

Bath & North East Somerset Council		
MEETING:	Council	
MEETING DATE:	13 July 2017	
TITLE:	Uber Private Hire Operators licence- issues and options	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix A- Responses to additional comments and queries about Uber		
Appendix B- Minutes of Licensing Committee held on 14 October 2015		
Appendix C- Monitoring of the presence of Uber vehicles operating in B&NES		
Appendix D- B&NES' Policy on Hackney Carriage and Private Hire Licensing Standards – Drivers, Vehicles and Operators		

1 THE ISSUE

1.1 This report follows a resolution of full Council on 23rd March 2017.

1.2 At that Council meeting 4 taxi drivers made statements raising a number of issues regarding Uber Britannia Limited ("Uber"). A ten minute debate of the Council took place following which it was resolved that, in view of:

- the widespread concerns about the lack of transparency over the awarding of a Taxi Operating License (sic) to Uber; and
- the impact on taxi and private hire services in our area

Council asked the Cabinet Member for Transport to produce a report for July Council on the issues and options for a way forward on this matter. It should be noted that this function formally falls to the Cabinet Member for Communities.

2 RECOMMENDATION

The Council is asked to note:

2.1 the contents of this report; and

2.2 that the Council has previously delegated authority to the Licensing Committee to carry out all of the Council's licensing functions.

2.3 that a thorough investigation and review has been completed and there are no grounds to revoke Uber's Private Hire Operator's ("PHO") licence. Any further issues should be dealt with through the Council's Licensing sub Committee

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

3.1 The delivery of the taxi licencing function is being met from existing budgets, however the preparation of this report has involved additional officer time and input from both the Licensing and Legal Services teams which has been resourced from existing revenue budgets.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

4.1 Uber holds a PHO licence issued by Bath & North East Somerset ("B&NES") Council. This Licence allows them to accept bookings for Private Hire Vehicles ("PHV").

4.2 Hackney Carriages ("HC") differ from PHVs in that they can be hailed or taken by a passenger from a taxi stand or rank. The driver of an HC must hold a Hackney Carriage Driver's Licence. A PHV must be pre-booked through a Private Hire Operator ("PHO") and the driver of the vehicle must hold a Private Hire Driver's Licence.

4.3 B&NES issues combined Hackney Carriage/Private Hire Driver's Licences.

4.4 The Local Government (Miscellaneous Provisions) Act 1976 ("the Act") provides the legislative framework for the licensing of PHOs.

Licensing of PHOs

4.5 Section 55 of the Act deals with the licensing of operators of PHVs. Whilst this Act expressly refers to 'District Council' the provision within this legislation is in force in relation to B&NES, as a Unitary Authority. It provides that:

"(1) Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence:

Provided that a district council shall not grant a licence unless they are satisfied –

(a) that the applicant is a fit and proper person to hold an operator's licence;

and

(b) if the applicant is an individual, that the applicant is not disqualified by reason of the applicant's immigration status from operating a private hire vehicle.

(1A) In determining for the purposes of subsection (1) whether an applicant is disqualified by reason of the applicant's immigration status from operating a

private hire vehicle, a district council must have regard to any guidance issued by the Secretary of State.”

4.6 Section 55(2) provides that “Subject to section 55ZA, every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.”

4.7 Section 55(3) provides that “A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.

4.8 Section 55(4) provides that “Any applicant aggrieved by the refusal of a district council to grant an operator’s licence under this section, or by any conditions attached to the grant of such a licence, may appeal to a magistrates’ court.”

Suspension and revocation of PHO licences

4.9 Section 62 of the Act provides in relation to suspension and revocation of operator’s licences that:

“(1) Notwithstanding anything in this Part of this Act a district council may suspend or revoke, or (on application therefor under section 55 of this Act) refuse to renew an operator’s licence on any of the following grounds-

(a) any offence under, or non-compliance with, the provision of this Part of this Act;

(b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator’s licence;

(c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted;

(ca) that the operator has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or

(d) any other reasonable cause.

4.10 Section 62(1A) deals with certain circumstances in which a district council may not suspend, revoke or refuse to renew an operator’s licence following conviction for an immigration offence or a requirement to pay an immigration penalty.

4.11 Section 62(2) provides “Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the operator notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal.”

4.12 Section 62(3) provides “Any operator aggrieved by a decision of a district council under this section may appeal to a magistrates’ court.”

- 4.13 In addition to the legislative framework B&NES has a Policy on Hackney Carriage and Private Hire Licensing Standards – Drivers, Vehicles and Operators which guides the Council’s decision-making in relation to applications, suspensions, revocations and refusals to renew a licence.
- 4.14 It should be noted however, that under section 55 Act where an application for a PHO licence is received by B&NES **it shall be granted** unless one of the legislative requirements are not met. At the time that Uber made their application, the requirement was for the applicant to be a “fit and proper person”. The provisions relating to immigration offences and penalties are relatively recent addition arising out of the Immigration Act 2016.

