

LICENSING PANEL

TUESDAY, 13 OCTOBER 2020

PRESENT: Councillors Gurpreet Bhangra (Chairman), David Hilton (Vice-Chairman), John Bowden, Gerry Clark, David Cannon, Phil Haseler, John Baldwin, Mandy Brar, Karen Davies, Jon Davey and Geoff Hill

Also in attendance: Public Speakers: Mr Yasir, Mr Sabir and Mr Pazir

Officers: Shilpa Manek, Greg Nelson and David Scott

APOLOGIES FOR ABSENCE

No apologies for absence were received.

DECLARATIONS OF INTEREST

No declarations of interest were received.

MINUTES

RESOLVED UNANIMOUSLY: That the minutes of the last meeting be approved. This was proposed by Councillor Haseler and seconded by Councillor Cannon.

MINUTES OF THE LICENSING AND PUBLIC SPACE PROTECTION ORDER SUB COMMITTEE

RESOLVED UNANIMOUSLY: That the minutes of the last Licensing and Public Space Protection Order Sub Committee were an accurate record. This was proposed by Councillor Brar and seconded by Councillor Haseler.

ADOPTING STATUTORY TAXI & PRIVATE HIRE VEHICLE STANDARDS

Greg Nelson, Trading Standards & Licensing Manager, introduced the report. The Panel were being asked to agree the recommendations set out in the report.

The Chairman invited Mr Sabir, Mr Yasin and Mr Pazir to address the Panel:

Mr Sabir informed the Panel that Covid had had a major impact on taxi drivers. The total lockdown had stopped fares and had caused him to be lost and confused as he could not support his family and all pre bookings were being cancelled. It had been very difficult to sustain the vehicles in the trade. With no travelling and airports being closed and no work commute, business had almost stopped. Many taxi drivers were trying to find other jobs to support their families. He was very concerned about the bleak future. Mr Sabir pointed out that RBWM should follow the same process as Wokingham Borough Council, where the drivers were handing back their licenses, the council had decided to extend their life of taxi vehicles without a maximum number of years and to reduce their licence fees. The drivers understood that RBWM had given extensions to the licenses and had not charged a fee which all drivers were grateful for. This was only till September 2020. Any drivers that had licenses to be renewed after September were given no privileges as the ones before September. Drivers were finding it extremely difficult to carry on their trade and support their families and could not afford the fees and insurance going forwards. Mr Sabir suggested that a cap be put on vehicles so that no more were issued and to get rid of the Windsor Marshal at Victoria Street, that they were paying towards along with the council. Mr Sabir was aware that the Windsor Marshal had

been in and out of post since the lockdown. The premium that was paid for the Hackney Carriage plate licence needed to be reduced since the service was no longer required. With these implementations, both the drivers and the council could save money as no nightclubs were open and no night time economy.

Mr Sabir informed the Panel that the drivers had no problems with the recommendations in the report. However, some drivers would be treated unfairly. The council would need to be more open and transparent in dealing with cases so the livelihood of drivers was not affected further. Mr Sabir suggested that the council have a conviction policy as regards to criminal records and to what extent a driver could be regarded as a risk. This detailed information would assist all drivers to understand and therefore comply.

The third point that Mr Sabir raised was that the drivers were happy that the policies for recommendation and the CCTV policy would be going to consultation but they were all concerned that with all the fees they were paying, in these unusual times, the recommended policies would incur further costs to the drivers which would be unfair and not right.

Mr Yasin informed the Panel that he agreed with everything that Mr Sabir had said and wanted to add a point on the language policies. Mr Yasin said that some drivers had been working in the trade for over thirty years and their language skills, spoken, were not a problem but their writing and reading skills were not that great. If these drivers had to be tested, it would not be fair as they had traded for such long times. It would be unfair to cancel their licenses.

Mr Pazir was invited to speak but was unable to join the discussion.

Greg Nelson thanked both speakers and answered a few of their points. Greg Nelson commented on the marshal, the council were looking at the best use of the marshal. A full consultation and agreement would be carried out if any changes were to take place to the position. With respect to the point about knowing who is a risk, each case would be treated on its own merits and the council would only act on the evidence available, only act when necessary and proportionally and all drivers would have the right to appeal upon any action that was taken. Greg Nelson confirmed that he was aware of the changes that Wokingham Borough Council had made, they had made a reduction of £40 to their Hackney fees this year and had extended the age of the vehicles for a twelve month period. Greg Nelson confirmed that he would be happy to discuss this with senior colleagues and councillors. Greg Nelson responded to Mr Yasin on the point of the English language policy and accepted that many drivers had been driving for many years and appreciated that their written English was not great. Greg Nelson made it clear that this would only be raised where an officer had cause to believe that an existing drivers English was a problem and was not enabling them to do their job properly would they seek the driver to do some English testing. The main point was to keep the residents safe. There were no intentions to start testing existing drivers.

