

Report from the Director – Environment, Transport and Planning

**Application for a Private Hire Operator’s licence**

**Summary**

1. This report seeks Members’ determination of an application for a private hire operator’s licence by Mr Neil McGonigle on behalf of Uber Britannia Limited (‘Uber’). A copy of the application is attached at **Annex 1** of this report. The applicant wishes to operate private hire vehicles from Tower Court, Oakdale Road, Clifton Moor, York, YO30 4XL.
2. The Council must determine an application for an operator’s licence on its own merits in accordance with the legislative framework, taking the application form, any supporting documentation and relevant information into consideration.
3. To summarise the legislation, Local Government (Miscellaneous Provisions) Act 1976 (‘the Act’) provides that the council shall, on receipt of an application, grant a private hire operator’s licence unless it considers the applicant is not a ‘fit and proper person’ to hold such a licence or is disqualified by reason of their immigration status. The Act provides that the licence shall remain in force for five years or for such lesser period as the council thinks is appropriate. Members of this committee determined in February 2021, to issue licences for a maximum period of 12 months until such time that the taxi licensing policy (‘the policy’) is reviewed, the policy is currently in the process of being reviewed. The Act also provides that the council may attach such conditions to the licence as they consider reasonably necessary, and that an applicant aggrieved by the council’s decision may appeal to the magistrates’ court. **Annex 2** provides legislation extracts.
4. The premises has planning permission for the use as a private hire operating company. A copy of the planning permission is attached at **Annex 3** of this report. A map of the location of the premises is at **Annex 4**.

5. The premises is currently operating as a shared office complex with parking. However, customers and drivers predominantly interact with Uber via an app, not by visiting the premises. Uber also provide Local Authorities with a 24/7 emergency line via its operating centres enabling council officers direct contact in the event of any immediate safeguarding or driver safety concerns.
6. The hours of operation are to be 24 hours every day of the week.

## **Recommendations**

7. Members are asked to consider the application for a private hire operator's licence
8. Reason: To determine whether or not to grant the licence, and any conditions considered reasonably necessary giving detailed reasons for any such conditions.

## **Background**

9. In March 1996, the council adopted Part 2 of the Act. This legislation, together with the provisions of the Town Police Clauses Act 1847 ('the 1847 Act') gives the council the duty to carry out hackney carriage and private hire licensing functions. As such, the council is responsible for the licensing of private hire drivers, vehicles and operators as well as hackney carriage drivers and vehicles. The council is also responsible for the setting of byelaws in relation to hackney carriage drivers and vehicles.
10. The council's current taxi licensing policy was implemented on 1st of October 2019. As noted above, it is currently under review. Nevertheless, it remains the policy for the purposes of this application.
11. The adoption of the legislation and the policy allows the council to set conditions on the grant of a private hire operator's licence. A copy of 'City of York Council's Standard Conditions for Private Hire Operators' is attached at **Annex 5**.
12. Private hire operators are defined in the legislation as:  
  
'a person who in the course of business makes provision for the invitation or acceptance of bookings for private hire vehicles.'

13. Case law has established that private hire operators may only dispatch vehicles and drivers that are licenced by the same local authority as the operator (*Dittah v Birmingham City Council*, 1993) This is known as the 'triple licensing rule' or 'trinity of licences' and by similar phrases. It has also been established that 'the operator can use the vehicles within his organisation for journeys both inside and outside of the local authority in which he was licensed and, indeed, can use such vehicles and drivers which ultimately have no connection with the area in which they are licensed' (*Shanks v North Tyneside Council*, 2001). Uber have been lawfully enabling passengers to take journeys in York under the 'triple licensing rule' since 2015. This application will enable them to recruit York licensed drivers (and vehicles) to undertake those journeys.

## Uber

14. The applicant has provided a presentation for Members to view which is attached at **Annex 6**. It includes details of how bookings are made via 'the Uber Rider App' and its various features including its safety features. The service is reported to be available worldwide.
15. The applicant has supplied a list of the sixty-one private hire operator's licences in the UK and Ireland by Uber in **Annex 7**. The applicant has also supplied a list of other Local Authorities refusal, suspension and revocation decisions at **Annex 8**.
16. The applicant has previously held a licence with the City of York Council until 12<sup>th</sup> December 2017 where a decision was made by Members to refuse to renew the licence. Minutes from this meeting are attached to this report at **Annex 9**. It will be noted that the grounds for the refusal were a significant data breach and an increase in the number of complaints. The committee report presented at the meeting noted that of the 296 complaints about taxis in the previous eleven months, 155 related to Uber drivers and vehicles. Uber initially appealed the committee decision to the magistrates' court but the appeal was subsequently withdrawn.

