

Report of the Strategic Director, Environment and Sport to the meeting of Regulatory and Appeals Committee to be held on 10th March 2016 10am.

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Subject:

Proposal to delegate power to take enforcement action in respect of taxi and private hire functions to officers within other West Yorkshire local authorities and the City of York Council, and for Bradford Council to receive similar delegated enforcement powers from those authorities.

Summary statement:

The purpose of this report is to seek the approval of Regulatory and Appeals Committee to recommend to full Council that it delegate the power to take enforcement action in respect of taxi and private hire functions to officers within other West Yorkshire local authorities and the City of York Council, whilst retaining these functions within the City of Bradford Metropolitan District Council, and for the City of Bradford Metropolitan District Council to receive similar delegated enforcement powers from those authorities.

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Portfolio:

Deputy Leader of the Council and Safer & Stronger Communities.

Overview & Scrutiny Area:

Regulatory & Appeals



1 SUMMARY

The purpose of this report is to seek the approval of Regulatory and Appeals Committee to recommend to full Council that it delegate the power to take enforcement action in respect of taxi and private hire functions to officers within other West Yorkshire local authorities and the City of York Council, whilst retaining these functions within the City of Bradford Metropolitan District Council, and for the City of Bradford Metropolitan District Council to receive similar delegated enforcement powers from those authorities.

2 BACKGROUND

- 2.1 The Deregulation Act 2015 came in to force on October 1st 2015. It permits private hire firms nationally to sub contract bookings outside of their own licensing district. Currently Bradford Council officers have no powers to conduct any enforcement activity on private hire vehicles not licensed by this authority. Previously it had been illegal for operators of private hire licences issued by Bradford Council to sub-contract work to an operator in another district. The implications of this change are potentially wide ranging. A customer could contact an operator in their district and order a private hire vehicle. The operator who took the booking may then pass the work to another company without first obtaining the consent of the customer. The new company need not necessarily be licensed in the same area. This means that vehicles used to fulfil contracts may be subject to different standards than vehicles in the licensed area. The Council may only take action against a vehicle or driver that it has licensed, meaning that there is no action the Council can take if a vehicle or driver licensed elsewhere is operating within the Bradford district
- 2.2 The Licencing Service has been working with the West Yorkshire Combined Authority towards establishing common licensing standards across districts. The aim is to have a uniformed approach to licencing that would deliver a consistent level of compliance/enforcement regardless of which authority had licensed a vehicle or driver.
- 2.3 The Licencing Service at a meeting of the Combined West Yorkshire authorities on 15th October 2015 discussed ways in which a common approach could be adopted going forward. This was in part aimed at minimising concerns around safeguarding and to put into place conditions that would increase passenger safety taking into consideration the changes in the Deregulation Act 2015.
- 2.4 It was agreed that all officers would consider whether there should be cross authority delegation of hackney carriage and Private Hire licensing enforcement functions. The intention would be to work towards all authorities having this in place as soon as possible but no later than 1st April 2016.

3. Risks that have been identified if no action is taken.

- 3.1 The following issues arise-
 - Currently officers in this Authority have no powers to conduct any enforcement activity on Private Hire Vehicles not licensed by this Authority

- Significant difficulties could arise in verifying whether a pre booking was in place when investigating plying for hire concerns
- There is the potential for confusion for the public who may not recognise the vehicle which turns up and cannot readily verify the credentials of the driver.
- Investigations may become protracted and on a national basis
- Operators could pick the least challenging authorities in which to be licensed, to set up base there and simply transfer bookings from the Bradford district to that operating base.
- Licensed vehicles from other authorities may have minimal exterior identification potentially creating opportunities for criminals, unlicensed drivers to more easily slip under the radar on opportunist illegal journeys.
- Bradford Council would be reliant on other Authorities having an enforcement capacity.
- Timescales for prosecutions to be brought before the courts could be tight

The introduction of cross- border working poses significant challenges for effective enforcement. The ability to challenge drivers licensed in another area working within the Bradford district would be severely compromised.

