

Licensing Committee Report

Ward(s) affected: All Wards

Report of Director of Service Delivery

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### **Taxi and Private Hire Policy – Private Hire Vehicle Operator Contracts**

#### **Executive Summary**

The Council in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades has a paramount obligation to ensure the safety of the public.

Following the updates to the Council's Hackney Carriage and Private Hire Vehicle Licensing Policy in 2021 and the consultation upon the Department for Transport's new draft Best Practice Guidance last year, on 28 July 2023 the High Court handed down a ruling following previous litigation between app-based drivers in London and workers' rights which affects the contract arrangements between Private Hire Operators and passengers under the Local Government (Miscellaneous Provisions) Act 1976.

In response to the Uber Britannia Limited v Sefton Metropolitan Borough Council & Others judgement, Officers are proposing a minor change to the Council's Licensing Policy which seeks to add a condition to all Private Hire Operator Licences to ensure Operators comply with this ruling.

#### **Recommendation to Committee**

That the Committee considers the issue identified in the report and recommends that a minor change to the Council's Taxi and Private Hire Licensing Policy is introduced under delegated powers. This change is to add a further condition to the Council's standard Private Hire Operator Licence Conditions to ensure compliance with the principle in the ruling.

Reason(s) for Recommendation:

To ensure all Guildford Licensed PHV operators are aware of their obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.

**Is the report (or part of it) exempt from publication?**

No

**1. Purpose of Report**

- 1.1 The purpose of this report is to brief the Committee on a recent piece of case law affecting the Taxi and Private Hire Sector in respect of the contractual relationship which Private Hire Operators must enter into with passengers. It asks the Committee to consider a recommendation to amend the Policy under delegation to include an additional standard Private Hire Operator Licence condition to ensure Operators comply with their responsibilities as a result of this ruling.

**2. Strategic Priorities**

Updating the Policy will contribute to our fundamental themes as follows:

- **Homes and jobs** – supporting private hire operators to be aware of the contractual duties.
- **Environment** – improving transportation in the Borough through a well regulated private hire service.
- **Community** – ensuring that all taxi and private hire vehicle users are still able to travel safely.

### **3. Background**

- 3.1 The Council in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades has a paramount obligation to ensure the safety of the public. The current Hackney Carriage and Private Hire Licensing Policy approved in April 2021, reflecting Guidance issued by the Department of Transport in July 2020, introduced positive changes to the licensing function reflecting this obligation.
- 3.2 The industry has experienced considerable changes in the last 10 years with the rise in popularity of mobile app based private hire operators which has resulted in a number of legal cases about operating models and workers' rights.
- 3.3 On 6 December 2021, in the case of Uber London Ltd v Transport for London & others [2021] EWHC 3290 (Admin), the Divisional Court ruled in order to operate lawfully under the Private Hire Vehicles (London) Act 1998 (the legislation governing private hire in London) a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking.
- 3.4 This case required the operator concerned to change its business model to contract directly with passengers rather than classifying itself as an agent. This has helped confirm driver status as workers with statutory protections and has also had VAT implications. This was predominantly a case relating to workers' rights, however it has had implications for all London based operators in respect of their operating model. It places the operator under an obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and affects their responsibilities under that contractual relationship.
- 3.4 Following this case, in order to level the competitive playing field nationally, Uber sought a declaration at the High Court to the one

imposed on it for London to cover the rest of England and Wales where Operators are governed by the Local Government (Miscellaneous Provisions) Act 1976.

- 3.5 The most recent case is known as the Uber Britannia Limited v Sefton Metropolitan Borough Council & Others judgement and in the ruling handed down on 28 July, Mrs Justice Foster DBE agreed with Uber and that the current model of practice upheld by Councils for 47 years must now change. As a result, the position is that all Private Hire Operators must now accept the contractual responsibility for the transport of their passengers.
- 3.6 The obligation applies to all Private Hire Vehicle Operators in England and Wales, regardless of how many vehicles and drivers are available to them, the employment status of their drivers who carry out bookings accepted by them and whether the operator accepts bookings by telephone, in-person, online or via an app.
- 3.7 All Private Hire Operators following the judgement must satisfy themselves that they are complying with the obligation and fulfilling their responsibilities under private hire legislation in relation to the contractual arrangements they have in place with passengers and drivers. These responsibilities include that:
- a Licensed Private Hire Operator must itself accept bookings from its passengers, rather than anyone else (for example a driver) doing so;
  - a Licensed Private Hire Operator must itself take responsibility for the journey from point A to point B, rather than anyone else (for example a driver) doing so;
  - the booking must be carried out in a licensed Private Hire Vehicle (licensed by the same Council as where the Operator is licensed) (or taxi) driven by a licensed driver (again licensed by the same authority); known as the 'triple lock'

