

Part A

**Report to:** Licensing Committee

**Date of meeting:** Thursday, 12 January 2023

**Report author:** Senior Licensing Officer (AY)

**Title:** Review of Hackney Carriage and Private Hire Licensing Policy

**1.0 Summary**

1.1 The licensing authority has recently conducted a consultation on amending our Hackney Carriage and Private Hire Licensing Policy, specifically in regards to whether drivers should be required to accept card and contactless payments and to clarify the position on driver medicals.

1.2 This report details the results of this consultation as well as the proposals to amend the policy for your consideration.

**2.0 Risks**

<b>Nature of risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> (treat, tolerate, terminate or transfer)	<b>Risk Rating</b> (combination of severity and likelihood)
Legal challenge to decision if consultation comments not properly considered	Negative perception of council and its licensing functions, and challenge through the Courts	Ensure that results of public consultations are thoroughly considered and amendments to proposed policy made where necessary and appropriate	Treat	Medium
Policy is unreasonable, irrational, discriminatory etc.	Legal challenge through the courts	Ensure that the results of the public consultation are taken into account in the final policy.	Treat	Medium
Legal challenge from failure	Negative perception of council and its licensing functions,	Consider results of consultation in accordance with the	Treat	Medium

to properly follow legislation and Government guidance	and challenge through the Courts	relevant legislation and guidance		
--	----------------------------------	-----------------------------------	--	--

### 3.0 Recommendations

3.1 That the following proposed policy amendments be approved, subject to any amendments proposed and approved by the committee:

- That a condition requiring drivers to provide means to accept contactless payments be attached to all vehicle licences under section 16.13.3 of the policy (please see paragraph 5.7 of the report)
- That the policy of requiring drivers to submit regular medicals be amended so that medicals are required upon initial application, every 5 years from the age of 45 until the age of 65, and yearly from the age of 65 under section 15.6 of the policy (please see paragraph 6.9 of the report)
- That minor amendments to policy are approved to clarify job titles and a correct a reference to another section within the policy (please see paragraph 7.1 of the report)

These policy amendments are to be in force from 1 April 2023 or such date as decided by the committee to allow time to implement the approved changes.

**Further information:**

Austen Young  
austen.young@watford.gov.uk

**Report approved by: Justine Hoy, Associate Director Housing and Wellbeing**

### 4.0 Background to proposal

4.1 The council has powers under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 to licence drivers of hackney carriage and private hire vehicles. The 1976 Act also allows the council to licence vehicles to be used for hackney carriage and private hire vehicle work.

4.2 Under section 47 of the Local Government (Miscellaneous Provisions) Act 1976 a council may attach such conditions to a hackney carriage vehicle licence as the council may consider reasonably necessary. Section 48 of the Act grants the same power in respect of private hire vehicle licences.

- 4.3 The council was approached by the Watford Hackney Carriage Driver's Association with a request to make it compulsory for all licensed vehicles to accept card and contactless payments. The current policy does not make it mandatory to have a device which accepts contactless payments, but they are not prohibited either. All vehicle licences are granted subject to a condition which requires card machines to be available where they are advertised on the vehicle, but this condition did not make it compulsory for all vehicles to offer such machines and payment methods. There was a suggestion that some drivers were refusing jobs due to not having card machines available, or they were not working, particularly for short local jobs which is illegal and risks creating a negative perception of Watford drivers. Since this would require a change in policy we were required to consult on this proposal.
- 4.4 Under section 57 of the Local Government (Miscellaneous Provisions) Act 1976, the council can require applicants for a driver's licence to submit such information as the council deems reasonably necessary to enable the council to determine if the licence should be granted. The Act states that, without prejudice to any other section, this includes the ability to request a certificate signed by a registered medical practitioner which confirms that the applicant is physically fit to act as a licensed driver.
- 4.5 The Department for Transport's (DfT) Taxi and Private Hire Vehicle Licensing: Best Practice Guidance states that it is best practice to apply the DVLA Group 2 medical standards to taxi and private hire drivers. This standard usually applies to drivers of lorries and buses, but it is recognised that taxi and private hire drivers should have more stringent medical standards than those applicable to normal car drivers because of the nature of their work.
- 4.6 It was decided to consult on the council's policy on requiring driver medicals to provide clarity around the current wording. It is appropriate that the council takes this action in order to clearly state which is expected of licence holders and applicants. The council currently requires satisfactory medicals from drivers on first application, every 5 years from the age of 55 to 70 (inclusive), and every year after the age of 70, but the wording in the policy only states that medicals must meet the DVLA Group 2 standards. This was carried out at the same time as the consultation on card payments because both required a change in policy.
- 4.7 The consultation ran from 1 November to 30 November 2022. This was considered to be a reasonable length of time for the consultation in accordance with the Government's consultation principles, which state that consultations should last for a proportionate amount of time. The consultation was only with regards to two proposals and avoided any holiday periods, such as summer school holidays and the Christmas period. Details of the consultation were published on the council's own website, including the taxi webpages for drivers and vehicles, were published in the Watford Observer, and existing licence holders were contacted directly. This

