Licensing and Regulatory Committee 26 April 2021

Report of the Director – Environment, Transport and Planning

Update on interpretation of the law – 'Out of town' private hire licences

Summary

1. This report is for information only. It outlines the City of York Council's current position in relation to 'out of town' private hire operators and drivers, and is brought following the request from Members at the Licensing and Regulatory Committee meeting on 22 February 2021.

2. It is important to stress that this report is concerned solely with the general principle of 'out of town' drivers and operators working within the authority area. It is not concerned with whether any particular operator or driver is 'fit and proper' to hold a City of York Council licence which would be an entirely separate matter.

Recommendations

3. That Members note the contents of the report

   Reason: To reiterate 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).

Background

4. At the meeting of the Executive on Thursday 26 September 2019, Members considered a detailed report explaining the legality of 'out of town' private hire operators and drivers. The report contained the opinions of leading counsel in the field of taxi licensing.

5. The Council's legal opinion was outlined as follows:

6. *'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. That is irrespective of where the journey commences, areas through which the journey passes and where the journey ends'.

7. Other key points of note in the report are as follows:

8. This issue is not new, the case of Adur District Council v Fry (1997) concerned an operator/driver/vehicle licensed by Hove District Council completing a journey entirely in the Adur District Council area. In finding there was no breach of the law, the court held that the meaning of 'operate' in section 80(1) the Local Government (Miscellaneous Provisions) Act 1976 was 'in the course of a business to make provision for the invitation or acceptance of a private hire booking and could not be construed more widely'. The meaning of 'provision' has subsequently been held to refer to the 'antecedent arrangements' around the invitation/acceptance of the booking i.e. it is not where the actual booking or acceptance of it takes place.

9. And in Shanks v North Tyneside Council (2001), the court held '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'.

10. In 2018, a Law Commission 'Task Finish Group' review of taxi licensing law concluded that the 'Government should legislate that journeys should start and/or finish in the area which the driver, vehicle and operator are licensed'. And in their response, the Department for Transport (DfT) recognised that 'currently a PHV journey can take place anywhere in England and Wales providing that the driver, vehicle and operator are licensed by the same local authority'. The DfT noted that they 'agreed with the Task Finish Group's recommendation and will consider further (with a view to legislation) as to how this may work in detail'. Therefore, that the Task Finish Group and the DfT were seeking a change in the law, implies that they both feel the current situation (maintained by the City of York Council) is lawful.

11. In relation to this particular matter, Executive Members resolved to:

12. 'Follow the council's legal opinion and agree the legal opinion outlined… with no change to the taxi licensing policy. The situation could be reviewed in the event of a change in the law. This was the option recommended in the report and by the Licensing and Regulatory

Committee when they considered their report at the meeting on 4 September 2019'…

13. *'That it be noted this is an issue faced by many authorities across the country, and noting specifically Medway Council's decision to secure additional legal advice on this matter, support be given pending consideration of this to working with a number of local authorities and the local government association, to ensure that the council's position is kept under review and reflects the most up to date situation'.*

14. Following the Executive Meeting, Members also wrote to Government asking for a change in the law.

15. At the Licensing and Regulatory Committee meeting on the 22 February 2021 it was reported that, on the basis of legal advice, North Yorkshire Police (NYP) were considering engaging with out of town drivers, asking them to return back to the area from which they are licensed. This had also been reported publicly in the York Mix. Members asked officers to formally clarify the position with the police, and the response received is as follows:

16. *'NYP have conducted a full review of police powers as well as engaging with the local authority and reviewing the publicly available material. The position of NYP is that taxi licensing matters are firmly for the local authority (or licensing authority) to deal with.*

    We will support our partners and work within our powers (for example road traffic act offences, Covid regs breaches etc). We will not take the lead on any licensing enforcement. We understand that CYC are clear on their position, they believe that Uber are operating lawfully, a decision endorsed by Executive Members. Legally it is not for NYP to override that position, nor will we seek to take unilateral action. CYC have the authority and decision making capability and this is a matter firmly for them.'

17. The council therefore has no basis on which to alter its view. Indeed, some recent developments are likely to stregthen the case that 'out of town' operators and drivers in the city are acting lawfully if any doubt remained.

18. Firstly, in respect of operators, the DfT, have reported that they are no longer minded to 'change the law'. They report that opinion is divided as to whether or not operators should be restricted as recommended and,

in the absence of a consensus view, are minded not to legislate to prevent it.

19. Secondly, in respect of drivers, earlier this year the Supreme Court ruled that Uber drivers are 'workers' of Uber (Uber BV v Aslam (2021)), it is therefore unlikely they would be held to be committing an offence if the company for whom they are working is not committing an offence. N.B In any event, as noted in the council's legal opinion, the case of Reading Borough Council v Ali (2019) highlighted that Uber Drivers are not guilty of 'plying for hire' by virtue of using the Uber app. Whilst it is acknowledged this is a different offence to operating/driving in a city when unlicensed, the High Court gave detailed regard to the Uber business model identifying that it is simply the modern day version of booking by telephone.

20. Finally, it is worth mentioning that these are criminal matters and the burden of proof is 'beyond reasonable doubt' that an offence has been committed. In the absence of any new argument to the contrary, the above cases demonstrate that, as things stand, the council will not meet that threshold simply on the basis of out of town operators and drivers working here.

Consultation

21. There is no consultation associated with this report as it is expressing legal opinion.

Options and anlysis

22. There are no options or analysis as this report is expressing legal opinion, not seeking a decision.

Council Priorities

23. The taxi licensing functions undertaken by the Council are statutory, supporting the new and existing trade, as well as local residents and visitors. Through these functions, the policy supports the Council's Plan of a good quality of life for everyone.

Implications

24. The direct implications arising from this report are:

(a) **Financial** – There are no financial implications as there is no change to the legal opinion.

(b) **Human Resources (HR) -** There are no HR implications.

(c) **Equalities –** There are no equalities implications.

(d) **Legal** – The report outlines the council's legal position in relation to 'out of town' private hire operators and drivers.

(e) **Crime and Disorder –** The report addresses the concerns that 'out of town' drivers and operators are committing offences in working here.

(f) **Information Technology (IT) -** There are no IT implications.

(g) **Property -** There are no property implications.

(h) **Other** - There are no other implications.

Risk Management

25. There are no changes in risk associated with this report as there is no change in the legal opinion.

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Background papers

https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=11109&Ver=4 **(p. 141-161)**

Annexes - None