

REPORT TO	ON
GENERAL LICENSING COMMITTEE	17 OCTOBER 2017

September 2017



TITLE	REPORT OF
PROPOSED ADOPTION OF INTENDED USE POLICY	DENISE JOHNSON

Is this report confidential?	No
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## 1. PURPOSE OF THE REPORT

- 1.1 Taking into account (i) the Equalities Impact Assessment (attached as Appendix 2) and (ii) the outcome of the consultation exercise undertaken throughout August 2017 (summarised in section 9 below), this report invites members to recommend the formal adoption of the draft Intended Use Policy attached as Appendix 1.

## 2. RECOMMENDATIONS

- 2.1 Members are requested to forward this report to the meeting of Council on 22 November 2017 with a recommendation for formal adoption of the draft Intended Use Policy attached as Appendix 1, along with the consequent proposed amendment to section 6.14 of the current Licensing Policy (as set out in section 7.3 below).

## 3. 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

## 4. BACKGROUND TO THE REPORT

- 4.1 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. A report was then presented to the General Licensing Committee on 11 July 2017, which covered the above point but also outlined the range of situations in which drivers licensed by another local authority ("out of town drivers") may be able to drive legitimately in this Borough. One such situation is set out in section 5 below, and it is this scenario which has led to the proposed strengthening of the Council's stance via an Intended Use Policy.
- 4.2 It should be stated from the outset that the authority does not consider itself to have a major problem arising from the number of out of town drivers operating within the Borough.

Specifically, 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. However, it is imperative that the Council plays its part in seeking to minimise its exposure to risk at every opportunity and this proposal forms part of such a strategy.

## **5. 'OUT OF TOWN' HACKNEY CARRIAGES ACTING AS PRIVATE HIRE VEHICLES**

- 5.1 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.
- 5.2 In 2008 and 2010, two cases of significance 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.
- 5.3 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.

## **6. CURRENT RESPONSE BY SOUTH RIBBLE BOROUGH COUNCIL**

- 6.1 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.
- 6.2 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.
- 6.3 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."

- 6.4 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.
- 6.5 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. LOOKING AHEAD – PROPOSED ADDITIONAL MEASURE – INTENDED USE POLICY**

- 7.1 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.
- 7.2 Consequently, at their meeting on 11 July 2017 members of the General Licensing Committee were 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).
- 7.3 Members agreed 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. CONSULTATION / COMMUNICATION PLAN**

- 8.1 The report presented to members on 11 July set out a proposed consultation plan. It can now be confirmed that the consultation plan as then presented was followed and a breakdown of consultation activity is given below.

## 8.2 Publicising the consultation exercise:

8.2.1 Officers went to considerable lengths to ensure that all interested parties were made aware that the consultation was taking place. Steps taken included:

- Proactively warning trade attendees at the Taxi Trade Forum on 13 July 2017 that the consultation was imminent;
- At the end of July 2017 a letter was sent to all drivers, proprietors and operators licensed with the Borough outlining the consultation areas under consultation and advising them of how responses may be submitted;
- Similar letters were sent to other interested parties including local disability groups; and
- Social media / tweets were used to further circulate information about the consultation.

## 8.3 The consultation exercise itself

8.3.1 The consultation documents were posted on the Council's website between 1 – 31 August 2017. Again, this gave details of the proposals under consultation and how responses may be submitted.

8.3.2 Officers held 2 drop in sessions at the Civic Centre on 15 and 17 August 2017. The purpose of these was to allow the trade or interested parties to call in without an appointment and discuss any aspect of the proposals with officers in informal surroundings.

## 9. OUTCOME OF THE CONSULTATION

9.1 Despite the efforts to promote the consultation exercise, on balance few responses were received. However, the drop in sessions can be said to have been a success, with the following attendees:

Date of drop in session	Persons attending
15.8.17	6 drivers, 1 operator
17.8.17	1 driver

9.2 A log of all the consultation responses has been compiled for this consultation exercise. For the purposes of this report, a summary of the main submissions is set out below:

Source:	Date:	Issue:	Council response
Drivers 1-6	15.8.17	Generally supportive of this proposal	Noted
Driver 7	17.8.17	How would this be enforced?	Via Council's Licensing staff (who do engage in out of hours activity)
Operator	31.8.17	The company's policy is never to contract any out of borough owner drivers. I think an amendment to issuing a company's operating licence should include only using drivers and vehicles licenced with SRBC. This would allow SRBC licensing team to police all drivers and vehicles operated by the	

		taxi companies within the borough	
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9.3 Members are invited to take the consultation responses into account when making their decision whether to adopt the documentation (as requested in section 2 above).

## 10. WIDER IMPLICATIONS AND BACKGROUND DOCUMENTATION

### 10.1 Comments of the Statutory Finance Officer

There are no financial implications arising from this report.

### 10.2 Comments of the Monitoring Officer

The legal implications are set out in the body of the report. There will be a right of appeal to the Magistrates Court for any refusal or revocation of a licence.

<b>Other implications:</b>	
► <b>Risk</b>	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 identifies an additional / proportionate measure which members may wish to adopt to strengthen their position.
► <b>Equality &amp; Diversity</b>	None
► <b>HR &amp; Organisational Development</b>	None
► <b>Property &amp; Asset Management</b>	None
► <b>ICT / Technology</b>	None

## 11. 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

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