



Response to Tewkesbury Borough Council's Policy review - hackney carriage (taxi) and private hire licensing

This is Cheltenham Borough Council's response to Tewkesbury Borough Council's hackney carriage (taxi) and private hire licensing policy review.

Context

It is important for Cheltenham Borough Council to provide a brief context to its consultation response so that Members and officers at Tewkesbury Borough Council are clear on the importance of some of the issues referenced in this response.

As a result of a number of factors such as weak national legislation and the deregulation of a number of restrictions previously placed on hackney carriage (taxi) and private hire licensing, Cheltenham Borough Council has found itself in a position where a substantial number of Tewkesbury Borough Council licensed private hire vehicles and drivers now predominately, in some cases exclusively, work in the Cheltenham Borough Council district.

The implications of this for Cheltenham Borough Council have been:

1. The high standards that Cheltenham Borough Council sets have been diluted since Tewkesbury Borough Council's licensing policies have not yet been brought in line with, at least, national best practice.
2. Cheltenham Borough Council has had to prosecute Tewkesbury Borough Council licence holders for illegally plying for hire in Cheltenham.
3. Cheltenham Borough Council has no regulatory control over Tewkesbury Borough Council licence holders despite them working predominately, in some cases exclusively, in Cheltenham. This has caused difficulties, including tensions with the local trade, difficulties with dealing with public concerns and complaints, and issues with implementing local initiatives, for example, improving air quality in Cheltenham.
4. Some safeguarding concerns relating to Tewkesbury Borough Council licence holders working in Cheltenham. There have, for example, been cases where Cheltenham Borough Council has revoked licences but the licence holders have subsequently obtained licences from Tewkesbury Borough Council and returned to work in Cheltenham.

It is in reference to this context that Cheltenham Borough Council considers it important that it contributes to this policy review in order for Members and officers at Tewkesbury Borough Council to be clear on the implications of their decision making on Cheltenham, its residents and visitors.

Finally and for the avoidance of doubt, this response is made on behalf of Cheltenham Borough Council's Licensing Committee with input and advice from officers.

Hackney Carriage & Private Hire Policy - Document 1 of 4, Regulatory Guidelines

Para 1.4 Cheltenham Borough Council strongly disagrees with the statement that *"The aim of the licensing regime to which these policy document guidelines relates is not to punish the applicant twice for an offence, where criminal action has already been taken, (which includes a conviction or caution), but to ensure that public safety is not compromised."*

This statement is fundamentally wrong and implies that in circumstances where a licence holder or applicant has had a criminal history and where they have been punished for this through the courts, Tewkesbury Borough Council will consider the criminal sanction as sufficient and the licence holder or applicant sufficiently rehabilitated and fit and proper as a result.

This would be wrong. Taxi and private hire licence holders are exempt from the provisions of the Rehabilitation of Offenders Act and as such their criminal history will remain relevant for the purpose of licensing, notwithstanding any criminal sanctions.

Para 2.2 Cheltenham Borough Council does not agree with the statement that *"Whether someone is a 'fit and proper person' to hold a licence is ultimately a matter of common sense."*

Cheltenham Borough Council is of the view that whether a person is "fit and proper" is a matter of fact determined against set criteria. The policy document should be used to set these criteria taking into account legislation, best practice and government guidance.

Section 3 "Guidelines on the relevance of convictions" - General comments on the proposed:

1. Para 3.2 It may be helpful to define what constitutes a "serious crime". Furthermore, the statement that *"a current conviction for serious crime need not be permanently barred from obtaining a licence"* seems at odds with the policy itself, for example, Sex and Indecency Offences & Exploitation Offences where the proposed policy states *"...a licence will not be granted."*

Evidence of "good character" in relation to "serious crime" appears to Cheltenham Borough Council to be inappropriate. Serious crime should be viewed as a serious matter in relation to taxi and private hire licensing, and the assessment as to the fitness of a licence holder or applicant should be more onerous in cases of serious crime.

2. (K) Vehicle construction of use offences – Appears that this is a duplication of the listed Hybrid Traffic Offences that makes reference to construction and use offences.

3. (N) Spent Convictions – Convictions in relation to taxi and private hire licensing are exempt from the provisions of the Rehabilitation of Offenders Act and therefore never considered spent.
4. The “Guidelines on the relevance of convictions” lacks information on how the council will deal with non-conviction related matters such as allegations, serious complaints or cases where concerns remain but where the criminal threshold has not been met. Since taxi and private hire licensing is determined on the civil standard it is possible for Tewkesbury Borough Council to still act notwithstanding.

Safeguarding is important in taxi and private hire licensing and Cheltenham Borough Council is of the view that this part of the policy should be strengthened in this regard. Tewkesbury Borough Council may wish to refer to the Institute of Licensing’s [Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades](#) and the Government’s recent draft [Taxi and Private Hire Vehicle Licensing: Protecting Users](#).

Section 6 “Complaints Investigation Procedure”

This section seems to imply that complaints of a minor nature will not be investigated (“Complaints of a minor nature may be dealt with by telephone or visit. **All complaints of a serious nature will be investigated.**”)

Whilst a lighter touch approach to a “minor” complaint may be appropriate, the policy should also recognise that a number of “complaints of a minor nature” may raise questions about the fitness of a licence holder and this should require more robust action.

As a general observation, the proposed complaints investigation procedure appears to be unnecessarily long (up to 14 days just for a response) particularly if the nature of the complaint is serious in nature. Cheltenham Borough Council is of the view that complaints of a serious nature should be investigated and acted on in a more expedient manner in the interest of public safety.