approach was broad to cover residents as potential service users and licence holders for their views.

4.8 The full results of the consultation are attached at appendix 1.

## **5.0 Contactless payment proposal**

5.1 The council asked for consultees to pick from one of the following options:

- Hackney carriages (taxis) and private hire vehicles should provide a means of paying for fares by card or a contactless method at all times
- Hackney carriages (taxis) only should provide a means of paying for fares by card or a contactless method at all times
- Private hire vehicles only should provide a means of paying for fares by card or a contactless method at all times
- There should not be a requirement for Hackney carriages (taxis) or private hire vehicles to provide a means of paying for fares by card or a contactless method at all times

5.2 These options allowed people to pick which type of licensed vehicle should be required to take contactless payments, with an option to select hackney carriages, private hire vehicles, or both, or to disagree with the proposal.

5.3 The consultation mentioned card and contactless payments due to the increasing popularity of banking and payment apps on mobile phones, so it was not limited to card payments only.

5.4 There was overwhelming support (77.68% of responses) for requiring hackney carriages and private hire vehicles to provide a means of accepting contactless payments at all times.

5.5 Officers recommend that, in response to the consultation results, the council should make it a condition of all vehicle licences, both hackney carriage and private hire vehicles, that there should be a method of accepting contactless payments available in the vehicle at all times. The consultation shows support for this approach and the original request was received from the trade, and acknowledging that card and contactless payments are accepted gives greater choice for passengers. This would amend section 16.13.3 of the policy with regards to the provision of payment devices, and also appendices 4 and 5 of the policy which set out the standard conditions for hackney carriage vehicle licences and private hire vehicle licences respectively.

5.6 Drivers would be responsible for sourcing their own devices, and it is suggested that the council does not state a specific device shall be used, allowing the greatest flexibility. Portable card readers can start from £20-£40 and can be supported with applications on the driver's phone to allow for other remote payment options.

5.7 The new condition is proposed to read as follows, as per the wording in the consultation:

“The vehicle proprietor must ensure that they provide a means for passengers to pay for fares by card or a contactless method at all times”

This proposed condition can be found in appendices 4 and 5 of the draft policy attached at appendix 2. The justification for the policy can be found at section 16.13.3 of the draft policy.

5.8 This condition confirms that drivers must at all times provide a method for passengers to pay for a journey by not using cash. Drivers who choose to operate a card payment machine will satisfy this condition providing that the machine is working. Drivers who operate an application on their phone, which may be their own operator’s mobile application, which can accept payments would also satisfy this condition. Private hire operators may also arrange for payments to be made direct to their office by phone. Failure to provide such means of payment will be a breach of the condition.

5.9 There is no minimum or maximum payment limit in order to provide the greatest offer for customers and prevent short, local, jobs from being refused due to them falling under a prescribed value. It should also be noted that it is not legal for drivers to charge a surcharge for paying by card and such charges have been illegal since January 2018. Hackney carriage drivers are limited to only accepting payments set by the council’s tariff, which does not include any additional payments for card or contactless payments. Private hire firms are responsible for setting and advertising their own fares and enter into a contract with the respective customer.

5.10 The new condition would need to replace the existing condition regarding card payment machines attached to both hackney carriage and private hire vehicle licences which read:

“Credit Card Machines

If a card machine is advertised as in use it shall be available for every passenger unless a fault prevents its use.”

5.11 It will also be necessary to amend the vehicle condition regarding the advertisement of payment facilities. The existing policy states the following with regards to the display of signage on the vehicle:

“Vehicles may only display the following window stickers or signs providing that they do not obscure vision...

(g) A sign advertising the availability of debit or credit card facilities”

5.12 With the vehicle licence conditions being amended to read that payment can be accepted by card or contactless methods officers would advise that this condition be amended so that it does not just refer to card payments. It is suggested that this condition is amended to read:

“Vehicles may only display the following window stickers or signs providing that they do not obscure vision...

