City of York Council	Committee Minutes
Meeting	Licensing and Regulatory Committee
Date	18 March 2019
Present	Councillors Lisle (Chair), Boyce, Cullwick, Douglas, Hayes, Hunter, Pavlovic, Reid, Richardson, D Taylor and Wells
Apologies	Councillors Funnell, Mason, Mercer and Derbyshire

29. DECLARATIONS OF INTEREST

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

30. MINUTES

Resolved: That the minutes of the meeting held on 11 Febuary 2019 be approved as a correct record and signed by the Chair subject to the inclusion of a Work Plan on future Committee meeting agendas.

31. PUBLIC PARTICIPATION

It was reported that there had been 8 registrations to speak at the meeting under the Council's Public Participation Scheme.

Gwen Swinburn spoke on agenda item 5 Update Report – Private Hire Licensing. She outlined her view that the report had a number of deficiencies including lack of an Equalities Impact Assessment. She urged the committee to reject the report.

Sidney Gitsham spoke on agenda item 5 Update Report – Private Hire Licensing. Mr Gitsham suggested that there should be a judicial review and made a number of points in relation to the operation of Uber in York.

Barry Page (YPHA) spoke on agenda item 5 Update Report – Private Hire Licensing. He noted that Uber did not hold an operators licence in York and that there had been a number of incidents involving Uber drivers in York. He suggested that all taxi drivers in York should be regulated.

Michael Palmer (York Private Hire Association (YPHA) Secretary) spoke on agenda item 5 Update Report – Private Hire Licensing. He questioned the validity of the advice given by the Barrister to the Council and he cited specific paragraphs where he disagreed with that advice.

Tony Green (York Hackney Carriage Association (YHCA) Vice Chair) spoke on agenda item 5 Update Report – Private Hire Licensing. He suggested that the Reading Case quoted by the Barrister to the Council was not relevant and cited section 46 of the 1976 Act.

Lauren Senior (YPHA Member) spoke on agenda item 5 Update Report – Private Hire Licensing. She explained the differences between Uber and York taxi drivers in their treatment of customers and she gave examples of how York taxi drivers met the needs of different customers.

Drew Thompson (YPHA Member) spoke on agenda item 5 Update Report – Private Hire Licensing. He noted that the legal opinions to the York Private Hire Association and to City of York Council (as detailed in the annexes to the report), were opinions and therefore the trade's legal position was as valid as the Council's legal position.

Alan Rowley (YHCA and YPHA Member) spoke on agenda item 5 Update Report – Private Hire Licensing. In referring to the York Taxi Licensing Policy, he clarified that the trade was asking for the full implementation of the policy. He noted that Uber lost its licence due to not being 'fit and proper' and that protecting the public should be a number one priority.

Wendy Loveday (YPHA Chair) spoke on agenda item 5 Update Report – Private Hire Licensing. She explained that the trade believed that the assessment made by officers was fundamentally flawed and that the authority's interpretation of its own policy was ambiguous. She asked that the Committee reject the officer recommendation and consider the advice put

forward in the legal opinion put forward to the York Private Hire Association.

Cllr Warters, Councillor for Osbaldwick and Derwent Ward spoke on behalf of a taxi driver in his Ward on agenda item 5 Update Report – Private Hire Licensing. He reminded the Committee that the legal opinions put forward were opinions. He noted the potential loss in income to the Council should there be a reduction in taxi licence renewals.

32. UPDATE ON DISCLOSURE AND BARRING SERVICE CHECKS FOR YORK TAXI DRIVERS

Members considered a report that updated them of the progress made on ongoing criminal record checks with the Disclosure and Barring Service (DBS), 'refresher' checks for York licensed hackney carriage and private hire drivers as requested by at the Committee meeting on 8 October 2018.

The Head of Public Protection gave an update advising that as at 20 February 2019, all 984 (100%) drivers had been contacted by officers and were in different stages of the checking process. He also noted that 18 drivers had indicated their intention to surrender their licence as they were no longer driving.

In response to Member questions, the Head of Public Protection clarified that:

- All drivers from out of town would be checked by their Licensing Authority.
- He was not aware of other Local Authorities not undertaking the DBS checks.
- One licence had been revoked and the remainder would be dealt with within a week.

The Head of Public Protection agreed to keep the future Executive Member for Transport and Planning and future Chair of the Committee updated on the DBS checks.

Resolved: That the report be noted.

Reason: In order that Members be updated on the progress of DBS checks for York taxi drivers.

33. UPDATE REPORT - PRIVATE HIRE LICENSING

Members considered an update report that explained the Council's position regarding the interpretation of the law relating to private hire licensing and the ability to work outside the area within which they are licensed. An alternative interpretation of the law had been put forward by members of the trade and the Opinion of their legal adviser was attached for Members' information at Annex 1. The Council had sought external legal advice which was attached for Members' information at Annex 2.

A legal update was provided by the Legal Services Manager to respond to questions raised during the public participation session. She explained why there were no options included in the report, which included a recommendation. She noted that it was unusual to have committee involvement in matters of legal interpretation, which had been at the request of the Chair. She highlighted the need to comply with the Code for Crown Prosecutors and the Council's enforcement policy when determining whether a criminal offence had been committed and whether it was in the public interest to prosecute. She advised that both the Counsel's Legal Opinion to the Council and the Leading Counsel's Opinion to the trade had been made public. She explained that risks had not been set out in the report as the risks would only have arisen if there was an alternative option to the recommendation. As the Council's legal adviser, the Legal Services Manager was satisfied that having regard to the independent Legal Opinion, which analysed and dismissed the QC's Opinion to the trade, that the settled legal position remained as follows:

Provided the three licences required in relation to a private hire vehicle (operator, vehicle and driver) have all been issued by the same authority, then the private hire vehicle (PHV) can undertake journeys anywhere in England and Wales. That is irrespective of where the journey commences, areas through which the journey passes and, ultimately, the area where the journey ends.

In response to questions raised by Members, the Legal Services Manager confirmed that:

- The matter was not about the Deregulation Act
- It was considered that there were no implications as the Council's position was viewed to be legally correct

- Any decision to change the Taxi Licensing Policy would be a decision made by Executive, not the Committee.
- Consideration of the Uber operating licence application was a licensing regulatory function which was under the remit of the Committee. That Committee made the decision that Uber was not fit and proper to hold an operating licence.

In response to Member questions, the Head of Public Protection clarified that

- It was not known how many licensing authorities had decided that Uber was not fit and proper to hold an operating licence.
- The cost for licences was the cost of operating the service.
- The investigation of a driver pretending to be Uber driver had been referred to the police and was under investigation.
- Enforcement officers would stop illegal picks if they observed this taking place.
- There was a government review of taxi licensing law in progress.

During debate a number of views and suggestions were put forward. Concerns were expressed regarding the conflicting legal Opinions, a lack of case law, risk analysis and Equalities Impact Assessment. Following debate it was:

Resolved: That it be recommended to Executive that, given the two differing legal opinions, further investigation be undertaken regarding the requirement for a change to Taxi Licensing policy in respect of the legality of out of town vehicles operating in York, and that a decision on future policy be taken based upon all the evidence.

Reason: To provide clarity for the public in relation to the Council's interpretation of the law.

Cllr S Lisle, Chair
[The meeting started at 4.00 pm and finished at 5.45 pm].