
Meeting	Licensing and Regulatory Committee
Date	10 August 2021
Present	Councillors Orrell (Chair), Galvin, Hook, Hunter, Melly (Vice-Chair), D Myers, Pearson, Warters and Wells
Apologies	Councillors Barker, D'Agorne, Looker, Mason, Norman and Wann

Chair's Remarks

The Chair expressed his thanks to the outgoing Chair, Cllr Mason, for his work on the committee and his proactive approach.

67. Declarations of Interest

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

68. Minutes

Resolved: That the minutes of the meeting held on 26 April 2021 be approved, and signed by the Chair as a correct record, subject to the following amendments:

- In the list of attendees, record Cllr Melly as Vice Chair instead of Cllr Wells;
- In Minute 61, 2nd paragraph, record the Chair's thanks to Cllr Wells, the outgoing Vice Chair;
- In Minute 63, include the organisations represented by the public participants;
- In Minute 64:
 - a) record Cllr Melly as the seconder of the motion to approve Option 1, instead of Cllr D'Agorne, and
 - b) in the resolution, after '*publish in a local newspaper*', insert '*and on the council's website and social media*'.

69. Public Participation

It was reported that 7 people had registered to speak at the meeting under the Council's Public Participation Scheme.

The following spoke on Agenda Items 4 (Update on Interpretation of the Law – 'out of town' private hire licences) and 8 (Update on Taxi Vehicle Testing):

- a) Lee Ward, of ALPHA, said the reports were biased and bordered on misleading, that the Licensing department had a conflict of interest, and that the issue was about ensuring that drivers from other areas did not take bookings while in York.
- b) Mark Jennings, of STDA, queried how a private hire vehicle licensed in Leeds could provide a local service in York in view of a series of court judgements, which he detailed in his speech.
- c) Dave Lawrie, Chair of the National Private Hire and Taxi Association, pointed out that although an out of town driver could take a pre-booked fare to York it was not legal for them to stay in the city to wait for another booking, and the police were willing to support the council in enforcing this.
- d) Angie Clarkson, of UTAG, outlined the court action being taken in London regarding the activities of out of area drivers and urged York to stand up to Uber and initiate a prosecution under Section 46(i)(d) of the Local Government Miscellaneous Provisions Act 1976.
- e) Tony Green, of GMB, said that Uber were operating in breach of Section 46 of the 1976 Act. He asked why Public Protection officers were not backing the police and said that York was seen as a 'soft touch' by out of town drivers.
- f) Wendy Loveday, Chair of YPHA, said that before they had met with the council the police's legal opinion had been that Uber were operating in breach of the law. She urged Members to back police action and force a change in council policy.

Samantha Hunt, of Make It York, spoke on Agenda Item 7 (Street Trading – St Helen’s Square), supporting the request for street trading activities, which she said would provide a great welcome to the city and support local businesses without affecting established activities in the Square.

70. Update on interpretation of the law - 'Out of town' private hire licences

Members considered an information report which outlined City of York Council’s current position in relation to ‘out of town’ private hire operators and drivers, as requested at the meeting on 22 February 2021.

In summary, the position was as stated in the legal opinion reported to, and agreed by, Executive on 26 September 2019 – that, under the current law, *‘provided the three licences required (operator, driver and vehicle) have all been issued by the same licensing authority then the private hire vehicle can undertake journeys anywhere in England and Wales.’* Executive had also resolved to write to Government asking for a change in the law. The DfT had since reported that they were not minded to change the law, as opinion was divided on the matter. Regarding the police reportedly asking drivers to return to the area where they were licensed, North Yorkshire Police had now clarified their position, stating that *‘...taxi licensing matters are firmly for the local authority (or licensing authority) to deal with.’* A recent court ruling that Uber drivers were ‘workers’ of Uber meant such drivers were unlikely to be committing an offence unless Uber were so doing.

Supt. Lindsey Robson was in attendance at the meeting. She confirmed that the police’s view was unchanged and they would not be leading on enforcement nor over-ride the council’s decision. In response to Members’ questions, she stated that she was not in a position to share the legal advice obtained by the police as it was legally privileged. Officers also responded to questions, stating that:

- the council had been consistent in its position, which was based on the legal opinion of Leo Charalambides;
- the same view was now shared by Gerard Gouriet QC, as well as by the DfT;

- the legal opinion was available online as a background document to the agenda for the Executive meeting on 26 September 2019;
- Uber drivers did not 'operate' in York under the terms of the 1976 Act.

Having noted the comments made under Public Participation on this item, it was

Resolved: (i) That the contents of the report be noted.

