

NORTH HERTFORDSHIRE DISTRICT COUNCIL

**MEMORANDUM**

To: Licensing	From: Anthony Roche Legal Services
Copy to:	Date: 1 September 2010
Your Ref:	Our Ref: LL11759
Subject: <b>Consultation on the hackney Carriage and Private Hire Policy</b>	

Please find set out in the table below the response from Legal Services to the draft Statement of Hackney Carriage and Private hire Licensing Policy.

Unless otherwise stated all comments are applicable to both Policy Option A and Policy Option B.

Paragraph	Comment
General comment 1	Has the 1976 Act been adopted by the Council (it is required to be)?
General comment 2	Throughout the policy licence plates are referred to. The definition should be made clearer to distinguish from the vehicle registration plate.
General comment 3	All defined terms should be capitalised throughout the Policy ie Licence Plate not licence plate etc
General comment 4	I would suggest removing the image from the front, unless you have the specific permission of the people pictured, and the photograph taker, for use of the image. Alternatively obscure the registration numbers in the photographs.
1.2.4	It is suggested that you state when the policy will next be reviewed.
1.3.3	Insert the word "of" in the penultimate line ie "...the full range of enforcement..."
OPTION A 2.1.1	Amend the second sentence to read "The licensing of all five separate zones is undertaken by...."  It is suggested that a further sentence is added as follows "For ease of reference these are referred to as zones within the Policy to avoid confusion with the District as a whole.
OPTION A 2.1.4	Amend the final sentence to read "The content of this appendix is not fixed and can be..."
OPTION B 2	It is suggested that an additional paragraph 2.1.5 is added as follows "The zoning system did not apply to private hire vehicles which are

	licensed to operate in the District of North Hertfordshire and are therefore not affected by this change.”
2.2.3	Delete the word “extensive” as this is difficult to quantify and may create scope for legal challenge
2.4.3	It is considered that the purpose of this paragraph is unclear – is it trying to ensure that all cars comply (except for those covered by 2.4.2) or not?  It is suggested that the following words be added to the end of the final sentence “...and all relevant equalities and disability legislation”.
2.4.4	It is suggested that the following words be inserted after 2010 – “...and other legislation...”
2.5.1	Consideration should be given to amending this paragraph which is inconsistent. The first sentence states setting age limits may be arbitrary and disproportionate. The appendices then go on to introduce different tiers of maximum age limits. A suggestion could be to insert the following sentence after the first sentence “The limits set by the Council in Appendix A paragraph 3 are considered necessary and proportionate to protect public safety and the other objectives of this Policy”.
2.5.4	Amend the final sentence to read “The reasonable and proportionate maximum age of vehicles set out in Appendix A reflects...”
2.5.5	It is suggested that reference could be made to the Taxi Forum as a mechanism for raising awareness of environmental issues.
2.5.6	Are Hybrid or Electric cars acceptable? Do they need to be referred to?
2.6.1	Consider whether the word “should” in the final sentence be replaced by “must”
2.6.4	It is suggested that an explanation be given as to why the Council has an exclusive arrangement with one inspection facility, which is presumably to ensure consistency of approach as well as certainty of knowledge and experience.
2.6.5	In the second sentence replace “must” with “will”.  It is noted that the vehicle cannot be used until it would meet the testing requirements. Who certifies that it would meet these requirements ie who signs it off? It is suggested that this point is explicitly addressed.  What happens if the timescale for repair of cosmetic damage is not complied with? It is suggested that this point is explicitly addressed.
2.6.6	Start of second sentence “These test...” should be “These tests...”
2.7.1	Final line – replace “Section” with “Appendix”
2.7.4	It is suggested that reference be made to Appendix A, paragraph 19 for the detail on advertisements.
2.8.2	Delete the comma after “required” at the end of the first line
2.10.1	“merits” should read “merit”

