

REPORT TO	ON
GENERAL LICENSING COMMITTEE	11 JULY 2017

Jan 2017



TITLE	AUTHOR	Agenda item No.
“OUT OF TOWN” DRIVERS: PRESENCE IN THIS BOROUGH OF DRIVERS LICENSED BY OTHER AUTHORITIES	PETER HAYWOOD	

1. PURPOSE OF THE REPORT

1.1 This report gives background information relating to the presence of drivers operating within South Ribble when they have not been licensed by South Ribble Borough Council. The report attempts to identify the legal / practical circumstances when “out of town” drivers may lawfully operate in the Borough; consider the risks that this situation may pose; and set out a range of options that members may wish to consider to combat this situation moving forward.

2. RECOMMENDATIONS

Members are requested to:

- 2.1 note the various scenarios outlined in this report in which drivers licensed by another local authority may legitimately operate in this Borough;
- 2.2 consider the steps taken to date by this authority to regulate those drivers licensed elsewhere; and
- 2.3 consider whether any further measures should be taken to further strengthen the Council’s position, including:
 - i) explore whether to consult on the draft Intended Use Policy attached as Appendix 1 and proposed amendment to section 6.14 of the current Licensing Policy (as set out in section 7.12 below); and
 - iii) adopt the suggested consultation process outlined at section 10.1 below.

3. EXECUTIVE SUMMARY

3.1 This report outlines the regulatory position regarding “out of town” drivers, ie those drivers licensed by another local authority but legitimately entitled to work in the Borough of South Ribble. There are several situations in which such drivers may operate legitimately, namely:

- i) Where case law permits holders of a Hackney Carriage Driver’s Licence granted in another Borough to act as a Private Hire driver in the area of another local authority. This has been increasingly recognised in recent years as an area of real concern (with some of the risks posed by “out of town” drivers articulated in Section 6 of this report). However, local authorities which have previously borne the brunt of criticism for condoning this approach are now adopting Intended Use Policies and as a result the problem is diminishing. In order to ensure that this authority is promoting the safety of the public (through enabling the licensing regime for hackney carriages to be applied and enforced locally), it is suggested that members consider the formal adoption of such an Intended Use Policy by this authority (see Appendix 1);

- ii) As a result of the Deregulation Act 2015, operators licensed in South Ribble may choose to sub-contract a booking to an operator licensed in another local authority, leading to a driver not licensed by South Ribble Borough Council legitimately taking fares in this Borough. The authority has attempted to mitigate any risks from this approach via its licensing conditions, an approach in line with that of other local authorities; and
- iii) Recent technological developments (such as mobile platforms or “apps”) have given rise to companies such as Uber and others. These companies are able to operate legitimately within the Borough (via the sub-contracting principle discussed above).

4. CORPORATE PRIORITIES

The report relates to the following corporate priorities

Clean, green and safe	x	Strong and healthy communities	
Strong South Ribble in the heart of prosperous Lancashire		Efficient, effective and exceptional council	x

5. BACKGROUND TO THE REPORT

5.1 At the meeting of the General Licensing Committee on 21 February 2017, members of the Committee expressed an interest in receiving information on the *modus operandi* of the firm trading as Uber (about which there is increasing national publicity), along with any potential implications this may have for the licensing authority. This report will cover the above point, as well as responding to members’ wider concerns about other situations when “out of town” drivers may operate in South Ribble when not licensed by this authority.