Reason: To confirm that Members are aware of the council's position that 'out of town' private hire operators and drivers are not acting unlawfully by virtue of working in the authority area, regardless of whether or not they are also licensed by the council.

(ii) That officers draft a further letter, to be sent to the Secretary of State for Transport and copied to the Secretary of State responsible for Climate Change, expressing the committee's disappointment that the government were not minded to change the law.

(iii) That the letter be circulated to Members for information before it is sent.

Reason: In order to support York's local private hire operators and drivers.

71. Renewal of Sex Establishment Licence for The Adult Shop, 70B Gillygate, York, YO31 7EQ

Members considered an application made by Lilacgrange Limited under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, to renew a Sex Establishment Licence at the above premises.

The Licensing Manager presented the report, confirming that consultation had been carried out correctly, that no objections had been received, and that there were no mandatory grounds to refuse the application. Potential discretionary grounds were set out in paragraph 16. Three options were available:
Option 1 – grant the renewal as requested.

Option 2 – renew the licence with modified/additional conditions.

Option 3 – refuse the application.

Members noted that there had been no changes since the licence was last approved, on 18 March 2020.

Resolved: That Option 1 be approved and a renewal of the licence be granted as requested.

Reason: Members are satisfied that there are no mandatory or discretionary grounds on which to refuse the application, and that no changes are required to the licence conditions.

72. Hackney Carriage Fares

Members received a report which asked them to consider objections to the advertised variation to the table of fares for the hire of City of York licensed hackney carriage vehicles.

The notice of variation, at Annex 1 to the report, had been published on 24 June 2021 following consideration of a request from the Hackney Carriage Associations at the committee meeting on 26 April. Two objections had been received from one hackney carriage driver, as detailed in Annex 3. Members were asked to decide whether to determine the original proposed variation at Annex 2 (Option 1) or determine to modify the variation in light of the objections (Option 2).

In response to questions from Members, officers confirmed that:

- The variation had been advertised on social media as well as in the Press, at West Offices and on the council's website, and in fact had been published twice.
- The objector's suggestion to replace the race day tariff with an all-day Tariff 2 on race days could lead to a higher charge.
- The race day tariff applied only to journeys to the racecourse.

Resolved: That Option 1 be approved, and that the variation to the table of fares proposed by the Hackney Carriage Associations be determined and be specified to come into operation from 1 September 2021.

Reason: To determine the table of fares that will apply to charges in respect of the hire of City of York's hackney carriage vehicles.

73. Street Trading - St Helen's Square

Members considered a report which sought approval to allow street trading activities to take place on St Helen's Square during the St Nicholas Fair Christmas Market, following a request from Make It York.

The council did not currently allow street trading to take place on St Helen's Square in view of its special characteristics and the potential impact on footfall congestion. During consultation on the proposal, concerns had been raised by North Yorkshire Police, Highways Regulations and St Helen with St Martin Church with regard to protest activities, other activities in the Square and potential anti-social behaviour.

Three options were presented:

Option 1 – permit street trading activities on St Helen's Square as requested, subject to the restrictions set out in paragraph 16 of the report. This was the recommended option.

Option 2 – as Option 1, but with alternative restrictions.

Option 3 – refuse to allow street trading activities on the Square.

After debate, and having noted the comments made on this item under Public Participation, it was

Resolved: That the request be refused (Option 3) and street trading activities not be permitted to take place on St Helen's Square.

Reason: In view of the detrimental effect that such activities would have upon existing uses of St Helen's Square, including civic use and the right to gather, and the effect on access of the loss of pavement space.

74. Update on taxi vehicle testing

Members considered an information report which outlined the council's vehicle testing arrangements for hackney carriage and

private hire vehicles (collectively referred to as 'taxis'), as well as the results of recent tests, and plans for further improvements.

The report set out the inspection and testing requirements in the council's Taxi Licensing Policy. Vehicle checks were carried out by a qualified MOT tester in Fleet Services; in practice, this was done annually. 'Enforcement inspections' were also undertaken whereby vehicles were randomly brought in for examination. In January 2021, Fleet Services had taken on the entire testing process with a view to making service improvements. Data since January indicated that two-thirds of vehicles were passing first time. Just over half of those that required a re-test were failing for things that should have been easily identifiable before the test. Further planned improvements to the service were listed in paragraphs 11-16 of the report.

In response to questions from Members, officers confirmed that:

- the level of testing was similar to that of other local authorities around the country;
- most of the vehicles that failed the test in York were from York.

Resolved: That the contents of the report be noted.

Reason: To confirm that Members have been informed of vehicle testing arrangements, the results of recent tests and plans for further service improvements.

Cllr K Orrell, Chair

[The meeting started at 5.30 pm and finished at 6.56 pm].