(g) A sign advertising which contactless payment methods are accepted”

This is covered in the draft policy at section 16.14.8 and can be found in the standard vehicle licence conditions at appendices 4 and 5 of the draft policy.

5.13 During vehicle licence renewals between September and November 2022, officers did carry out informal consultation to establish how many vehicles currently had devices which could accept contactless payments. Over the period of 2½ months that we carried out these checks, just over 33% of vehicles were found to currently have devices. This applies to both hackney carriage and private hire vehicles, with 38% of private hire vehicles seen carrying payment devices, and 33% of hackney carriage vehicles seen carrying payment devices.

5.14 To allow all drivers the opportunity to obtain a contactless payment device, it is suggested that this condition is only attached to vehicle licences granted from 1 April 2023. This allows drivers who need to renew their vehicles licences during the month of April and shortly thereafter the opportunity to source the necessary equipment. The condition will not be retrospectively attached, but over the course of 12 months every vehicle should be seen for a renewal and each vehicle will eventually be granted a licence with the new condition by April 2024.

5.15 A draft amended policy which confirms this approach is attached at appendix 2.

## **6.0 Driver medicals proposal**

6.1 The council asked for consultees to pick from one of the following options:

- Licensed drivers must submit a satisfactory medical upon first application and then submit satisfactory medicals every 5 years from the age of 55, then every year from the age of 70
- Licensed drivers must submit a satisfactory medical upon first application and then submit satisfactory medicals every 5 years from the age of 45, then every year from the age of 65
- Licensed drivers must submit satisfactory medicals at a different frequency (please specify)

6.2 These options allowed people to pick whether the council should continue with the current practice of requiring a medical on initial application and from the ages of 55 and 70, adopt an approach must closer to the DVLA group 2 standards or requiring a medical on initial application and from the ages of 45 and 65, or to suggest an alternative approach.

6.3 The current policy states the following with regards to ordinary driver medicals:

#### 15.6 Medical Tests

You will need must book your medical with your regular or usual GP, taking along the medical form to your appointment for your GP to complete. You must reach the standard of the DVLA group 2 medical requirements which can be found here <https://www.gov.uk/guidance/general-information-assessing-fitness-to-drive>. A medical is valid for six months

6.4 Officers use the distinction of ordinary driver medicals because drivers may obtain a medical exemption from the council from having assistance dogs in their vehicles or from accepting passengers in wheelchairs (see 16.3.1 of the policy) or specific medicals with regards to satisfying the council that they are not alcohol or drug dependent (see 18.11.3 and 18.11.6 of the policy). The option for consideration only concerns medicals required at initial application and then during the length of the relevant licences held by the driver.

6.5 It is relevant to mention that the DfT's Taxi and Private Hire Vehicle Licensing: Best Practice Guidance states the following on driver medicals:

67. It is clearly good practice for medical checks to be made on each driver before the initial grant of a licence and thereafter for each renewal. There is general recognition that it is appropriate for taxi/PHV drivers to have more stringent medical standards than those applicable to normal car drivers because:

- they carry members of the general public who have expectations of a safe journey;
- they are on the road for longer hours than most car drivers; and
- they may have to assist disabled passengers and handle luggage.

68. It is common for licensing authorities to apply the "Group 2" medical standards – applied by DVLA to the licensing of lorry and bus drivers – to taxi and PHV drivers. This seems best practice. The Group 2 standards preclude the licensing of drivers with insulin treated diabetes. However, exceptional arrangements do exist for drivers with insulin treated diabetes, who can meet a series of medical criteria, to obtain a licence to drive category C1 vehicles (ie 3500-7500 kgs lorries); the position is summarised at Annex C to

the Guidance. It is suggested that the best practice is to apply the C1 standards to taxi and PHV drivers with insulin treated diabetes.

