

# Report of the Chief Licensing Officer and Head of Licensing to the Licensing Committee on 17<sup>th</sup> September 2015

## Private Hire & Hackney Carriage Licensing – Review of Plying for Hire Policy

### 1.0 Purpose

1.1 To review and approve the Councils Policy in relation to Plying for Hire.

### 2.0 Background

2.1 The last review of this policy took place in June 2012 and I have attached a copy of the policy for your attention and information at “Appendix A”.

2.2 Members need to be aware that there has been significant legislative change since the last review of this policy was undertaken. These changes will potentially exacerbate the problem of plying for hire significantly.

2.3 Members will be aware of the Deregulation Act 2015 that will permit operators to sub-contract bookings to operators licensed in other authorities.

2.4 Members will be aware that problem with illegal plying for hire are already causing problems within the City and is creating an excessive amount of work.

### 3.0 What is plying for hire / illegal plying for hire?

3.1 Plying for hire entails the “making of the provision of a vehicle and a driver available for immediate hire”. This is also known as public hire. Drivers of hackney carriages (taxis) can legally ply for hire, drivers of other vehicles (including private hire vehicles) cannot.

3.2 Illegal plying for hire occurs when a person driving a vehicle other than a licensed hackney carriage takes a fare that is not pre-booked (there are limited exceptions e.g. a bus on a designated route). It is irrelevant whether the driver has or hasn't a licence to drive a hackney carriage as the offence is plying for hire without a (hackney carriage vehicle proprietors) licence.

3.3 The driver of a hackney carriage can only ply for hire in the area in which they are licensed. It is illegal for them to ply for hire outside the area in which they are licensed i.e. the driver of a hackney carriage licensed by North East Derbyshire District Council would be committing an offence should they ply for hire in Sheffield and vice versa.

3.4 Illegal Plying for hire also throws up the possibility of a prosecution for no insurance. The penalty for illegal plying for hire is a maximum £2500. No insurance offences carry a minimum 6 penalty points on a drivers licence.

3.5 Enforcement observations suggest that it is very likely that a large proportion of illegal plying for hire is committed by a relatively small number of drivers. As these drivers can, and do, charge as much as they wish and they can carry out several illegal journeys each night, illegal plying for hire can be very profitable for the offender.

#### 4.0 Why is illegal plying for hire a serious offence?

- 4.1 The greatest danger to the public is from vehicles and drivers that hold no licences at all as they will not have undergone any of the usual tests or checks. The drivers may have criminal convictions and their intentions may be solely to engage in serious criminal activity e.g. sexual offences, robbery against those that get into their vehicle.
- 4.2 With respect to private hire vehicle drivers, other than the insurance implications there are other and much more serious actual and potential consequences of this illegal activity.
- 4.3 No legal contract. A person hiring a hackney carriage enters into a contract with the driver of that vehicle. A person booking a private hire vehicle through a licensed operator (as is the legal requirement) enters into a contract with the operator **not the driver**. It is the operator that determines the fare for the journey and is responsible, in the first instance, for resolving any problems that may arise. The lack of any legal contract deprives the passenger of those legal rights afforded to them by a contract and can have the following effects:-
- There is no control over the fare charged and the driver will demand as much as he sees fit. From complaints that have been received over the years it seems that drivers illegally plying for hire usually charge considerably more than those working legally. This is a regular cause of disputes arising between the passengers and drivers, sometimes ending in the abandonment or assault of the passenger.
  - Should a problem arise during the journey (and they often do) then there is no recourse other than a complaint to the Police or to the Council Licensing Service. As the investigation of any complaint in these circumstances will of necessity involve the criminal act of plying for hire without a licence then an aggrieved person will be asked to provide a witness statement and has to be prepared to attend court as a witness should a prosecution ensue. Unless they have suffered serious detriment it is unlikely that a passenger in a vehicle illegally plying for hire will be prepared to register a complaint.
- 4.4 A private hire operator is required to keep detailed records of job bookings and the vehicles dispatched to take the booking. Should a problem arise during a journey that has been properly booked then the Police and/or Licensing have immediate access to those records and will be able to identify the vehicle and driver involved within minutes. Where there is no job booking then there is no record of the journey or of the vehicle and driver involved. It is therefore often very difficult, or just not possible to correctly identify the vehicle and driver after an incident involving a driver illegally plying for hire has occurred.
- 4.5 There is also a difficulty in instances where the driver is not suspected of other offences as drivers are often witnesses to incidents. A driver that is himself committing an illegal act is less likely to come forward as a witness to an incident.
- 4.6 Most illegal plying for hire occurs at night and when often it can be difficult for the passengers to provide a useful description of either the vehicle or the driver involved. Drivers that do have criminal intentions know that the chances of them being detected are even further reduced.
- 4.7 Offences committed against passengers by licensed drivers in Sheffield are uncommon but in the large majority of cases the offender has picked up the passenger while illegally plying for hire.