Hackney Carriage & Private Hire Policy - Policy Document 2 of 4, Hackney Carriage Driver and Vehicle Rules

New Applications - 1.1 A - Cheltenham Borough Council recommends that the driving licence requirement be changed to a full **UK** driving licence. The proposed rule will allow the use of non-UK driving licences such as international driving permits etc. These will show no history of driving offences in the UK, which poses a risk.

Disciplinary Action – 3.6 – “...refer a driver or operator to the Council’s Licensing Sub-Committee...”
Tewkesbury Borough Council may wish to also include vehicle licence holders in this, since vehicle licence holders are not always also licensed drivers / operators.

Medical Criteria – 3.12 – Is the reference to “...a medical every 5 years on renewal of the drivers licence...” correct as 3.11 states that “A Drivers licence shall remain in force for up to 3 years.”

Vehicle Age and Testing – 3.35(A) - Cheltenham Borough Council is of the view that a 10 year age limit on new vehicles to be licensed is inappropriate. Vehicles that are 10 years old will be manufactured to Euro Emission 4 standards which Cheltenham Borough Council considers to be too low a standard.

Cheltenham Borough Council has adopted an Air Quality Management Area encompassing the entire borough. With this, the council has adopted an air quality action plan detailing measures the council will adopt to improve air quality in the borough. As previously referred to in this response, a large number of Tewkesbury Borough Council licensed private hire vehicles work predominantly or exclusively in Cheltenham. Under these circumstances, a large fleet of licensed vehicles constructed to a relatively low emission standard is detrimental to Cheltenham Borough Council's efforts to improve air quality in the borough. Cheltenham Borough Council would recommend a minimum standard of Euro Emission 5 (applied to most new registrations from 1 January 2011) for vehicles to be licensed on the first occasion by Tewkesbury Borough Council.

As a general observation, a 10 year rule for new vehicles to be licensed for the first time is not consistent with national best practice. Most licensing authorities cease licensing vehicles at around this age.

Hackney Carriage & Private Hire Policy - Document 3 of 4, Private Hire Driver and Vehicle Rules

New Applications - 1.1 A - Cheltenham Borough Council recommends that the driving licence requirement be changed to a full **UK** driving licence. The proposed rule will allow the use of non-UK driving licences such as international driving permits etc. These will show no history of driving offences in the UK, which poses a risk.

Medical Criteria – 3.11 – Is the reference to "...a medical every 5 years on renewal of the drivers licence..." correct as 3.11 states that "A Drivers licence shall remain in force for up to 3 years."

Vehicle Age and Testing – 3.32(A) - Cheltenham Borough Council is of the view that a 10 year age limit on new vehicles to be licensed is inappropriate. Vehicles that are 10 years old will be manufactured to Euro Emission 4 standards which Cheltenham Borough Council considers to be too low a standard.

Cheltenham Borough Council has adopted an Air Quality Management Area encompassing the entire borough. With this, the council has adopted an air quality action plan detailing measures the council will adopt to improve air quality in the borough. As previously referred to in this response, a large number of Tewkesbury Borough Council licensed private hire vehicles work predominantly or exclusively in Cheltenham. Under these circumstances, a large fleet of licensed vehicles constructed to a relatively low emission standard is detrimental to Cheltenham Borough Council's efforts to improve air quality in the borough. Cheltenham Borough Council would recommend a minimum standard of Euro Emission 5 (applied to most new registrations from 1 January 2011) for vehicles to be licensed on the first occasion by Tewkesbury Borough Council.

As a general observation, a 10 year rule for new vehicles to be licensed for the first time is not consistent with national best practice. Most licensing authorities cease licensing vehicles at around this age.

Literacy and Numeracy Test (Private Hire Knowledge Test) - 5.9 - Cheltenham Borough Council is of the opinion that the Private Hire Knowledge Test should be strengthened. We note that the test

includes “Basic map reading”. This seems odd, as usually the purpose of a knowledge test is to assess geographical knowledge of the relevant licensing district/area. If the assessment is basic map reading, it seems to defeat the entire object of the knowledge test.

Furthermore, Cheltenham Borough Council would also question the suitability of a basic map reading assessment as part of the fitness assessment of licence applicants. Without an adequate topographical knowledge of the area where they are licensed, private hire licensed drivers will need to refer to mapping tools which may cause unnecessary delays and/or prolonging of journeys. This too is not consistent with national best practice.

Hackney Carriage & Private Hire Policy - Document 4 of 4, Private Hire

Operator Rules

No comments to make

Other comments

- 1. Gloucestershire Economic Growth Joint Scrutiny Committee - Licensing Review Proposal**
Cheltenham Borough Council would like to draw the attention of Tewkesbury Borough Council to the Gloucestershire Economic Growth Joint Scrutiny Committee’s proposal to harmonise taxi and private hire licensing procedures across the county. This work will have an impact on the future licensing policies adopted.
- 2. Joint enforcement powers**
Cheltenham Borough Council would welcome consideration of joint enforcement powers as part of this policy review. Enforcement officers employed by Cheltenham Borough Council have very limited powers to deal with issues resulting from Tewkesbury Borough Council licensed drivers and vehicles operating in the borough of Cheltenham. Cheltenham Borough Council considers this necessary in the interest of public safety and protection.

Submitted by Louis Krog, Licensing Team Leader for Cheltenham Borough Council.

Dated: Thursday, 11 July 2019