- the booking must be carried out for a fare which was either agreed or for which an accurate estimate was provided in advance.
- 3.8 The obligation applies to operators in the same way regardless of how they operate (e.g. if they take bookings via an app or over the telephone) and whether or not they use written contracts with passengers and/or drivers. A contract will exist even if it is not recorded in writing and the same requirements apply to operators who orally agree arrangements with passengers as they do to those who have written terms.
- 3.9 An operator can still sub-contract a booking to another licensed operator but the contract with the operator who initially accepted the booking must remain in force in the usual way. All operators must comply with the obligation including those without written contracts. Indeed, what a written contract says may not be conclusive evidence that an operator is complying with the obligation. What happens in practice must also be consistent with the obligation.
- 3.8 Following the ruling, there is likely to be an expectation that Local Licensing Authorities take steps to ensure that all licensed Private Hire Operators under their jurisdiction are aware and compliant with their obligations. From a licensing perspective, failure to do so could mean an unfair playing field for operators who are not compliant, and result in weakened protection for customers. There are also potential workers rights and tax implications for operators, however these are outside of the expertise and remit of the Council.
- 3.9 Section 55(3) of the Local Government (Miscellaneous Provisions) Act 1976 in respect of Private Hire Operator Licensing allows that:  
*“a district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.*
- 3.10 Clearly the judgement from the Senior Courts is one which all Local Authorities and Private Hire Operators must now have regard to in their practices. Consequently, this report proposes a prescribed standard licence condition to be included in all licences issued under

section 55 to ensure all Guildford Licensed Private Hire Operators are aware of their obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.

3.11 The additional condition provides that:

*“The operator shall enter into a contractual obligation as principal with the person making the private hire booking to provide the journey which is the subject of the booking, and any such contractual obligation must be consistent with the Local Government (Miscellaneous Provisions) Act 1976.”*

3.9 Under the Council’s Constitution (page 3-68, paragraph 13), the Joint Executive Head of Regulatory Services, in consultation with the appropriate Lead Councillor, has delegation to make minor changes to the Taxi and Private Hire Licensing Policy. As such, should Licensing Committee agree, this change has been made under delegation with immediate effect.

#### **4. Consultations**

4.1 Clearly the judgement from the Senior Courts is one which all Local Authorities and Private Hire Operators must now have regard to in their practices.

4.2 The Licensed trade will be informed of the implications of the judgement, and the additional condition, via the Council’s Taxi and Private Hire Newsletter. All conditions are also clearly detailed on licences issued.

#### **5. Key Risks**

5.1 Clearly the judgment has implications for Private Hire Operators in respect of workers’ rights and tax. However, these are outside of the scope of the Council’s remit and it is important that the judgement is implemented properly by Operators to ensure a level playing field and

adequate protection for passengers making a booking, as otherwise there may be reputational and safety risks for Operators, passengers and the Council.

## **6. Financial Implications**

6.1 There is no financial implications for the Council as a result of this change.

## **7. Legal Implications**

7.1 The Council in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades has a paramount obligation to ensure the safety of the public.

7.2 Section 55(3) of the 1976 Act allows the Council to attach conditions to the grant of a Private Hire Operator Licence which is considered to be reasonably necessary. The Council sets out what is considered necessary via its adopted Licensing Policy.

7.3 As set out previously, this is a judgement affecting all Licensing Authorities and Licensed Operators in England and Wales and consequently applies to all.

7.4 Should the Council refuse an application for the grant of a Private Hire Operator Licence, or revoke a licence once granted, there is a right of appeal.

## **8. Human Resource Implications**

8.1 The minor change to the Policy can be managed from the current resource.

## **9. Equality and Diversity Implications**

9.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to

eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.

- 9.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 9.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.
- 9.4 The additional licence condition will provide additional protection to all passengers, including those with protected characteristics. There are no other equality and diversity implications arising from this report.

## **10. Climate Change/Sustainability Implications**

- 10.1 The Council's current Taxi and Private Hire Licensing Policy sets out a vehicle age and emissions criteria in order to help improve air quality in the Borough. There are no changes to this position.

## **11. Summary of Options**

- 11.1 After considering the report, the Committee may:
- i. Recommend that a minor change to the Councils' policy in respect of a licensing condition to account for the Uber Britannia Limited v Sefton Metropolitan Borough Council & ORS judgement, or
  - ii. Not recommend such a change.



## **12. Conclusion**

- 12.1 The current position is that the Uber Britannia Limited v Sefton Metropolitan Borough Council & ORS judgement applies to all Private Hire Operators in England and Wales and the addition of a licence condition to ensure Operators are aware of the judgement and their subsequent obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.

## **13. Background Papers**

[Taxi and Private Hire Licensing Policy 2021](#)

[Statutory Taxi and Private Hire Vehicle Standards \(Department for Transport, 2020\)](#)

[Taxi and Private Hire Vehicle Licensing: Best Practice \(Department for Transport, 2010\)](#)

[Taxi and Private Hire Vehicle Licensing: Best Practice Guidance for Licensing Authorities in England \(draft\). \(Department for Transport, 2022\)](#)

[Taxi and Private Hire Vehicle Licensing: Councillor Handbook \(Local Government Association, 2021\)](#)

[Uber Britannia Limited v Sefton Metropolitan Borough Council & ORS \[2023\] EWHC 1975](#)

[Guidance for London Private Hire Vehicle Operators: Contracts with Passengers - April 2022 \(tfl.gov.uk\)](#)

## **14. Appendices**

None

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