6. CONTEXT / RISKS

6.1 There are a number of scenarios which may relate to drivers operating in South Ribble when not licensed by this authority. These are detailed in sections 7-9 below. However, it is important to understand at an early stage why the issue of “out of town” drivers is potentially a major problem for the Borough. As an illustration, some of the problems which this could lead to are set out below:

- legal inability of a host licensing authority to take enforcement action against a driver / vehicle who is not licensed within the area where the enforcement action is proposed;
- even if enforcement action could be taken, investigations could become protracted / logistically difficult and the timescales for summary prosecutions could become extremely tight;
- inability of Council enforcement staff to enforce or undertake spot checks on “out of town” vehicles (although the Police or VOSA have jurisdiction of any licensed vehicle, regardless of where they are licensed);
- risk to the Section’s funding if a significant percentage of drivers migrate to other less regulated authorities;
- licensed vehicles from other licensed authorities may have minimal exterior identification creating opportunities for criminals, unlicensed drivers or sexual predators to more easily slip under the radar on opportunist illegal journeys;
- confusion for the public who may not recognise the vehicle which turns up and cannot readily verify the credentials of the driver;
- potential for conflict amongst the two sides of the licensed trade (Hackney Carriage and Private Hire); and
- South Ribble Borough Council would be reliant on other authorities having an enforcement capacity dedicated to Taxi & Private Hire Licensing.

- 6.2 Members should be aware that officers do not consider this authority to have a serious problem with drivers licensed elsewhere but who are working in South Ribble. The number of such drivers is relatively small (around 12, see section 7.8 below), and no complaints have been received about them in at least the past 2 years.
- 6.3 In recent times, officers have by way of enforcing the private hire operator conditions ensured that local operators employing “out of town” drivers submit them to South Ribble Borough Council licensing processes wherever possible, and this approach has received support from the local trade. There is therefore a degree of control through the licensing system exercised over the vast majority of drivers operating locally. However, for members’ information this report considers the various scenarios which may result in the presence of an “out of town” driver.

7. ‘OUT OF TOWN’ HACKNEY CARRIAGES ACTING AS PRIVATE HIRE VEHICLES

- 7.1 Section 57 of the Local Government Miscellaneous Provisions Act 1976 allows a district council to require any applicant for a licence to submit such information as they reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence granted. Section 47(1) of the 1976 Act allows a district council to attach conditions to a licence as it may consider reasonably necessary.
- 7.2 In 2008 and 2010, a couple of cases were pursued through the courts. The High Court handed down relevant judgements in Newcastle City Council v Berwick upon Tweed Borough Council and Stockton-On-Tees Borough Council v Fidler, Hussain & Zamanian. These identified that once a vehicle has been licensed as a Hackney Carriage, it is a Hackney Carriage for the duration of that licence (wherever it is currently located) and can therefore be used for pre-booked (private hire) purposes in any district in England and Wales. The judgments make it clear that it is not an offence for a licensed Private Hire operator to take bookings but then dispatch a Hackney Carriage licensed by a district (or Transport for London - TfL) which is different from that which licences that operator.
- 7.3 The cases also confirmed that a Hackney Carriage vehicle can be used for pre-booked (ie Private Hire) work outside the district in which the vehicle has been licensed, even if the Licensing Authority is some considerable distance from the district in which the vehicle is undertaking the pre-booked work. The courts concluded that by virtue of Section 37 of the Town Police Clauses Act 1847, a local authority had discretion to refuse to issue a hackney carriage licence to those proprietors who intended to use the vehicle predominantly outside the area.

This authority’s current response:

- 7.4 The outcome of the above cases is often described as a “legal loophole” and has proved to be a very contentious issue in recent years for Licensing authorities. This has been compounded by the approach of certain local authorities who have tended to issue large numbers of Hackney Carriage Driver Licences with little regard for problems caused when such vehicles operate primarily in other local authority areas.
- 7.5 To combat this, many local authorities have introduced an Intended Use Policy; this obliges Hackney Carriage proprietors to declare that they will primarily operate the vehicle as a Hackney Carriage within the area of that Licensing authority, rather than use the principle in the Berwick upon Tweed and Fidler cases to drive as a Private Hire vehicle elsewhere. As a result, the problem is now far less prevalent than it was even 2 years ago.
- 7.6 In order to ensure that this authority is playing its part in combating problems from the Berwick upon Tweed and Fidler judgments, the Council has introduced a reference to “Intended Use” in

its current Licensing Policy (formally adopted in July 2016). At page 13 of the current Licensing Policy (paragraph 6.14) it states:

“If it appears...that the applicant [for a Hackney Carriage Driver’s Licence] intends to trade in another authority’s area for a substantial period of time, and so frustrate the purpose of the legislation and potentially undermine public safety, there will be a presumption against the granting of a licence.”

