

# DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

## LICENSING COMMITTEE

### MINUTES OF THE MEETING HELD ON TUESDAY, 13 DECEMBER 2011

**Councillors Present:** Jeff Beck (Chairman), Paul Bryant, Adrian Edwards, Manohar Gopal, David Holtby, Tony Linden, Mollie Lock (Vice-Chairman), Geoff Mayes, Ieuan Tuck and Laszlo Zverko

**Also Present:** Paul Anstey (Environmental Health & Licensing Manager), Sarah Clarke (Team Leader - Solicitor), Brian Leahy (Senior Licensing Officer), Moira Fraser (Democratic Services Manager) and Jenny Legge (Research, Consultation and Performance)

**Apologies for inability to attend the meeting:** Councillor Peter Argyle, Councillor Billy Drummond, Councillor Andrew Rowles and Councillor Quentin Webb

#### PART I

#### 8. Minutes

The minutes of the meeting held on 29 June 2011 were approved as a true and correct record and signed by the Chairman subject to the inclusion of the following amendments:

**Item 3, page 2, 5<sup>th</sup> paragraph** - It was noted by Councillor Jeff Beck that 'West Berkshire Taxi and Private Hire Association' should read 'West Berkshire Hackney and Private Hire Association'.

**Item 3, page 3, 3<sup>rd</sup> paragraph** - Councillor Laszlo Zverko advised that his name had been misspelt.

#### 9. Declarations of Interest

During the discussion of item 4 Councillor David Holtby advised that he had been lobbied on this item.

#### 10. Transfer of Hackney Carriage Driver Licences

*(Councillor Holtby had been lobbied on this matter)*

The Committee considered a report (Agenda Item 4) concerning a request from the Taxi Trade Associations to review a decision taken on 26 April 2005 in respect of Hackney Carriage vehicle transfers.

Brian Leahy introduced the report (Agenda Item 4). He apologised for two errors in the title of the report; 'Hackney Carriage Driver' should read 'Hackney Carriage Proprietor' and 'To advice Members...' should read 'To advise Members...'.

Brian Leahy provided the Committee with an overview as to why the original decision was made in April 2005, to apply the Family Exemption condition and explained the Council's position. Mr Leahy noted that the condition had been introduced:

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1. in order to encourage the proliferation of wheelchair accessible vehicles over a period of time;
2. as it was felt to be unacceptable for a value to be placed on Council property (in the form of a council plate).

Members had therefore chosen to implement the Family Exemption condition.

Brian Leahy then directed the meeting to page 9, part 5, which set out that the Government had commissioned a review via the Law Commission of all matters pertaining to Taxis and Private Hire Vehicles (PHVs). Section 5.2 of the report outlined the timescale of the review. He stated that it was an all encompassing review which was long overdue and would be a comprehensive overhaul of taxi legislation, some of which had been in existence since 1847. Consultation would be undertaken with all groups who might have an interest in taxis including local authorities, the trade and users.

Brian Leahy therefore recommended that as the consultation was due to commence in April 2012, the Committee should consider keeping the status quo in regards to vehicle transfers and the Family Exemption condition until the draft legislation became available in November 2012. At this time, the Council would be aware of what areas would be under local control and what areas would be legislated for by Parliament.

Brian Leahy drew attention to page 11, Appendix A: Equality Impact Assessment which referred to the necessity for a Stage 2 EIA by 13 December 2011. This recommendation for a stage two assessment being completed by the 13 December 2011 had been made in error, as any requirement would be dependent on the outcome of this meeting.

Councillor Paul Bryant raised a question in relation to paragraph 3.3. He asked if a third option, to rescind the Family Exemption condition and not allow transfers, had been considered.

Brian Leahy responded by stating the ability to transfer was a right under legislation and Members had previously voted in favour of the condition. Only protected vehicles could be transferred to a member of the family, as shown in the conditions for Family Exemption on page 15, part 3. The Council imposed this condition in 2005, to encourage the proliferation of wheelchair accessible vehicles and to ensure an increase in the percentage of these vehicles available for hire in West Berkshire. However, it was for Members to decide if they wanted this condition to remain.