Councillor Cannon proposed the motion as recommended in the report. This was seconded by Councillor Hilton.

Councillor Cannon reminded all that the role of the Panel was as a taxi regulator and the first priority had to be the safety of the residents and passengers using the taxis that were operating in the borough. The recommendations in the report were mandatory from government with the only caveat saying that except there were exceptional circumstances for them not to be implemented. Councillor Cannon highlighted that he would have been surprised if any Member felt that the recommendations were unsuitable to keep the residents safe. Two of the recommendations were not mandatory and the Officer had highlighted these, first being the English language provision and the second being the CCTV, and to speak with the trade and get their views on this as there would be impacts, financial and GDPR on them. However, the main reason was to protect the public and for the drivers to protect the public, which they did a very good job of. The drivers provided a safe, secure transport service for the residents and the Panel needed to ensure that this continued. All the recommendations

enhanced the safety of the residents and passengers. This was a sensible and proportional step forward.

Councillor Hilton pointed out that the drivers had no concerns with the policies and the policies offered protection to the drivers as much as they did to the passengers. Councillor Hilton addressed Mr Sabir's concerns and highlighted as did Greg Nelson that each case would be looked at on its own merits and actions would only be taken when they had to. Councillor Hilton commented on the language issue and said that drivers needed to have an adequate command of English to communicate with their passenger and the licensing officer. Councillor Hilton concluded that these were sensible proposals and were statutory requirements from government, who expect the council to adopt these unless there were compelling reasons not to. Councillor Hilton said he fully supported the motion.

After some discussion about the procedure, Councillor Baldwin proposed an amendment to the motion as follows:

Agrees that the proposed changes to the current RBWM Hackney Carriage Driver and Vehicle Policy & Conditions, the RBWM Private Hire Driver and Vehicle Policy & Conditions and the RBWM Private Hire Operator Policy & Conditions ("RBWM policies") be sent out to consultation with the trade immediately and that the post consultation changes be brought to the Licencing panel at the earliest possible date at which time those and any other minor amendments can be considered.

Councillor Baldwin's justification for the amendment was that within the terms of reference of the Licensing Panel, the purposes of the Panel included the determination and review of both the Hackney Carriage and the Private Hire Driver and Vehicle Policy and Conditions as well as consultations with representative organisations of the relevant trades on matters of concern to users and the trade. Councillor Baldwin's proposed amendments to those Policies and Conditions were matters of concern worthy of consultation. Councillor Baldwin informed the Panel of the first principle of Gunning (which must underpin every public consultation that takes place in the UK) was that Consultation should take place at a formative stage of the development of the policies. Yet here, the Panel were being asked to agree to the changes first with a consultation to follow. Final versions of the amended policies were to be agreed under delegated responsibility of lead Councillors, the chair, and officers. There was no logical reason why the consultation should not take place first, after which a report of recommended changes, informed by the consultation could be brought to the Panel for agreement. Moreover, for one section of the national standards, the part dealing with CCTV inside vehicles, this was indeed the approach being taken, with no recommended policy amendments proposed until after the consultation. Councillor Baldwin felt that this approach was always best practice and should be extended to all the proposed policy changes. Councillor Baldwin said that it may be argued that the process was legally safe because there was still a final decision to be made of the policy wording, which was proposed to be made under delegated authority. However, there was an issue with this arrangement because it meant that the final decision would be made in private without the opportunity for affected persons to address the decision makers through public speaking. Such would not be the case were the recommendations, perhaps amended due to consultation, were brought back before this panel. This would avoid a looming human rights issue, as those potentially seriously impacted by the final decision on the policy amendments were entitled to a fair hearing.

Councillor Brar seconded the amendment.

Councillor Bowden commented that he had taken part in many taxi appeals. Councillor Bowden discussed the DBS and drivers not declaring their convictions so supported the recommendations. He suggested that the DBS should be a rolling, continuous DBS. This was essential. Councillor Bowden felt the English language recommendation was essential too. It was necessary to have a good command of the English Language. Councillor Bowden fully supported the recommendations in the report.

Councillor Hill spoke in support of the amendment on the recommendations as it was a great way forward but agreed that the consultations should take place first before making the decisions. On the point about the English language, Councillor Hill felt that it would be expected that drivers spoke sufficient English to do their job proficiently and properly. With respect to written English, a driver would only need to do so much to do their job. Great care needed to be taken with the exams and make sure they were focussed on drivers being able to do their job properly and cope with any circumstances they may meet in their daily work properly and professionally. Councillor Hill acknowledged that the business had fallen dramatically for drivers and that had major impacts on their livelihood and support for their families. Councillor Hill suggested being very careful and mindful and to extend some concessions to the drivers to help them financially in these very difficult times. The CCTV would be an additional cost and would seek to delay the implementation as it would cost the drivers money and the GDPR formalities are costly and tricky to complete. Councillor Hill suggested that this be revisited once Covid was behind us. Councillor Hill agreed with the fit and proper person test and the previous convictions but felt that the recommendation was quite subjective and it needed to be clarified further and that was the reason that the consultation was important first before making the decision.

