

PUBLIC PROTECTION COMMITTEE

3 NOVEMBER 2020

Present: Councillor Mackie(Chairperson)
Councillors Sattar, Asghar Ali, Derbyshire, Hudson, Jacobsen,
Lancaster, Dianne Rees, Robson and Wood

12 : APOLOGIES FOR ABSENCE

No apologies for absence were received.

13 : DECLARATIONS OF INTEREST

Apologies were received from Councillor Susan Goddard.

14 : MINUTES

The minutes of the meetings held on 6 October 2020 were approved by the Committee as a correct record.

15 : PRIVATE HIRE OPERATOR CONDITIONS

Under the Local Government (Miscellaneous Provisions) Act 1976 the Council may attach any conditions to the grant of a private hire operator licence that they consider reasonably necessary. The Committee was advised that the authority's current private hire operator conditions have been in place for many years and in response to new best practice standards published by the Department for Transport officers considered that it is appropriate to review the current conditions to bring them in line with the new standards.

The Committee received a report. Members were asked to consider replacing the current private hire operator conditions. The current private hire operator conditions are detailed at Appendix A of the report and a draft proposed set were detailed at Appendix B.

The new set of proposed conditions prioritised public safety. A summary of the elements of the new conditions was set out in the report. The Licensing Policy Officer introduced the report and highlighted the main changes in the proposed conditions.

Members were advised that a number of responses were received during consultation with private hire operators and a formal trade representative body details of which were also set out in the report.

The Chairperson welcomed representatives from the private hire trade to the meeting. A number of representative were invited to make representations regarding the proposed new private hire operator conditions.

Mr Shammi Raichura of Uber addressed the Committee. Mr Raichura thanked the Committee for the opportunity to engage and welcomed the changes to the wording

of condition 1.2 that allows companies to be private hire operators as well as individuals. The amendments to 2.1 in relation to passenger email addresses and 2.7 in relation to complaint reporting were also supported. Mr Raichura stated that Uber already required with the requirements for driver and vehicle record keeping set out in condition 3.1. Uber also shared feedback and welcomed changes regarding DBS checks, booking records, driver working hours, insurance and car-pooling.

David Coral of Ola Cabs stated that Ola were content with the submissions they provided and the responses to that from the authority. Ola appreciate the flexibility allowed by allowing the email address to be recorded for the customer instead of the a requirement for a home address to be recorded. Ola also supported the categorisation of complaints received. Mr Coral stated that the requirement for a DBS check for staff presented some challenges for staff based overseas in India, but they are looking at an equivalent check. Members were advised that Ola drivers are automatically logged off their application when rest breaks are due.

Mr Des Broster representing Veezu (Dragon Taxis) addressed the Committee. Mr Broster complimented Licensing Officers for listening to the responses to the consultation exercise, particularly in relation to new technology and the changing nature of the trade. In relation to the reporting of complaints, Mr Broster considered that 48 hours did not afford much time for complaints to be investigated. He requested that a minimum of 72 hours be allowed.

Mr Broster did raise concerns that drivers are able to work for different operators on different platforms and therefore keeping track of driver's working hours presented some difficulties. Mr Broster suggested that a regulatory control could be put in place that would allow drivers to work with one operator. This system is operated in Leeds and Swindon has just agreed to implement the same arrangement. The measure is not intended to restrict trade or employment opportunities. Drivers are currently able to operate two platforms simultaneously or switch operators when 'surge charging' is in place. Mr Broster stated that this is a regulatory matter and the public would benefit from these controls. He advised Members that these controls were set out in their response to the consultation but were not included within the finalised proposed conditions. Mr Broster requested officers to reconsider this issue. Mr Broster also commented on condition 10.1 insurance. He asked for operators to be regarded as an aspect of the enforcement regime and in return operators need to have the controls referred to above put in place.

Mr Yusef Jama spoke on behalf of Cardiff Hackney Alliance. Mr Jama stated that there was a reasonable expectation that all drivers and operators working within a local area would abide by the requirements of the local authority's licensing conditions.