Councillor Paul Bryant asked what other Councils had done. Brian Leahy informed the Committee that very few Councils had protected vehicles, but many authorities did insist that any new vehicles had to be fitted for wheelchair access. As there is no comprehensive data available, it would be impossible to draw a conclusion on this point.

Councillor David Holtby inquired of Brian Leahy if any indication had been given at the conference he had recently attended, as to whether councils would be refraining from changing policies relating to the taxi industry, until the new regulations had been published.

Brian Leahy answered that no indication had been given as to how to approach this matter. Attendees had been directed to continue to make decisions as they saw fit, until the changes received Royal Assent. Brian Leahy understood the general view at the conference was that the changes would be radical and would involve deregulation which would benefit the trade, but not necessarily Councils or customers. Delegates he spoke

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to offered the view that Councils were disinclined to make changes when the entire system could be overhauled in 18 months time.

Paul Anstey informed the committee, in his experience with previous consultations, if there was to be fundamental change it would be better to wait for the consultation to be completed and to delay making any decision until the Council was aware of the changes to be made as there would inevitably be costs and little benefit in changing now. Brian Leahy suggested that these costs would not just be for the Council, but would also impact on the trade.

Councillor David Holtby remarked, the current coalition Government had a propensity to openness, but agreed with Officers' advice that no change should be made in the light of the Government consultation. However, he drew attention to page 15, part 3.3 and questioned Sarah Clarke as to the use of the term 'partner'. He asked if, since 2005, there had been a change as to how this word was understood.

Sarah Clarke explained that in the context of Family Exemption, the term related to a common law husband or wife and in keeping with the Council's broader approach, this included same sex couples. Where challenges arose, the Council would have accepted evidence and would not have interpreted the term narrowly. It was not the Council's policy to limit or prevent the transfer of licenses, but it wished to ensure the availability within the fleet of vehicles for infirm passengers. The Council did not prevent transfers, but if the licence was transferred it would ensure the new vehicle would be wheelchair accessible.

Councillor David Holtby expressed concern that the term 'partner' was too loose and if business value became attached to a licence, this might result in difficulties for the Council. Sarah Clarke advised that the definitions of 'immediate family' and the need to provide proof had so far been sufficient. She was not aware of any challenge to the Council on this point. Councillor Holtby stood by his conjecture that 'partner' was a loose term and in future, more definition would be necessary if money were attached to a license.

Councillor Paul Bryant asked for assurance that the consultation response mentioned on page 10, part 5.2 would be brought back to the Committee. Brian Leahy informed the Committee that the consultation would be available via the website and therefore open to all. Councillor Paul Bryant noted that although the consultation was open to all, some councils submitted a Council view based on the results of a task group combining the responses of officers and trade members. Brian Leahy confirmed that Officers would prepare a brief report to agree the procedure for submitting a response to the consultation for the next Licensing Committee meeting.

*In accordance with paragraph 7.12.14 of the Council's Constitution, the Chairman proposed suspension of standing orders to allow members of the trade to participate in the discussion. This was seconded by Councillor Mollie Lock and the Committee voted in favour of this proposal.*

Two representatives of the trade, Mr Andrew Lutter and Mr Richard Brown Chairman and Vice Chairman respectively of West Berkshire Hackney and Private Hire Association, addressed the committee. Mr Richard Brown reiterated that conditions had been agreed by Members to increase the quantity of wheelchair accessible vehicles and it was felt by the trade, the target had been achieved as 59% of vehicles were now disabled accessible. In his experience, many customers preferred to travel in saloon cars and

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were declining to use wheelchair accessible vehicles. Proprietors were concerned as unprotected plates were non-transferable, when a saloon plate was returned to the Council it would be reissued as a plate for a wheelchair accessible vehicle, leading to a lack of saloon cars and an unbalanced fleet. The trade felt it was time for the conditions to be lifted to allow free transfers, in order to reduce regulation and encourage those who wanted to enter the trade.