Councillor Cannon disagreed with Councillor Baldwin's amendment. Councillor Cannon asked who Councillor was referring to when he said 'our' amendment. Councillor Cannon felt that the reference to the Gunning principles had been misrepresented or misunderstood. The Gunning principles were used for when there was an option, the recommendations in the report were mandatory conditions set by Department of Transport unless there were exceptional circumstances not to adopt them. Of the two recommendations that are not mandatory, the CCTV will go out for consultation as there is an option for this one. The safety of the residents was the most important factor. Councillor Cannon suggested that the decisions needed to be made at the meeting and then sent out for consultation. If concerns were raised from the consultation then they would be brought back to the Panel. Councillor Cannon did not support the amendment.

Councillor Clark also sympathised with the drivers and like many other small businesses had really suffered as a result of Covid. Councillor Clark pointed out that the recommendations read that in para 2.5 it says that the department therefore expects these recommendations to be implemented unless there is a compelling local reason not to. Any reasons not to adopt these would have to be demonstrably local concerns which were overriding and therefore would prevent the department's recommendations to be carried out by enforcing or putting in force the recommendations. The consultation would be the identification of local issues which prevented the implementation of the points laid out in the recommendations in the report. Councillor Clark continued to say the point three confirmed that after the consultation, the decision would lie with the Head of Communities, Officers and the Licensing Panel to agree the final points. The consultation would be looking at the local concerns. Councillor Clark did not support the amendment.

Councillor Hilton highlighted that both speakers had no concerns with the recommendations. The report reads that government went through a consultation with the trade, regulators and Safety campaign groups across the country. Councillor Hilton did not support the amendment.

Greg Nelson commented that the adoption of these recommendations was mandatory as there were legal consequences if they were not.

Councillor Brar commented that she agreed with everyone that safety of the residents was the most important thing but felt that a consultation was required before the decision was made. Councillor Brar pointed out that being from the BAME community, she didn't agree with recommendation 11 as many of the taxi drivers were also from the BAME community. Councillor Brar was concerned about drivers taking the English test after years of driving as they could lose their livelihood if they failed.

David Scott assisted to clarify the situation. The expectations of the Department of Transport were expected to be put into place unless there were compelling local reasons not to. This is what the consultation with the drivers would be on. If any local reasons are flagged up, as the head of Communities, to whom the delegation is with, in consultation with the Chairman of Licensing Panel and the Lead Member, Councillor Cannon, this would be discussed and if they were compelling, would be brought back to the Panel to consider. The national consultation had already taken place and this was a very comprehensive process undertaken by the Department of Transport. The discussions at this Panel were for local compelling reasons, which would be the only basis upon which they couldn't be implemented. David Scott reassured the Panel that he had listened carefully to the debate and fully understood the concerns that had been raised.

Councillor Baldwin talked to the amendment that was proposed by him and seconded by Councillor Brar. He felt that the recommendations were not mandatory otherwise they would have been mandated. Councillor Baldwin stressed that it was crucial to carry out the consultation first before making a decision.

Councillor Hill pointed out that all agreed with the recommendations but felt it necessary to carry out the consultation first before making the decisions.

Councillor Davey appreciated the amendment of carrying out the consultation first. Councillor Davey commented on the entire decision making process.

A named vote was taken.

Councillor Baldwin's Amendment (Amendment)	
Councillor Gurpreet Bhangra	Against
Councillor David Hilton	Against
Councillor John Bowden	Against
Councillor Gerry Clark	Against
Councillor David Cannon	Against
Councillor Phil Haseler	Against
Councillor John Baldwin	For
Councillor Mandy Brar	For
Councillor Karen Davies	For
Councillor Jon Davey	For
Councillor Geoffrey Hill	For
Rejected	

Upon being put to the vote, the amendment fell.

Members returned to debating the substantive motion.

A named vote was taken.

Recommendations in the report (Motion)	
Councillor Gurpreet Bhangra	For
Councillor David Hilton	For
Councillor John Bowden	For
Councillor Gerry Clark	For
Councillor David Cannon	For
Councillor Phil Haseler	For
Councillor John Baldwin	Abstain
Councillor Mandy Brar	Abstain
Councillor Karen Davies	Abstain
Councillor Jon Davey	For
Councillor Geoffrey Hill	For

Carried

The motion was passed.

RESOLVED: That the recommendations in the report were agreed.

DATES OF FUTURE MEETINGS

Members noted the next meeting of the Licensing Panel would be 2 February 2021.

If an additional meeting was required after the consultation, the clerk would be advised by Licensing and would arrange.

The meeting, which began at 6.15 pm, finished at 8.00 pm

CHAIRMAN.....

DATE.....