- 6.6 A number of alternative suggestions were submitted in respect of the frequency of medicals as can be seen through the consultation responses. While all responses are appreciated, the summary of the responses is that there was no clear preference for one specific alternative approach or any other approach which required further consideration.
- 6.7 A number of responses suggested that the council should require medicals of a frequency of every 2 years or less. It is noted that this approach would be more stringent than both the Group 2 standards for bus and lorry drivers and also the DfT's Best Practice Guidance and was not a majority view among the responses. Officers are wary of applying stronger standard than what is accepted as being best practice without good reasons to do so. Responses were also received that suggested applying less stringent standards, such as only requiring medicals every 10 years or every 2 years after the age of 70. This would result in relaxing standards which could pose a risk to public safety. Some responses did appear to support carrying out medicals every 5 years without specifically mentioning or clarifying what should happen once drivers reach the age of 65 or older, and some of these responses did suggest that the requirement for submitting a medical should occur at different starting ages.
- 6.8 The council must also have regards to the Regulator's Code when developing policies. The Code states that regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should choose proportionate approaches to those they regulate. Regulators should consider how they might support or enable economic growth by minimising the costs of compliance.
- 6.9 The council needs to balance the expectations of service users and the promotion of public safety through the taxi and private hire licensing regime, and consider the Regulator's Code. Officers consider that this can be achieved by following relevant Government guidance, in this case the DfT Best Practice Guidance, and not go beyond the scope of this guidance unless good reasons can be provided. It is acknowledged that medicals are paid for by applicants and licence holders, so this is a cost that they must meet, but the DfT say that it is best practice to require a medical on applicant and each renewal thereafter. The consultation mentioned requiring a medical on first application, every 5 years after the age of 45 and every year after the age of 65 in accordance with the Group 2 medical standards so that taxi and private hire drivers were treated to the same standard as lorry and bus drivers.
- 6.10 The option which received the majority support from the consultation was for licensed drivers to submit a satisfactory medical upon first application and then



submit satisfactory medicals every 5 years from the age of 45, and then every year from the age of 65. Officers would therefore recommend the adoption of this amendment.

6.11 As suggested in section 5.10, it is recommended that any changes to policy do not come into force until 1 April 2023 to allow time to communicate the change to drivers.

6.12 A draft amended policy is attached at appendix 2 and includes the recommendation identified above at section 15.6 of the draft policy.

## 7.0 **Minor housekeeping**

7.1 Officers would also suggest some minor amendments to policy as part of general good housekeeping. These amendments concern changes to job titles as a result of change in roles and responsibilities. There is also a need to correct a reference to a policy section which was incorrect, remove a duplicated section number and update the reference to the council's compliance policy.

7.2 These changes have no material effect on the policy and still involve the same senior officers, but they now more accurately reflect the council's organisational structure. Correcting the error in referencing another part of the policy, correcting a duplicated section number and updating the title of the council's compliance policy helps people navigate the policy.

7.3 It is noted that such administrative changes can be made under delegated authority, but with other changes to policy proposed officers have taken the opportunity to update these titles and this mistake in directing people to other sections of the policy. Confirming these changes in a public report also allows more transparency.

7.4 These amendments are included in the draft policy attached at appendix 2.

## 8.0 **Implications**

### 8.1 **Financial**

8.2 The Shared Director of Finance comments that there are no financial implications directly arising from this report.

### 8.3 **Legal Issues (Monitoring Officer)**

8.4 The Group Head of Democracy and Governance comments that the legal implications are contained in the report.)

## 8.5 Equalities, Human Rights and Data Protection

8.6 Under s149 (1) of the Equality Act the council must have due regard, in the exercise of its functions, to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share them
- foster good relations between persons who share relevant protected characteristics and persons who do not share them.

8.7 As this is a change to an existing policy, an equalities impact analysis has been undertaken. The analysis is attached as appendix 3 to this report. The main conclusions of that analysis are, as detailed in the impact analysis, that the amendments are overall positive for the Watford community and visitors to the town. It is recognised that there will be negative impacts for some drivers but the licensing authority will work with drivers to mitigate their concerns as far as possible.

## 8.8 Community Safety/Crime and Disorder

8.9 Section 17 of the Crime and Disorder Act 1998 requires the council to give due regard to the likely effect of the exercise of its functions on crime and disorder in its area and to do all it reasonably can to prevent these. Due to the changes proposed, there are no crime and disorder implications.

## Appendices

Appendix 1 – Consultation responses

Appendix 2 – Draft Hackney Carriage and Private Hire Licensing Policy

Appendix 3 – Equalities Impact Analysis

## Background papers

Hackney Carriage and Private Hire Licensing Policy 2021 – 2026 (existing policy)

Department for Transport's Taxi and Private Hire Vehicle Licensing: Best Practice Guidance (March 2010)

Better Regulation Delivery Office: Regulators' Code (April 2014)

Local Government (Miscellaneous Provisions ) Act 1976

Town Police Clauses Act 1847