2.11.1	Insert the word “maximum” in the second line ie “...for a maximum one-year...”
2.11.3	It is suggested that you insert additional wording so that the final sentence reads “...if applications and supporting documentation are received...”
2.11.4	It is suggested that the following additional wording be inserted at the end of the first paragraph “...and are therefore not offered by this Council”.  It is suggested that further clarification be added to explain what is meant by “vehicle transfers” as there are various references to transfers throughout the Policy which need to be distinguished.  In the second paragraph it is suggested that clarification be given as to what happens at the end of the year ie is the vehicle then required to be wheelchair accessible?
2.12.2	Replace “preventing” with “which prevents”
2.18.1	Should this definition be expanded to include paramedic cars?
3.1.1	Add the following wording to the end of the second sentence “...unless otherwise stated.”
3.1.2	Amend the start of the paragraph so that it reads “The Council requires that separate...”
3.2.1 (and elsewhere)	Consideration could be given to the use of the word “high  It is suggested that the public safety objective be referred to within this paragraph as the reason to require the medical certificate.
3.4.2 and 3.4.3	It appears from 3.4.4 that the requirement to obtain DSA is compulsory for new applicants. Therefore change the final sentence of 3.4.2 to read “An assessment of a driver’s ability will, therefore, be required for all new applicants”.  In 3.4.3 replace “should” with “will”
3.4	It appears that existing drivers are not required to obtain the DSA qualification. If this is the case, should consideration be given to it being a condition (or enforcement measure) should there be concerns about a particular driver that this would address?
3.4.5	Having checked the Council’s website the list of professionally qualified drivers does not appear to be on the website (or is not easily found). It is suggested this be remedied.  It is suggested that the final sentence be amended to read “...the Council publicises a list...”
3.5.2	It is suggested that a time limit be placed on the validity of the medical examination
3.5.3	It is suggested that this section includes reference to the sanction if the council is not notified of a deterioration.  Consideration could be given to including eye-sight related issues in the list of ailments  Amend the fifth bullet to read “sudden attacks of...”

3.6.6	It is suggested that “are obliged to” is replaced with “must”
3.6.8	It is noted that the words “It is proposed...” are the same words used in the previous version of the Policy. Have these additional controls been introduced within the last 3 years? It is suggested that this needs to be reworded.  The third sentence should read “...an additional CRB...”
3.6.9	“parties” should be “party”
3.9.1	It is suggested that wording be inserted to make the point that although the Council provides a reminder of the expiry of licences, this does not take the responsibility and liability for renewing away from the licence holder (ie if we forget to remind, that does not excuse them)
3.9.3	Replace “Once” with “After”  Reword the first sentence to read “...has passed if a valid...”  “haven’t” needs to be changed to “have not”  The second sentence should read “All holders with expired licences will...”
3.10.2	It is suggested that it is explicitly stated that all Private Hire Licences will be issued with these conditions attached.  Are there any grounds on which exceptions might be made in whole or in part for a Private Hire Licence holder? If so, this should be referred to.
3.11	Consideration could be given to moving this section next to the other sections dealing with convictions at 3.7
3.11.1	Insert additional wording so that it reads “...committed by licensed drivers in the course of their business or otherwise, it is...”
3.11.2	It should be noted that informing the Council of the penalty within seven days of conviction may not be possible if the sentencing is deferred after conviction.  Consideration should be given to including cautions as there also require an acceptance of guilt in the same way as fixed penalty notices (although arguably more so for cautions which remain on your record)
3.12	It is suggested that reference could be made to promoting the Code of Good Conduct through the Taxi Forum
4.1.2	Amend final sentence to read “Where defects are such that use of a vehicle needs to be immediately prohibited, livelihood interference is inevitable”.
4.1.4 and elsewhere	Please ensure the Enforcement Policy is referred to by the correct name (there has been some inconsistency in the different policies currently out for consultation)
4.2	This section does not actually refer to the disciplinary hearings themselves. It is suggested that either the sub-heading be changed, or information about the disciplinary hearings be included.