## Deregulation Act 2015

17. The Deregulation Act of 2015 amended the Local Government (Miscellaneous Provisions) Act 1976, allowing a person licensed as a private hire operator in one district who has accepted a booking for a private hire vehicle, to arrange for another person to provide a vehicle to carry out the booking if:-

- (a) the other person is licensed under section 55 in respect of the same district and the sub-contracted booking is accepted in that district;
  - or
  - (b) the other person is licensed under section 55 in respect of another district and the sub-contracted booking is accepted in that district;
18. However, in this situation, the Deregulation Act is not directly relevant as Uber do not 'subcontract' bookings. As noted above, they comply with the law under the 'triple licensing rule' – their App enables them to do this. For example, a passenger is simply booking an out of town driver and vehicle under another authorities private hire operator's licence to take them on a journey around York. The relevance of the Deregulation Act is that as we have seen in York and elsewhere, it is more common for operators to sub-contract to other operators 'out of district' to carry out the journey. Often, the other operators are in effect 'sister operators' of locally licensed firms i.e. the same operator holds licences in York and Wolverhampton for example. For the avoidance of any doubt, the use of 'out of town' drivers and vehicles through either of these means (the 'Deregulation Act' or the 'triple licensing rule') is lawful, and an operator should not be considered 'unfit' purely on the basis that they make use of provisions which enable them to lawfully complete journeys in the city using drivers and vehicles licensed by other authorities. Furthermore, the council's attempts to ensure operators sub-contract to drivers of a similar standard to York's drivers have been successfully challenged in the Magistrates' court.
19. It is also important to note that either granting or refusing the application will necessarily result in Uber drivers and vehicles licensed by other authorities being absent in York. Granting the licence will enable Uber to recruit York licensed drivers and vehicles on to their platform for passengers in York which they cannot currently do. Furthermore, the York licensed drivers will be lawfully able to undertake journeys for passengers in other authority areas.

### **Fit & Proper Assessment**

20. As noted above, the council shall not grant a licence unless they are satisfied:-
- (a) that the applicant is a fit and proper person to hold an operator's licence; and

- (b) if the applicant is an individual, that the applicant is not disqualified by reason of the applicant's immigration status from operating a private hire vehicle.
21. The licence is granted to the private hire operator based on their fitness and propriety. It has been suggested that a working test of fitness and propriety for private hire operators is “would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?” (Button on Taxis, the leading textbook on taxi licensing)
  22. The role of private hire operator goes far beyond simply taking bookings and despatching vehicles. In the course of making a booking and despatching the vehicle and driver, the private hire operator will obtain significant amounts of personal information. For example, when a booking is made to an airport, and a return booking made for a week or fortnight later, it is reasonably apparent that a holiday is being taken and the house is going to be empty for that period of time. In dishonest hands this information is extremely valuable. It is therefore vital that private hire operators are as trustworthy and reliable as a driver, notwithstanding their slightly remote role. The term “safe and suitable” is considered a modern interpretation of “fit and proper” (Button on Taxis).
  23. Unlike hackney carriage and private hire drivers, the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 does not apply to private hire operators. Operators are therefore not excluded from the workings of the Rehabilitation of Offenders Act 1984 (the 1974 Act) and it is not possible to obtain an Enhanced DBS check, but they can be asked to obtain a Basic Disclosure.
  24. The applicant (as well as the six other directors of Uber Britannia Ltd) has undertaken the relevant DBS criminal record checks and submitted the correct documentation required to determine the application. There are no issues of concern.
  25. The applicant is not barred by virtue of their immigration status.

## **Complaints**

26. As passengers have been able to take journeys in the city through the Uber app under the ‘triple licensing rule’, the Taxi Licensing team have received complaints about Uber drivers. A summary of the

complaints over the last year is contained in **Annex 10**. The Annex contains brief details of the 31 complaints that were classified by officers as 'accepted' i.e 'more likely than not substantiated' and the action taken e.g written warning/advice. To add further context, the complaints give details of the source of the information where they are made by a City of York Council licensed driver or a CYC employee/councillor. It is important to stress that officers actively encourage complaints to be made by anyone who is dissatisfied about taxis in York. This may be passengers who have taken a journey (or not), other road users, residents or visitors amongst others. Officers especially encourage complaints from other taxi drivers rather than risk them taking matters into their own hands. It is also noted that the nature of many of the complaints about Uber drivers are more likely to be known to taxi drivers than the general public e.g 'waiting on ranks'. Therefore, that there are a high percentage of complaints from the taxi trade is not surprising and officers are grateful for all the information supplied. As well as the complaints about where the vehicles are waiting, the other complaints include six about 'the standard of driving' and one complaint about the refusal to carry a guide dog. These complaints were predominantly dealt with by the local authority where they were licensed. It is noted that the complaints are predominantly about the actions of Uber *drivers* and not about the operator.

27. **Annex 10** also contains details of the complaints about 'all taxis' received in the same period (this includes CYC licensed taxis as well as 'out of town' taxis working in York for other operators or where the operator has not been identified). This information is to help Members put the Uber complaints in that context. There were 104 complaints about 'other taxis' in the same period. In the opinion of officers, the volume of Uber complaints is similar to some – not all - other large operators in the city and similar to the total received about York 'hackney carriage vehicles' generically. As with the 'Uber' complaints, the 'other taxi' complaints are also predominantly about the actions of *drivers* rather than the operators.
28. Furthermore, officers report finding Uber cooperative with requests for information, and it is noted that in two cases of alleged 'plying for hire', Uber have been witnesses for the council in support of the prosecution against their drivers.