Mr Andrew Lutter stated the conditions prevented competition in the market as wheelchair accessible vehicles could not compete with saloon cars for school transport, for example. The trade needed support in these difficult financial times and this could be provided in part by deregulation. Mr Richard Brown advised that there would be no extra costing to the Council should they lift the conditions, but there might be an increased cost to the proprietors in a fee to transfer the license.

Mr Andrew Lutter suggested that if an agreement to lift the condition were made, a clause could be included stating agreements were subject to change following the government review. Mr Richard Brown responded in the affirmative to Councillor Paul Bryant's query as to whether, should the status quo continue, there would be no saloon cars remaining in the fleet. However, he noted that a protected license holder could have a choice of vehicle.

Councillor Laszlo Zverko enquired as to the cost of converting a vehicle to be wheelchair accessible. Mr Andrew Lutter answered that to refit a VW transport, for example, would cost approx £7,000. Due to cost, many proprietors used a Fiat Doblo, which sold for approximately £12,000 new. There were not many second hand wheelchair accessible vehicles on the market and because of this, they were more expensive to purchase than a saloon car.

Councillor Laszlo Zverko asked if there are any regulations regarding vehicle maintenance.

Mr Richard Brown responded that the interior of the vehicle was checked annually. As the vehicle became older, checks increased in frequency to biannually and then quarterly.

*The Chairman reinstated standing orders. Seconded by Councillor Mollie Lock.*

Councillor Paul Bryant requested information on the mix of wheelchair accessible and saloon vehicles in the fleet. He also asked if Officers had a view that there should be a mix and if so, what the proportions should be and how it could be maintained?

Brian Leahy explained that the Disability Alliance had suggested that a ratio of 50% wheelchair accessible and 50% other vehicles would be beneficial. The 59% quoted by Mr Richard Brown included disabled accessible vehicles with swivel seats, not all vehicles were as yet wheelchair accessible. He informed the committee that in addition to Hackney Carriages, there were about 167 Private Hire vehicles which could not be hailed or ranked, but could be pre-booked most of which were saloon vehicles. Therefore the overall picture was that in addition to the 60+ protected licenses, there were a further 150-160 Private Hire saloon vehicles available for customers to use.

Sarah Clarke noted that some other councils had determined that their entire Hackney Carriage fleet should be wheelchair accessible. This might be one possible direction the Council wished to follow, or to have a two tier Hackney Carriage regime.

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Brian Leahy and Sarah Clarke confirmed for Councillor Paul Bryant, the distinction between disabled accessible and wheelchair accessible vehicles.

Councillor David Holtby asked Sarah Clarke and Brian Leahy, if they were suggesting the Council was heading towards an all wheelchair accessible fleet. Sarah Clarke explained there was much debate around this matter. The Disability Discrimination Act could have meant that wheelchair accessible vehicles were a requirement; however this was not implemented by Parliament. West Berkshire Council had made a concession to people who held licenses at the time the conditions were imposed and offered new licenses only to those who had wheelchair accessible vehicles. She stated it was for the Members to decide, however it was not unreasonable for this to become a requirement.

Councillor David Holtby questioned Brian Leahy if he thought the Council had a healthy mix in its fleet. Brian Leahy confirmed this was the case. He informed the Committee that 59% of the 203 vehicles were disabled accessible. However, only 33% were wheelchair accessible, 17% less than recommended by the Disability Alliance. He therefore recommended that the Members keep the status quo and await the outcome of the legislative changes.

Councillor Tony Linden proposed the Committee should not pre-empt the Government consultation and follow Officers' advice to reaffirm the Council's intention to apply the Family Exemption condition approved in April 2005. Councillor Paul Bryant seconded Councillor Tony Linden's proposal.

The Committee voted in favour of the proposal to reaffirm the Council's intention to apply the Family Exemption condition approved in April 2005.

**RESOLVED:** To reaffirm the Council's intention to apply the Family Exemption condition approved in April 2005.

(Next meeting to be held on 20 March 2012, Council Chamber, Council Offices, Market Street, Newbury at 6.30 p.m.)

*(The meeting commenced at 6.30pm and closed at 7.20pm)*

**CHAIRMAN** .....

**Date of Signature** .....