4.2.2	Consideration should be given to including convictions in the list of serious disciplinary matters
4.4.1	Consideration should be given to the use of the word “prosecution”. If it is intended that warnings and cautions be used for penalty point scheme transgressions, then this needs to be a different word as “prosecution” infers a criminal offence.
4.4.2 (i)	In the second paragraph it is suggested that the reference to “further test” include “at the Council’s nominated testing facility”.
4.4.2 (ii) and (iii)	There is no reference to the potential length of suspension. Is this deliberate in order to allow flexibility? If so it is suggested that reference be made to the length of suspension being a matter for the discretion of the Head of HPPS
4.4.4	Could this measure be coupled with a suspension in the interim? If so, this should be referred to. [It is acknowledged this is effectively a revocation so may not be an option]
4.6.1	Delete the word “Fortunately”
4.6.3	There is a concern that the investigator also “reaching a decision” on the action to take may not be the most robust and defensible process and consideration might be given to the investigator making a “recommendation” for another to then make a decision.
6.2.1 and 6.3.1	Add to the end of each sentence “and any matter specifically referred to within this Policy”.
7.1.1	It is suggested that explicit reference be made to the Operators Licence being in addition to Driver’s Licence and Vehicle Licence.
7.1.4	It is suggested that the operator also be required to ensure that all vehicles have a licence
7.3.2	Are there any grounds on which exceptions might be made in whole or in part for a Private Hire Operator Licence holder? If so, this should be referred to.
7.4.2	Consideration could be given to requiring, as a n alternative, that a declaration be signed that the operator does not have premises that are open to the public. If this is added the penalty for breaching such a declaration would also need to be considered.
7.5.3	It is considered that the meaning of the second sentence is not clear and should be reworded.
7.6.1	Consideration could be given to requiring that proof of insurance for the new address be provided with notification of a change of operating address.
7.6	Consideration could be given to reminding operators that they separately need to ensure they are complying with any planning or building regulation or other considerations with respect to the premises.
8.1.6	Start the sentence with “Save for paragraph 8.1.3 above, these...”
9.3.1	Insert the word “voluntarily” between holder and surrenders.
9.3	Consideration could be given to specifying that no refund is provided if the licence ends early due to disciplinary matters.
9.3.2	[Linked to previous point about transfers at 2.11.4]. Clarification should be provided as to what transfers are referred to within this

	paragraph.
11	It is suggested that this section be expanded as it currently provides no information to an uneducated reader as to what the Forum is, how it is constituted, what its purposes are, how often it meets, whether it is open to the public etc
12.2	Consider whether “impact” is more appropriate than “effect”  It is suggested that the first two bullet points should also include reference to the public
12.3	Amend so that this reads “...Portfolio Holder responsible for Housing and Public Protection...”
13.2	Insert the word “currently” between is and based
14	All defined terms should be capitalised  Hackney Carriage is not defined  Private Hire Vehicle is not defined  Driver’s Licence should defined to provide clarity between DVLA issued licences and the Council issued licence  Registered Medical Practitioner is not defined  Best Practice Guidance – consider referring to potential subsequent guidance  DIA – include reference to “and other legislation”  Elected Members – is this definition accurate? Should this not include Cabinet or LAC? (As I understand it this is a Cabinet approved policy and therefore why would this refer to Full Council?)  Portfolio Holder – include the wording used in the definition of Head of HPPS regarding restructure
A1.2	At the end of the first sentence “to” should be “with”
A1.3 (ii)	Does the exception referred to also apply to (i)? This needs to be clearer
A1.5	For clarity it is suggested that bullet point be added with the maximum number of passengers allowed
A2.1.1	It is suggested that you provide a justification for this position which could be viewed as arbitrary and disproportionate
A2.3.1	See previous comments regarding “transfers”. Clarification is needed.
A3.1.2 to A3.1.5	I assume that the different maximum age of vehicles within these sections can be justified.
A3.2.2	The absence of a maximum age could be seen as inconsistent with A3.1.2 to A3.1.5. Again I assume this can be justified.

