

BARNSELY METROPOLITAN BOROUGH COUNCIL

GENERAL LICENSING REGULATORY BOARD

A

3rd July, 2013

1. **Present:** Councillors C. C. Wraith (Chairman), P Birkinshaw, Brook, Bruff, J Carr, Tracey Cheetham, Duerden, Dures, Ennis, Johnson, Saunders, Sixsmith, Tattersall, Wilson and Worton.

2. **Declarations of Pecuniary and Non-Pecuniary Interest**

There were no declarations of pecuniary and non-pecuniary interest from Members in respect of items on the agenda.

3. **Minutes**

The minutes of the meeting held on 13th March, 2013 were taken as read and signed by the Chairman as a correct record.

4. **Vehicle Inspections and Related Matters**

The Fleet Operations Manager gave a briefing on the current position with regard to Private Hire and Hackney Carriage Vehicle Inspections and related matters.

He reminded Members that following the approval by Cabinet on the 28th February, 2013 new arrangements for vehicle inspections had been approved. Fleet Services now undertook an MOT test on every hackney carriage and private hire vehicle booked in for inspection which used the same criteria as the previous Certificate of Compliance test. MOT tests were also registered with VOSA so that all interested parties could check whether or not a vehicle was tested.

He explained that retest fees were charged in the event that licensed vehicles failed the test but this re-test fee was not levied on private motorists. The rationale for this was that operators of licensed vehicles were deemed to be professionals who should be keeping their vehicles in roadworthy condition at all times. The re-test fee was used, therefore, as an incentive to encourage operators to maintain their vehicles and not incur additional costs.

Members were reminded that when previously reported, failure rates were deemed to be unacceptable, however, since the introduction of the MOT test there had been an increase in the number of failures which was disturbing. Evidence, which outlined in detail within the briefing note

circulated, indicated that, taking account of the vehicles requiring a second re-test, failure rates were currently around 60%.

The majority of these failures related to matters that should be picked up by drivers on their daily checks which were a requirement of Licensing conditions. In order to assist operators and reduce the number of failures, Fleet Services offered advice and the loan of minor parts subject to such items being replaced prior to the release of the test paper.

The briefing engendered a full and frank discussion during which matters of a detailed and general nature were raised and answers were given to Members questions where appropriated.

The following issues were amongst those raised:

- Members expressed grave concern at the increase in the number of failures and there was a discussion of the ways in which this matter could be addressed
- the levy of the re-test fee was welcomed as an incentive to encourage operators to maintain their vehicles
- there was a discussion of the ways in which drivers could be 'encouraged' to fill in the daily check sheets. It was noted that failure to comply with licensing conditions could mean that a driver was required to appear before Panel to explain their conduct
- it was suggested that a detailed breakdown of failures including the breakdown between hackney carriage and private hire vehicles be provided for the next meeting.
- Arising out of the above, reference was made to the licensing enforcement exercises undertaken and of the results of spot checks of vehicles, details of which could also be provided for the next meeting. Any Member wishing to participate in a 'spot check' exercise or visit Fleet Services to view the work undertaken there should contact the Principal Licensing Officer or Fleet Operations Manager respectively
- It was noted that consideration was being given by the Licensing Service to allowing operators to have their vehicles inspected by private companies rather than by Fleet Services. It was noted that, if approved, companies undertaking such work would have to ensure that detailed statistics about failure rates etc would still have to be provided for Licensing Services. In addition, there would be a requirement that such inspections were undertaken by companies within the Borough
- the improving relationship with the trade was noted and their request for consideration of 12 month vehicle licenses which was currently being considered by the Licensing Service was noted. It was felt that, if adopted, this could be developed as a 'reward' system with those operators with consistently high pass rates being allowed 12 month licenses but those with higher fail rates being

required to have the 2 or 3 inspections (dependent upon the age of the vehicle) per year as at present.

- Reference was made to the delays encountered recently when drivers came into Licensing Services to renew their licenses. It was noted that this matter had now been addressed.

RESOLVED

- (i) that the briefing be received and the Fleet Operations Manager be thanked for a most informative presentation. ; and
- (ii) that a further report be submitted to the next meeting outlining in detail the types of MOT failures encountered broken down by licence type (hackney carriage and private hire) together with details of the 'spot checks' undertaken by Licensing Services.

5. Review of Approach to Licensing Enforcement as a Result of Recent Cast Law

The Assistant Director of Culture and Regulation submitted a report which was presented by the Assistant Chief Executive (Legal and Governance) on the outcome of a recent High Court Queens Bench Division case in respect of taxi licensing affecting the manner in which the suspension of a taxi driver's licence could be used as a means of punishment.

In summary, in order to comply with this new requirement it was proposed that in future, if the Licensing Service received an allegation or complaint which was of particular serious nature giving rise to a genuine and urgent concern for the protection of public safety, officers may give consideration to using their delegated powers to immediately revoke a licence.

The driver would then be afforded the opportunity of lodging an appeal in the Magistrates Court within 21 days and also the opportunity of appealing to a Licensing Board Panel. The Panel would have options of either upholding the officer's decision or directing the issuing of a new driver license and in such circumstances the application fee would be waived.

Where the Board overturned the officer decision and an appeal had been lodged by the driver in the magistrates court, the Council may need to consider reimbursing the driver the court issue fee for the appeal which would subsequently have to be withdrawn at court. However, provided that the Council did not act unreasonably, improperly or dishonestly it was unlikely to be penalised in costs even if the subsequent decision of the magistrates was to uphold the appeal.

In response to questioning, Members discussed the implications of this High Court decision and the ways in which the new arrangements would

operate within Barnsley. Arising out of this, the Assistant Chief Executive commented that the Licensing Service would consider and produce for approval, guidance on the use of suspension as a punitive measure.

RESOLVED

- (i) that the report be received and its contents noted;
- (ii) that in accordance with the High Court decision, the Council's Licensing Department exercise the power of revocation of a taxi licence with immediate effect under existing delegated powers contained within the Council Constitution in circumstances where a serious complaint or allegation is received against a driver which, if substantiated, would cast doubt over the fitness and propriety to continue to hold a taxi licence (the primacy of such action to ensure the protection of public safety); and
- (iii) that in circumstances where a license is revoked in the interests of public safety and the driver is subsequently cleared of all allegation or charges, a new licence be issued at no expense to the driver.

6. Review of Taxi Licensing

The Executive Director Development, Environment and Culture submitted, for information, a report which had been approved by the Council on the 13th June, 2013 on:

- (a) the re-adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976 within the Borough of Barnsley; and
- (b) the amalgamation of existing hackney Carriage Licensing Zones pursuant to Schedule 14 , Part 2, Paragraph 25 of the Local Government Act 1972

The report was presented by the Assistant Chief Executive (Legal and Governance).

The recommendations contained within the report, having been adopted by the Council, provided undisputable proof that this legislation applied throughout the whole of the Borough and enabled the Council to take enforcement action without fear of challenge. They also amalgamated existing hackney carriage licensing zones into a single zone within the Borough and thereby enabled hackney carriages licensed by the Council to ply for hire within the whole of its area.

RESOLVED that the report be received.

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Chairman