Mr Lee Ward of Unite was invited to address the Committee. Mr Ward considered that the report was flawed but the Committee had an opportunity to rectify that. Mr Ward raised concerns that whilst the policy was in regard to operators there were conditions within it that aimed to regulate drivers and vehicles, such as controls over the number of hours a driver can work. Mr Ward supported the view that drivers should only be able to register with one operator at a time. This would support public safety in event of any investigation. Mr Ward suggested that the driver's original paper licence could be held by the operator.

Members also were advised that they have an opportunity to use the proposed policy to protect local licenced drivers and the public from vehicles that are licenced outside of the area by insisting that operators can only give work to drivers and vehicles licenced by Cardiff Council. Mr Ward also made a number of further suggestions in relation to clarifying the role of the driver in accepting bookings and clarifying the contract between the operator and the customer.

Mr Steven Toy representing Unite also made representations. Mr Toy commented on the proposal to limit the number of hours drivers are able to work. Concerns were raised that this would create an 'uneven playing field' as some platforms would support this but smaller operators not on those platforms would struggle.

The Chairperson asked the Legal Officer to comment on the issues raised by the trade representatives. Members were advised that the policy conditions were in place to support existing legislation not to replicate the legislation. Independent counsel's opinion was taken in relation to 'app based' operators which confirmed that such operators were not committing any offences. Current case law also supported that position. The Legal Officer also confirmed that the authority is permitted to limit the number of working hours for drivers.

Members were invited to raised questions or seek clarification on the issues raised. A Member ask how it would be possible to manage the number of hours drivers are working if they are able to switch platforms. The Licensing Team Manager stated that the operator would be able to monitor the hours a driver is working for them. This was a tool to restrict drivers working excessive hours. It was accepted that legislation allows drivers to work for multiple operators.

The Operational Manager Public Protection stated that at present there are no controls regarding how long drivers can work. Ultimately this was an issue for drivers to manage their own health and safety. The condition suggested was a first attempt to address this issue. Members were recommended to approve the condition. However, if Members have concerns an undertaken was given that officers would take these on-board and reviewed at a later date. A number of Committee Members indicated a preference that officer continue to monitor and review the issue of driver working excessive hours.

Members raised concerns regarding the health and safety implications brought about by drivers working excessive hours. A Member asked whether it would be possible to put a restriction on drivers switching between operators, for example during any 24 hour period.

The Licensing Policy Officer confirmed that an explanatory note in relation to the carriage of assistance dogs reminding operators of their obligations. Members were advised that Cardiff Council is only able to condition operators working in Cardiff. Officers confirmed that there was nothing to stop a neighbouring authority operator from working in Cardiff.

A Member asked why operators were not subject to an enhanced DBS check. The Licensing Manager stated that, unlike drivers, there was no requirement for operators

to transport children and therefore an enhanced check was not proportionate. Cardiff drivers are still expected to have an enhanced check.

In response to a point made by a trade representative, the Licensing Manager stated that the officers do not consider it is appropriate for operators to hold the paper licences of drivers working for them. The Legal Officer stated there would be nothing legally to prevent that. The Licensing Manager raised concerns that if operators were able to hold the original paper licences that this would have unintended consequences, such as the operator withholding the paper licence in the event of a dispute. There were also implications for drivers who are revoked as a result of a conviction or being charged with a serious offence. The Operational Manager stated that such a condition would represent a significant change and would have a direct effect on drivers. If Members were considering implementing such a condition then more work would be needed to cover some of the issues raised by the Licensing Manager. Officers have already given an undertaking to look at working hours and this issue could also be considered further.

RESOLVED – That:

- (1) the current private hire operator conditions be replaced by the proposed conditions detailed at Appendix B of the report with immediate effect;
- (2) a grace period of 6 weeks be allowed for existing private hire operators in relation to compliance with the conditions detailed in Appendix B.

16 : URGENT ITEMS (IF ANY)

The meeting terminated at 11.15 am