3.2 These concerns are shared by many leading authorities. The Service is working with the West Yorkshire Combined Authority to try and establish some common licensing standards and enforcement compatibility across districts. The key issues being considered are:

- Safeguarding - child sexual exploitation - human trafficking – a common minimum training standard for the trade
- Driver application process – improved common minimum standards
- English comprehension - common minimum standards for new applicants, It would only apply to existing licence holders where there was an identified need with the focus being on training and development within an agreeable timeframe.
- Convictions Policy and Convictions Criteria – a standard criteria be adopted
- Decision making-scheme of delegation - All local authorities introduce a scheme of delegation to Officers for decision making
- Private Hire Operator Conditions – a common standard across the Combined Authority

- Private Hire Vehicle Conditions - All West Yorkshire licensed vehicles have similar recognisable door livery which deforms when removed
- Common Byelaws - Hackney Carriages – a common standard across the Combined Authority
- West Yorkshire Centralised Licensing Database – maintaining a centralised record of licence applications, suspensions, revocations to enable greater checking at the point of revocation
- Enforcement Capability - Officers to prepare information sharing protocol and implement
- Authorised Officer status - Licensing and Enforcement Officers able to carry out inspection and suspension powers on a vehicle licensed by any West Yorkshire Authority through the scheme of delegation of powers being co-ordinated across all West Yorkshire Authorities to enable more efficient enforcement action
- Share and adopt good practice wherever it is found

3.3 Cross delegation of hackney carriage and private hire enforcement functions across the West Yorkshire Authorities would improve the consistency of enforcement activities regionally and would assist in reducing concerns arising from the changes to the law allowing private hire firms to sub contract bookings outside of their licensing district.

4. Proposed action

4.1 The proposal is that the hackney carriage and private hire enforcement powers, as set out in Appendix A of this report, are delegated to the other West Yorkshire Authorities and the City of York Council (whilst retaining our own). It is also proposed that Bradford Council receives similar delegated enforcement powers from the other West Yorkshire authorities and the City of York Council.

4.2 Each authority would retain the ability to grant and renew licences; those functions will not be delegated. The enforcement functions would be delegated.

Officers in each West Yorkshire authority will agree to provide evidence where necessary to support prosecutions by the other West Yorkshire authorities where they have been involved in investigating the alleged offence. How this will work in practice including recompense for each authority will be set out in an agreement between all of the West Yorkshire authorities.

4.3 The Committee are asked to recommend to full Council that the Council delegate the Taxi and Private Hire enforcement functions under the legislation set out in Appendix A to the West Yorkshire local authorities and the City of York Council (as set out in Appendix A), in addition to retaining those functions within the City of Bradford Metropolitan District Council and to similarly receive the delegated Taxi and Private Hire enforcement functions (as set out in Appendix A) of those local authorities.

5. OTHER CONSIDERATIONS

Consultation

Although consultation is not a legal requirement, the Licensing Service did discuss this proposal with the hackney carriage/private hire trade associations at their meetings of the 6th and 7th January 2016. Operators were consulted at their Business Meeting on the 27th January 2016. The proposals were discussed again at the hackney carriage and private hire joint Driver Representative Meeting on the 3rd February 2016. The trade were asked to inform the service of any comments. The closing date for consultation responses was Monday 15th February 2016, and none were received. The overall general comments made during the meetings were in agreement with the proposals to share authorisation to officers across the West Yorkshire local authorities and the City of York Council.

6. FINANCIAL & RESOURCE APPRAISAL

- 6.1 At this present time there are no significant resource issues. The Licensing Service anticipates some financial expenditure which cannot be evaluated at the moment. Any emerging needs would have to be met from the licensing fees which are set at the level required to fund the regulatory regime.

7. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 7.1 These are set out at paragraph (3) Risks that have been identified if no action is taken.