7.7 This is a significant measure – it is important for this authority to do what it can to prevent its own drivers working beyond its borders before it can legitimately seek to persuade others to meet this same high standard.

7.8 Furthermore, South Ribble Borough Council has also previously introduced a number of conditions on the operator licence with which all operators must abide. These are set out in section 12 of the operator conditions and include the following:

- an operator must advise the local authority within 72 hours if any “out of town” driver is employed to work in the Borough;
- the operator must keep on file copies of all relevant documentation, eg DVLA licence, insurance certificate, MOT etc;
- all such vehicles must bear an advertisement stating “This vehicle is NOT licensed by South Ribble Borough Council”; and
- Any telephone booking must be preceded by a telephone warning stating that any complaints will be forwarded to the relevant Council as South Ribble Borough Council can only take enforcement action against drivers issued with South Ribble licences.

7.9 There are currently 2 operators (out of 18) known to employ between them a total of 12 drivers licensed by other authorities but driving within South Ribble.

Looking ahead - further proposed measures – Intended Use Policy

7.10 As well as seeking to strengthen the operator conditions, it is proposed to go further and revisit the Council’s approach to “Intended Use” (currently set out on page 13 / section 6.14 of the Licensing Policy). The Council’s current stance of including a minimalist Intended Use Policy within one section of an overall Licensing Policy (with little clarification or detail as to precisely what is expected) may lack robustness when compared to the approach adopted in other local authorities.

7.11 Consequently, members are asked to consider adopting an Intended Use Policy (attached as Appendix 1) as a distinct procedure in its own right. The proposed Intended Use Policy goes into considerably more detail about the issue and, in addition, it will provide a means for officers to determine if a Hackney Carriage is being used to fulfil pre-booked hiring on behalf of a Private Hire operator licensed by another local authority (with that information being used to determine if a licence should then be granted or not by South Ribble Borough Council).

7.12 Members are requested to consider whether to consult on:

- the draft Intended Use Policy attached as Appendix 1, with a view to formal adoption of a full Intended Use Policy at a future meeting; and
- deleting the current wording set out in section 6.14 of the Licensing Policy, and replacing it with the following:

“Intended Use:

The Council has adopted a specific and distinct Intended Use Policy. Please refer to this document for details of the Council’s approach to Intended Use.”

8. DEREGULATION / SUB-CONTRACTING

- 8.1 On 26 March 2015, the Deregulation Act 2015 received royal assent. This was followed by The Deregulation Act 2015 (Commencement No. 1 and Transitional and Saving Provisions) Order 2015 which set out the commencement date for taxi and private hire deregulation measures. These provisions came into force on 1 October 2015.
- 8.2 Section 11 of the Deregulation Act inserts two new sections (55A and 55B) into the Local Government (Miscellaneous Provisions) Act 1976 in relation to the sub-contracting of bookings from one private hire vehicle operator to another. This is a major amendment to the 1976 Act affecting taxi and private hire drivers and operators. As a result, operators licensed in South Ribble may choose to sub-contract a booking to an operator licensed in another local authority, leading to a driver not licensed by South Ribble Borough Council legitimately taking fares in this Borough.

This authority's current response

- 8.3 The authority has recognised that the legislation now permits operators to sub-contract without fear of breaking the law. However, the authority has sought to do what it can to minimise the impact of this practice, specifically by using its licensing controls to ensure that operators retain accountability for any sub-contracted journeys. For instance:
- Paragraph 9.7 of the current Licensing Policy specifies that full details are to be recorded separately for any bookings that are sub-contracted to another Private Hire operator or Hackney Carriage; and
 - Condition 11c – even where an operator transfers the booking to another operator, they remain accountable for that service delivery.