## **Consultation**

29. There is no requirement within the Act for a consultation to take place in relation to application for the grant of private hire vehicle,

driver or operator licences. Therefore, a consultation has not taken place in relation to this application.

## Options

30. The Committee have the following options available to them in making their decision:
31. Option 1: Grant a private hire operator's licence as requested, with the standard conditions attached for a period of one year.
32. Option 2: Grant the private hire operator's licence with the standard conditions and any additional conditions considered reasonably necessary for a period of one year.
33. Option 3: Refuse the application providing the grounds for refusal.

## Analysis

34. To summarise the legislation, Local Government (Miscellaneous Provisions) Act 1976 ('the Act') provides that the council shall, on receipt of an application, grant a private hire operator's licence unless it considers the applicant is not a 'fit and proper person' to hold such a licence or is disqualified by reason of their immigration status. The 'fit and proper person' test should be approached by considering the purpose of the legislation, being regulatory compliance and public safety. The guidance given above in relation to the applicant being trusted with sensitive information, and the complaint analysis are relevant to the test.
35. An applicant aggrieved by the refusal to grant an operator's licence or by any conditions attached to the grant of the licence may appeal the decision, under Section 55(4) of the Local Government (Miscellaneous Provisions) Act 1976. The appeal must be made to the Magistrates Court within 21 days of the applicant being informed of the decision. As noted above, operators have challenged/ are challenging the committee's attempts to impose additional conditions which attempt to ensure drivers licensed by other authorities are of a similar standard to York licensed drivers.

## Council Plan

36. The Council Plan priorities include 'a fair thriving green economy for all' and 'sustainable accessible transport for all'. It is underpinned by

four core commitments to ‘equalities and human rights’, ‘affordability’, ‘climate’ and ‘health’.

## Implications.

37. The implications arising directly from this report are:

- **Financial** – There are no direct financial implications.
- **Human Resources (HR)** – There are no HR implications.
- **Equalities** – It is recognised that licensed taxis and private hire vehicles are a particularly important method of transport for people with disabilities and other vulnerable passengers including school children because of the door-door service they provide.
- **Legal** – The Local Government (Miscellaneous Provisions) Act 1976 provides the legislative framework for the licensing of private hire operators. Section 55 of the Act deals with the licensing of operators. Whilst this Act expressly refers to ‘district council’ the provisions within this legislation are in force in relation to the council as a unitary authority. It provides that:

“(1) Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator’s licence:

Provided that a district council shall not grant a licence unless they are satisfied –

(a) that the applicant is a fit and proper person to hold an operator’s licence; and

(b) if the applicant is an individual, that the applicant is not disqualified by reason of the applicant’s immigration status from operating a private hire vehicle.

(1A) In determining for the purposes of subsection (1) whether an applicant is disqualified by reason of the applicant’s immigration status from operating a private hire vehicle, a district council must have regard to any guidance issued by the Secretary of State.”

Section 55(2) provides that: “Subject to section 55ZA, every licence granted under this section shall remain in force for five years or for



such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.”

Section 55(3) provides that “A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.

The applicant has the right to appeal the refusal to grant an operator’s licence and any conditions imposed to the Magistrates’ Court.

Members should also take into consideration the Department of Transport’s ‘Statutory Taxi & Private Hire Vehicle Standards’ when considering whether a person is ‘fit and proper’ to hold a licence.

The Licensing authority has a duty to ensure that any person to whom it grants an operator’s licence is a ‘fit and proper’ person to be a licensee.

- **Crime and Disorder** – There are no crime and disorder implications.
- **Information Technology (IT)** – There are no IT implications.
- **Property** – There are no property implications.
- **Other** – There are no other implications.

## **Risk Management**

38. All Members are aware that any decision which is unreasonable or unlawful could be open to legal challenge resulting in loss of reputation and potential financial penalty.
39. The report details the options available to the committee in determining the application and recommends that a decision be reached. Provided the decision complies with the proper grounds for considering the application as set out within this report, there are no known risks involved with this recommendation.

## **Contact Details**

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**Report  
Approved**



**Date** 22.05.24

**Wards Affected:** All

## **Background Papers**

Taxi Licensing Policy –

<https://www.york.gov.uk/downloads/download/54/taxi-licensing-policy>

Licensing and Regulatory Committee Meeting 12<sup>th</sup> December 2017.

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=606&MID=10445>

## **Annexes**

- Annex 1** - Copy of application for Private Hire Operators Licence.
- Annex 2** - Legislation extracts
- Annex 3** - Copy of current planning permission
- Annex 4** - Map showing location of premises.
- Annex 5** - A copy of City of York Council's Standard Conditions for Private Hire Operators.
- Annex 6** - Uber Presentation.
- Annex 7** - List of operator licences
- Annex 8** - List of suspended, refused, revoked licences.
- Annex 9** - Minutes of Licensing and Regulatory Committee meeting 12<sup>th</sup> December 2017.
- Annex 10** - Taxi licensing complaints 1 April 2023 to 31 March 2024