- 4.8 Lost property - the loss of mobile phones, purses etc. in taxis and private hire vehicles is commonplace. The record of drivers working legally is good in terms of drivers identifying passengers to return lost goods to or handing them in to a police station. Complaints from the public about unreturned goods left in vehicles and drive-offs where a driver has taken goods (jewellery, leather jackets etc.) as surety while the passenger goes to fetch money to pay the fare usually relate to journeys that have started with an illegal ply for hire.
- 4.9 The largest problem in Sheffield in recent years has been the large number of North East Derbyshire and Rotherham licensed private hire vehicle drivers illegally plying for hire. This is expected to get much worse following the Deregulation Act 2015.
- 4.10 There is now the problem with out of town hackneys that can be of a make and model similar to a Sheffield Private Hire vehicle which leads to problems of identification to the public
- 4.11 Out of town vehicles have less knowledge of Sheffield and are unfamiliar with routes. This is known to have been the cause of disputes arising between the driver and passengers and the abandonment of passengers in areas that they do not know and/or assaults.
- 4.12 The other benefit to drivers is that any fare gained is “tax free” as no record is made of this work and it is not traceable. They are also at liberty to charge any fare they desire for this hiring.
- 4.13 The effect on legitimate services and drivers is considerable. The obvious loss is to hackney carriage drivers. Drivers of hackney carriages invest significant amounts of money into purpose built vehicles that are designed to carry in reasonable comfort citizens of and visitors to Sheffield including those that have various forms of disability. These vehicles also have a separate passenger compartment that offers security to both the passenger and the driver. Fares from people that hail them on the street form a significant part of their income. Illegal plying for hire deprives them of income and reduces the incentive for others to invest in such vehicles.
- 4.14 A less obvious, but just as serious problem is in relation to properly licensed private hire vehicle drivers that are trying to work legally. Customers book a private hire vehicle through a licensed operator and the operator dispatches a vehicle to undertake the booking. At night in the city centre there is a fair chance that when the (legitimate) driver arrives his fare will have already been picked up by a driver illegally plying for hire. That leaves the legitimate driver with no fare to pick up. This could occur to a private hire vehicle driver several times in any night and as they are only paid for completed journeys a “no pick up” means time and fuel lost with no income.

## **5.0 Public attitude**

- 5.1 Public attitudes to the dangers of illegal plying for hire are a significant problem. Most people will accept that there are risks involved in getting into a vehicle that is not a taxi or a pre-booked private hire vehicle. However, many people just want to get home quickly and don't consider what the consequences may be!
- 5.2 Licensing Officers have on occasions intervened to warn unaccompanied women not to get into unlicensed vehicles. Unfortunately the most common response is that they don't care and they just want to go home. Another not uncommon response is verbal abuse towards officers.

- 5.3 Some members of the public seem to think that Licensing Officers are on the streets in the early hours of the morning for no purpose other than to prevent them getting home. These can be unhelpful, abusive and on occasions threatening.
- 5.4 Some members of the public seem to think (wrongly) that it is far cheaper to get in a private hire vehicle that is illegally plying for hire than to get a hackney carriage.
- 5.5 There have been a number of publicity campaigns to inform the public about safe travel home using taxis and private hire vehicles and to warn them of the dangers of getting into unlicensed vehicles. These seem to have had little impact on the problem except for short periods following a serious incident e.g. a sexual assault on a passenger in a vehicle illegally plying for hire.
- 5.6 Officers will, however, continue to take advantage of any opportunities that arise to publicise this issue.

## **6.0 Enforcement Activity**

- 6.1 Enforcement takes on many guises and officers can now use many ways and different types of enforcement.
- 6.2 The best results gained come from the use of officers as passengers, these being either Council staff or officers from neighbouring Authorities with whom we have good working relationships.
- 6.3 Video and CCTV evidence have been previously used with some effect. This is more difficult now that the Councils CCTV monitoring has been outsourced to a private company. There are many protocols to go through to obtain copies of footage that may provide evidence.
- 6.4 There are many areas within the city boundaries that are a current cause for concern such as the City Centre and many of the smaller district centres such as Woodseats, Chapletown etc that are all hot spots for such illegal activity.
- 6.5 The impact of the Deregulation Act in relation to licensed vehicles and in particular the impact on cross border working and plying for hire will require the Service to review its resources and increase numbers of staff.