Looking ahead - further proposed measures

- 8.4 This report does not propose the introduction of any further measures in this regard. Operators are legally entitled to sub-contract their bookings and it is understood that the Council's current controls via its conditions and Policy are in line with the approach of other authorities.

9. UBER

- 9.1 Uber Technologies Inc. is an American international transportation network company and its headquarters are in San Francisco, California. The company develops, markets and operates the Uber mobile application, allowing consumers with smartphones to use the 'App', essentially as an online booking service for private hire vehicles.
- 9.2 To engage with Uber, a consumer downloads its 'App' (or mobile platform) to their mobile phone and sets up an account with the company. Through the use of GPS technology, the App can detect the consumer's location and connects them with the nearest driver and vehicle that is registered to the Uber Platform. Consumers can then, through the App, pre-book that vehicle with the relevant licensed private hire operator. During the booking stage, the App provides information to the consumers as to which Licensing Authority the driver and vehicle are licensed with and provides the identity of the driver and the vehicle. (In fairness to Uber, this could be said to a benefit to public safety as the potential for a passenger inadvertently getting into an unlicensed vehicle is reduced). The App then texts the consumer when the driver arrives so that they can check the identity of the driver and vehicle against who actually shows up.
- 9.3 As with all licensed private hire operators, Uber can dispatch vehicles and drivers to carry out work anywhere in the country, providing that the vehicle / driver that is allocated the booking is also licensed with the local authority that issued the relevant private hire operator licence.

- 9.4 The Uber website (www.uber.com/legal/terms/gb/) states that Uber is the holder of Private Hire Vehicle Operator licences in each of the jurisdictions in which it operates, and accepts at its registered address and/or operations centre, private hire bookings made by the Uber App.
- 9.5 Uber is not the only smartphone app to have been developed to help connect passengers and taxi / private hire service providers. Other examples operating in the UK include Hailo, Addison Lee, Kabbee and Gett.
- 9.6 Due to the relaxation on sub-contracting rules for private hire vehicles (explained in section 8 above), Uber can also sub-contract bookings to other licensed private hire operators in other local authority areas so that this second operator can dispatch an appropriately licensed vehicle and driver.
- 9.7 By March 2016, the Uber service was believed to be available in 58 countries and 200 cities worldwide. This number may well have increased considerably since that date.
- 9.8 The activities of Uber have sometimes provoked controversy in some countries with questions raised about the legalities of their operating model. However within the UK it should be stressed that Uber appears to be operating entirely lawfully within existing private hire licensing regimes.

Uber and the Licensing regime

- 9.9 The starting point is that Uber is required to obtain a Private Hire operator's licence (made under Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976) in every local authority in which it has a base.
- 9.10 This requirement has been disputed, in that Uber has maintained it only provides a service to customers who want a vehicle as soon as possible (ASAP); ie immediately. By operating through its "platform", which provides an almost instantaneous response, it is therefore not taking advance bookings. Some believe that as Uber is only taking ASAP bookings the company is not operating as a Private Hire service - the operation is alleged to be more in line with Hackney Carriage vehicles which can ply for hire, and rank, and do not have to be pre booked. However, this view is not widely accepted:
- there are no requirements within the 1976 Act relating to how far in advance a private hire vehicle must be pre booked. It is only a requirement that a booking for private hire vehicle must be made through their licensed operator; and
 - the consensus amongst licensing officers is that the Uber platform pre-books the journeys with the relevant operator (albeit within a very short timescale), thereby triggering the requirement for an operator's licence.
- 9.11 Uber does not hold an operator's licence in South Ribble Borough Council. However, it is incorrect to say that it could therefore not operate in this authority. There are 2 ways in which Uber drivers could legitimately find themselves working in this Borough, but not licensed here:
- a) Uber holds a licence to operate in relatively nearby authorities such as Rossendale, Rochdale and Manchester. An Uber customer in / near to these locations who wanted to take a journey from, through or to South Ribble could therefore make a booking via the Uber app (and through an operator licensed in the above authorities) and be driven by an "out of town" vehicle in this Borough; and
 - b) Under the Deregulation Act (outlined in section 7 above), an Uber booking could in theory be sub-contracted via a licensed operator in (say) Rossendale to an operator in another local authority (say Preston), with the resulting journey taking place via South Ribble.