5 THE REPORT

- 5.1 In the Council meeting on 23rd March 2017 a number of concerns were raised and allegations made regarding the operation of Uber within B&NES. The two main issues of concern are considered below and further comments made and questions posed during the meeting are reviewed in Appendix A to this report.
- 5.2 **The widespread concerns about the lack of transparency over the grant of a Private Hire Operator’s Licence to Uber:**
- 5.3 Uber approached B&NES Council’s Licensing Team in 2015 to discuss their intention to apply for a licence to operate private hire vehicles in Bath and North East Somerset. This was discussed with the Senior Officers of the Licensing Team who sought input from the Council’s Legal team. No decision about whether the licence should be granted was made at this time but it was noted by officers that the legislation says the council “shall” grant a licence unless one of the legislative criteria was not met. Furthermore, the application did not appear to be contentious within the context of the Council’s policy. That being the case, officers noted that any application was likely to be dealt with as an officer delegated decision in the normal way. Only contentious applications are referred to the Licensing Sub-Committee (LSC) for determination. A contentious application within the meaning of the Policy is where for example, an application from an applicant discloses a history of offending showing convictions or formal police cautions.
- 5.4 An application for a licence was subsequently received in August 2015 where a named individual applied for the PHO licence on behalf of Uber. That individual volunteered an enhanced DBS Certificate supported by an online DBS registration, as part of the application process. The application satisfied the legislative requirement and was non-contentious within the meaning of B&NES Policy. The Licence was therefore, duly granted with standard licensing conditions under delegated authority on 10th August 2015 with Uber intending to launch in B&NES’ area in early 2016.
- 5.5 At the time that the application was made section 55 of the Act stated that the Council “shall” grant the licence provided the applicant meets the fit and proper test. This is unlike some other licensing legislation which states “may”. There were no grounds for refusal of the initial grant of the licence.
- 5.6 The B&NES Licensing public access portal provides a register of officer delegated decisions granting certain classes of licence. At the time of the application, Operator’s Licences were not published on the portal on the

understanding that there was no requirement to do so under Licensing legislation. The portal has recently been reviewed and all decisions to grant Operator's Licences are now published subject to limitations regarding the publication of confidential and exempt information.

5.7 The decision to grant the PHO licence to a named individual on behalf of Uber was subject to a press release in September 2015 and a briefing was provided to the Licensing Committee on 14th October 2015. A copy of the minute of the Committee is attached to this report as Appendix B.

5.8 The impact on taxi (hackney) and private hire services in our area

5.9 The points listed below provide factual information to assist Members on the impact of Uber operating in B&NES.

5.10 If a complaint is received about any driver or operator then the Licensing Team investigate the complaint and take any necessary enforcement action which may include a referral to the Licensing Sub-Committee for a decision.

5.11 At the time of writing this report no complaints have been received from the public about Uber operating in B&NES.

5.12 44 allegations have been received from taxi drivers from November 2016 to date, stating that Uber have been operating illegally in B&NES. The majority of these contacts have been in the form of photographs. 35 of these contacts did not provide sufficient evidence to enable an investigation into the allegation.

5.13 Of the 9 allegations which did offer sufficient evidence for investigation, 7 were investigated and were not upheld. 2 investigations remain ongoing.

5.14 Officers from the Licensing Team regularly carry out enforcement visits to ranks and locations throughout the authority, some of which are conducted 'out of hours' including early hour's enforcement visits. On average these take place 4 to 5 times per month. Since May 2017 there have been 13 out of hours enforcement visits.

5.15 There are 375 private hire vehicles licenced by B&NES. Of these 40 (or 11%) currently work on behalf of Uber. At any one time during normal working hours, there is the potential for approximately 100 non-Uber private hire vehicles to be available and working in Bath City Centre.

5.16 The Licensing Team have been monitoring the presence of Uber vehicles operating in B&NES via the Uber online application ("app") for the purposes of this report. The results of this monitoring are located in Appendix C and information from Uber confirms that only 8 vehicles will be shown at any one time to prevent causing confusion for customers when viewing the app. Of the 62 times that the app was monitored by officers between April and June 2017, there were 2 occasions when 8 vehicles were shown as operating. The monitoring has been carried out on different days of the week and at different times to incorporate busier times e.g. Friday and Saturday evenings.

6 RATIONALE

6.1 With reference to the Local Government (Miscellaneous Provisions) Act 1976 and the review of the concerns expressed by the taxi trade, there are no

grounds to suspend or revoke the licence issued to Uber in Bath & North East Somerset at this time.

7 OTHER OPTIONS CONSIDERED

7.1 None

8 CONSULTATION

8.1 Legal Services, Members of the Licensing Committee, Cabinet Member for Communities, s.151 Monitoring Officer.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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Background papers	<i>None</i>
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