## **7.0 Financial implications**

- 7.1 Members will be aware that as the Licensing Authority we have a statutory duty to enforce the provisions of the legislation, licence conditions and any other associated regulations and the costs of such are recoverable through licence fees.
- 7.2 Although we are not certain to what extent illegal plying for hire may increase as a result of the Deregulation Act 2015 and recent court judgements we do expect a further influx of non- Sheffield licensed vehicles and an increase in illegal plying for hire. If we decide that we require additional resources to tackle these ever increasing issues then there will also have to be an increase in fees.

- 4.2 The costs associated with the securing of a conviction are quite high and if full costs are not awarded to the Council by the courts then it becomes a costly exercise. The usual period for a person who pleads not guilty to this sort of offence from date of offence to court hearing is between six and nine months.
- 4.4 There are no additional costs to the Council arising from the approval of the attached policy. However, if members request that licensing undertake more enforcement to try and tackle the problem with plying for hire, additional staffing resources will be required.

## **8.0 Consultation**

- 8.1 A draft of this report was circulated to representatives of the trades associations on the 28<sup>th</sup> August 2015 and was discussed at a consultation meeting with the representatives of the trade associations on the 2<sup>nd</sup> and 10<sup>th</sup> September 2015.
- 8.3 Trade Associations have been invited to attend this meeting.

## **9.0 Recommendation**

- 9.1 That Members approve this Policy and in doing so confirm that;
- i) Because of the potentially serious consequences of the offence, offenders will be prosecuted (where there is considered to be sufficient evidence to secure a conviction and it is in the public interest to do so);
  - ii) Officers must endeavour to recover the costs of prosecutions from those convicted in order to reduce the financial burden on licensed drivers who work within the law;
  - iii) Officers refer any current licensed drivers to the Licensing Sub-Committee at the point that there is sufficient evidence for the licensing service to submit a file for legal proceedings to be brought against that driver.
  - iv) Unless there are exceptional circumstances offenders should expect to have any licences they hold immediately revoked and/or any application for a licence refused.
  - v) Councillors' confirm that they deem that this offence is a matter of public safety and any revocation of a licence would be done under Section 52 Road Safety Act 2006, which amends Section 61 of the Local Government (Miscellaneous Provisions) Act 1976. This means any revocation would be with immediate effect.
  - vi) The use of officers as passengers be endorsed as a method of enforcement, and instruct Chief Licensing Officer and Head of Licensing to carry on conducting enforcement activity against this illegal activity.
  - vi) A copy of this report, the resulting resolution and policy is made available to the Courts when relevant cases are being considered.
  - vii) That "Delegated Authority" be given to the Chief Licensing Officer & Head of Licensing to organise enforcement operations in response to intelligence and/or information received that brings to his attention a problem/issue with plying for hire in any area of the City.
  - viii) That the wording of this policy be include in the proposed new policy documents that are currently been drafted ready for consultation.

## **10.0 Options**

- 10.1 That members approve and confirm the policy as set out in paragraph 9.1 above as recommended by the Chief Licensing Officer and Head of Licensing.
- 10.2 That members approve and confirm the policy set out above with any amendments agreed by the Licensing Committee.
- 10.3 That members defer the report for further consideration.
- 10.4 That members reject the policy and retain the existing policy as set out at Appendix A.

Steven Lonnia  
Chief Licensing Officer  
Head of Licensing Service  
August 2015

# “APPENDIX A”

## Current Illegal Plying for hire policy

- i) Because of the potentially serious consequences of the offence, offenders will be prosecuted (where there is considered to be sufficient evidence to secure a conviction and it is in the public interest to do so);
- ii) Officers must endeavour to recover the costs of prosecutions from those convicted in order to reduce the financial burden on licensed drivers who work within the law;
- iii) Officer’s refer any current licensed drivers to the Licensing Board at the point that there is sufficient evidence for the Officers to submit a file for legal proceedings to be brought against that driver.
- iv) Unless there are exceptional circumstances offenders should expect to have any licences they hold revoked and/or any application for a licence refused.
- v) Councillors’ confirm that they deem that this offence is a matter of public safety and any revocation of a licence would be done under Section 52 Road Safety Act 2006, which amends Section 61 of the Local Government (Miscellaneous Provisions) Act 1976. This means any revocation would be with immediate effect.
- vi) The use of officers as covert passengers be endorsed as a method of enforcement, and instruct Chief Licensing Officer to carry on conducting enforcement activity against this illegal activity.
- vi) A copy of the report and the these resolutions are made available to the Courts when relevant cases are being considered.

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