This authority's current response

9.12 Whilst either of the above scenarios may legitimately occur, it is not true to say that such a booking is outside any legal control because:

- the operator to whom the booking is sub-contracted must be licensed by the local authority in the area where it operates; and
- all drivers contracted to Uber must also be licensed in the same local authority area as that of the operator to which the Uber booking was sub-contracted.

9.13 Accordingly, this authority has not taken any particular steps in response to the Uber situation.

Looking ahead - further proposed measures

9.14 In compiling this report, Licensing colleagues in areas where Uber currently hold an operator's licence have been spoken to and their views taken into account. Differing views have been encountered; for instance one authority experiencing an upsurge in Uber journeys is known to have proactively approached the company and encouraged them to apply for an operator's licence with that authority (the logic being that this would give them a degree of leverage and control over the situation).

9.15 However, given the lack of problems encountered in this authority to date, no specific action is suggested at this stage. Instead, a watching brief will be maintained and – should the situation change – a further report will be brought to Committee with a range of measures which could be taken at that time.

10. NEXT STEPS

Consultation exercise

10.1 Should members agree to consult on the proposed Intended Use Policy mentioned above, it is proposed that the following procedure should be followed:

- the Licensed taxi trade to be given advance warning of these proposals at the Taxi Trade Forum scheduled to take place subsequent to this Committee meeting (subject to a separate report on this agenda);
- a formal 28 day consultation period to be held starting at an appropriate time after this Forum; and
- the results of consultation to be brought back to the next meeting of this Committee, with a view to formal adoption being considered.

10.2 If members wish to adopt the Intended Use Policy, this will be forwarded to Council for ratification.

11. CONCLUSION

11.1 It is not considered that the authority currently has major concerns arising from "out of town" drivers. However, this report sets out certain proportionate and considered measures which members may wish to examine in order to strengthen their control over the situation.

12. WIDER IMPLICATIONS AND BACKGROUND DOCUMENTATION

12.1 Comments of the Statutory Finance Officer

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

12.2 Comments of the Monitoring Officer

Under S57 of the Local Government Miscellaneous Provisions Act 1976, the council may require an applicant for a hackney carriage proprietor's licence to submit such information as they reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence granted. In the case of R (on the application of Newcastle City Council) v Berwick Upon Tweed Borough Council (2008) the judge stated it would be within the local authority's discretion to refuse to licence a hackney carriage when it knows the applicant has no intention of using that licence to ply for hire in its area. Section 47(1) of the Local Government (Miscellaneous Provisions) Act 1976 allows a district council to attach conditions to a licence, as it may consider reasonably necessary. Any person aggrieved by any conditions attached to a licence may appeal to the Magistrates Court.

Other implications:	
<ul style="list-style-type: none">• Risk	The Licensing regime has traditionally been predicated upon local control over drivers licensed with the local authority in whose area they operate. The growing national trend towards "out of town" drivers could be seen as undermining this approach. This report sets out the Council's current responses to the areas where local control may have been diluted, and identifies other measures which members may wish to adopt to strengthen their position.
<ul style="list-style-type: none">• Equality	None
<ul style="list-style-type: none">• HR	None

14. BACKGROUND DOCUMENTS (or there are no background papers to this report)

Appendix 1 – draft Intended Use Policy

Appendix 2 – Equalities Impact Assessment for Intended Use Policy