8. LEGAL APPRAISAL

- 8.1 The enforcement functions set out in Appendix A to this report are council functions. The Local Government Act 1972 Section 101(1) (b) permits delegations of council functions from one council to another. Section 101 (b) 101 (3) of the Local Government Act 1972 permits that other council to arrange for discharge of those functions by a committee, sub-committee or officer of that council, effectively as though the function had always been theirs.
- 8.2 Part 2 Article 13 “Joint Arrangements” of the Council’s Constitution, at 13.2 provides that the Council may establish joint arrangements with one or more local authorities and/or their executives in any of the participating authorities, or advise the Council.
- 8.3 Article 13.7 provides that the Council may delegate non-executive functions to another local authority or, in certain circumstances, the executive of another local authority.
- 8.4 Article 13.9 provides that the decision whether or not to accept such a delegation from another local authority shall be reserved to the Council. Accordingly Council will be requested to agree to accept such delegation from the authorities referred to in Appendix A.
- 8.5 Changes to licencing conditions of operators/drivers may need to be altered to reflect the above. Minor variations/ changes would be put forward by the Licensing Service for the consideration of the Regulation and Appeals Committee.

9. EQUALITY & DIVERSITY

None

10. COMMUNITY SAFETY IMPLICATIONS

The recommendation to Council, if accepted, will contribute to community safety by allowing for consistent and rigorous enforcement action.

11. HUMAN RIGHTS ACT

None

12. NOT FOR PUBLICATION DOCUMENTS

None

13. OPTIONS

13.1 That Members recommend that full Council resolves to approve the proposal as set out in Paragraph (4) Proposed Actions of this report.

13.2 That Members do not recommend that full Council approves the proposal as set out in Paragraph (4) Proposed Actions of this report

14. RECOMMENDATIONS

14.1 That Members recommend to full Council that the Taxi and Private Hire enforcement powers as set out in Appendix A of this report are delegated by City of Bradford Metropolitan District Council to the following local authorities, namely, Leeds City Council, Wakefield Metropolitan District Council, Calderdale Metropolitan Borough Council, Kirklees Metropolitan Borough Council and City of York Council, in addition to retaining those functions within the City of Bradford Metropolitan District Council.

14.2 That Members recommend to full Council that the Council should agree to accept similar delegated enforcement powers from Leeds City Council, Wakefield Metropolitan District Council, Calderdale Metropolitan Borough Council, Kirklees Metropolitan Borough Council and the City of York Council.

14.3 That Members recommend to full Council that it should instruct the Strategic Director, Environment and Sport to take the necessary action to implement recommendations 14.1 and 14.2 above.

14.4 That officers report back to Regulatory and Appeals Committee on the effectiveness of the arrangements recommended by this report.

15. APPENDIX

Appendix (A)

Functions to be delegated to the West Yorkshire Local Authorities and the City of York

16. BACKGROUND DOCUMENTS

Best Practice Guidance - Department of Transport March 2010 Law Commission report 2014- 'Reforming the regulation of taxis and private hire vehicles'.

Deregulation Act 2015.

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Appendix A**Functions to be delegated to the West Yorkshire Local Authorities and the City of York Council**

Functions associated with -

Local Government (Miscellaneous Provisions) Act 1976

- Section 53(3) (a) Driver to produce his licence for inspection
- Section 58 Return of identification plate or disc on revocation
- Section 60 to suspend and revoke vehicle licenses
- Section 61 to suspend and revoke driver licences
- Section 68 Fitness of private hire vehicles
- Section 73 – Obstruction of Authorised Officer

Town and Police Clauses Act 1847

- Section 45 prosecution for plying for hire

Road traffic Act 1988

- Section 143 (no insurance)

The Authorities named below have delegated (or will delegate) the same functions to City of Bradford Metropolitan District Council.

Those authorities have also retained the ability to exercise these functions.

The Authorities -

Leeds City Council, Wakefield Metropolitan District Council, Calderdale Metropolitan Borough Council, Kirklees Metropolitan Borough Council and the City of York Council.