point, questions have arisen since the Committee meeting in September regarding the breadth of powers required to be delegated to Licensing Officers employed by other Surrey authorities. Spelthorne's Licensing department is currently awaiting further information from counterparts elsewhere to get some clear direction on exactly how Spelthorne's delegations need to be amended.
- 8.3 It will however be to the benefit of the scheme if the wording contained within the body of the draft policy is left as originally agreed by the Committee, so that it features when published. This way, at such a time as the scheme of delegations is amended – Hackney Carriage and Private Hire drivers will be aware that they should expect to be subject to action taken wherever they go in Surrey.

9. Comments received from the Licensing Team Leader at Guildford Borough Council

- 10.1 The Licensing Department was grateful to receive input from a colleague working at Guildford Borough Council, which is attached as **Appendix E**.
- 10.2 Key items for consideration, along with responses are listed below: -
- Suggestion of equalities training as outlined in the draft guidance
It is our intention to wait for the final version of the guidance to be published before pursuing this further, as it may be that the final version of the guidance gives a clear steer on which training it deems appropriate. Whilst we acknowledge that training on a number of items will be a positive for the licensed trade within the borough, the Council should be reluctant to impose any requirement on its licensees which might later turn out to be out of sync with what other authorities are requiring. A BTEC is a big undertaking, and as such we need to be sure this is the correct measure before requiring Spelthorne-licensed Hackney Carriage and Private Hire drivers complete it.

- Reduction in the age limit for licensable vehicles

This item is the subject of much debate at the moment. Some Surrey authorities: -

- have shorter age limits,
- have no age limit whatsoever, or
- instead impose restrictions based on emissions standards.

There is not yet an agreed best course of action and there are pros and cons to each one.

Historically, Spelthorne's Licensing Committee elected to reduce the age limit of licensable vehicles from ten years to seven. The trade appealed this decision and the original age limit was reinstated. Given this chain of events, at this point in time it therefore seems practical to wait for a solid steer from central government and / or an agreed best course of action through the Surrey Licensing Forum. Bearing in mind Spelthorne's heavy involvement in the Heathrow expansion and pollution control, it seems logical to give heavy consideration to emissions going forward.

- A register of all staff taking bookings for Private Hire Operators should be kept

This has already been covered on page 7 of the draft policy, however Mr Smith does raise a good point regarding PHOs having their own policy on employing ex-offenders. I think it would be prudent to give some steer on this and would perhaps suggest that the Committee agrees to addition of wording at the top of page 8 outlining that the Council expect PHOs to give regard to the same Surrey-wide convictions policy that the Council itself uses to determine applications from prospective drivers with relevant convictions. Doing otherwise would potentially result in a situation where we can be confident that licensed drivers are fit and proper; but cannot say the same for the people passing work to them (who have access to sensitive information about empty properties, vulnerable individuals etc.).

10. Options analysis and proposal

- 10.1 Most of the changes detailed in the draft Policy mean that Spelthorne's Licensing department will be working in line with the rest of Surrey. This is important in order to promote consistency and avoid the potential for prospective applicants to "shop around" authorities in order to find one which best suits their needs.
- 10.2 The changes also generally fall in line with draft best practice guidance.
- 10.3 Spelthorne's Licensing department do not consider that any of the comments or objections to the proposed changes are extenuating or provide good enough reason to counteract their benefits, especially where most measures cited are with a view to the benefit of the safety of the public.

11. Financial implications

- 11.1 There are financial implications for licensees and prospective applicants, which need to be taken into consideration: -
- PHOs will incur additional costs as a result of needing to provide criminal record checks for their controllers (a basic check is currently costed at £20), as well as Barnardos' safeguarding vulnerable adults and CSE online training module (charged at £19 per applicant).
 - Proposed amendments to window tinting in licensed vehicles will certainly have a financial impact on those applicants using or looking to use a vehicle with tinted windows as a taxi or private hire vehicle. It is important to give this weight, whilst also bearing in mind that the overriding role of Spelthorne in its function as Licensing authority is to protect the taxi-using public.

12. Other considerations

- 12.1 The amendments to the Policy consulted on highlight that Spelthorne Borough Council is an in-touch organisation, keen to work in a manner consistent with nearby counterparts in order to promote equality for all involved with the Hackney Carriage and Private Hire licensing trades.
- 12.2 The changes to policy and procedure will help the Licensing department contribute towards intelligently making full use of information, to assist members in decision making, and to drive service improvement – delivering a higher standard for all involved and thus improving the quality of life for residents in the area.
- 12.3 Ultimately, above all else, the ethos of regulating the Hackney Carriage and Private Hire trade is to ensure safety and efficiency for the people using its services. One should be able to assume that any booking made will be recorded by a reliable and trustworthy individual, carried out by a fit and proper individual, in a car that is mechanically and aesthetically sound and suitable for this purpose. The measures proposed should assist in ensuring this to be the case.

13. Timetable for implementation

- 13.1 If the Committee is minded to agree the Hackney Carriage and Private Hire Licensing Policy should be published as consulted on, this can be done at once.
- 13.2 At such a time as the Policy is published, certain elements will take time to implement and be subject to timescales, as outlined within the Policy itself: -
- Mandatory subscription to the DBS' online update service will need to be rolled out over a three year period, as new applications are submitted – because it is only possible to subscribe to the online update service at such a time as one has an application outstanding with them. On this basis, it is not anticipated that further paper copy applications will need to be submitted to the DBS beyond September 2022.

- Safeguarding vulnerable adults and CSE training for all controllers working for PHOs in Spelthorne should be achievable within a relatively short time, and – in accordance with wording added to the Policy – within six months. In order to allow operators ample time to address this measure it would be reasonable to expect them to be in a position to produce certificates for all staff on request by June 2020.
- Restrictions on window tinting will need to be rolled out over time, to allow 'Grandfather rights' for licensees to continue using already licensed vehicles which are fitted with tinted glass.

Appendices:

Appendix A – Spelthorne's Hackney Carriage and Private Hire Licensing Policy 2019

Appendix B – letter received from multiple drivers regarding window tinting criteria

Appendix C – e-mail dated 04/10/2019 regarding window tinting criteria

Appendix D – e-mail dated 06/09/2019 regarding window tinting criteria

Appendix E – e-mail from Mike Smith, Licensing Team Leader at Guildford Borough Council