A4.1	<p>Is the requirement for four side opening doors reasonable. Have some of the older London style cabs only got three opening doors?</p> <p>It is suggested that clarification be given as to where the 137cm is measured – is this the width of the vehicle? This could be read as the distance between two handles on one side of the vehicle?</p>
A8.2	<p>Measuring along the widest part of the seat is counter productive to ensuring passenger comfort (it is the narrowest part which has most potential for discomfort), but I assume this is included for good reason.</p>
A10.2	<p>Insert the word “maximum” in the second sentence – “...state the maximum number of...”</p>
A12.1	<p>In the final line use an alternative word to one “appropriate”</p>
A15.3	<p>Consider whether the word “should” in the second line be replaced by “must”</p>
A18.1.1	<p>Consider whether to explain that the illumination should ensure that the vehicle be clearly identifiable to the public. If this is included consideration could be given to including that the illumination not be so bright as to cause a nuisance.</p>
A18.2.1	<p>It is considered unclear whether this means no roof sign at all, or merely not a roof sign as set out in 18.1.1. It is suggested this be clarified</p>
A21.2.2	<p>Consider whether the word “should” in the final sentence be replaced by “must”</p>
A30.3	<p>Consider including a requirement that the hire company must have approved the use as a licensed vehicle</p>
A33.1	<p>The reference to Section 12 is considered inaccurate. Section 12 deals with amendments to the Policy which is not the same thing as a dispensation.</p>
B1.1(ii)	<p>It is suggested that the wording of “prior to the introduction of this Policy” be changed as this is the second version of the policy and such wording is more appropriate in the first.</p>
B2.6.1	<p>It is suggested that the requirement to comply with the Original Manufacturers’ Specification may not be the most appropriate test, given that the original specification will not have allowed for the increased size and weight of the enlarged vehicle. Should this instead refer to the SVA requirements?</p>
B4.1	<p>The first line should read “...vehicles will be required...”</p>
C1.1(ii)	<p>It is suggested that this specifically refer to the insurance policy having to cover use as a Hackney Carriage or Private Hire Vehicle</p>
C4.3	<p>The third paragraph could also include reference to the plate being surrendered when the vehicle changes.</p>
C5.2.1(ii)	<p>Add the following wording to the end “since the date of the previous enhanced CRB certificate”.</p>
D	<p>The introduction and final paragraphs are not numbered. It is suggested that they are for ease of reference.</p>
D General, 3 <sup>rd</sup> para	<p>The use of the word “may” in the second sentence is queried. A caution requires an admission of guilt and therefore why would it not be considered?</p>

All numbers	The paragraphs in the other Appendices are labelled A1, A2 etc. For consistency these should be labelled D1, D2 etc
3.6	It is suggested that there is a reference to drink driving being covered in section 4 as otherwise this appears to be omitted from major traffic offences.
3.7.2	There may be an inconsistency here, as the “exceptional hardship” arguments used in court could well have included that loss of driving licence would mean inability to work as a taxi driver and yet the Council may still remove. However the use of “will still normally” provides an opportunity to treat all cases on their merits and therefore this issue is flagged for awareness as opposed to suggested change.
6.1	Amend so this reads “...indecency offence (other than a major offence – see 6.3 below) will normally...”
8	Consideration should be given for including a paragraph relating to multiple offences, similar to 7.6
E2.3	It is suggested that you cross refer to paragraph 3.5 in the Policy
E4.2	Clarify whether you mean the DVLA or Council issued driver’s licence (this could be resolved by better use of defined terms, as dealt with above)
H2.3	Consideration should be given to including employee disciplinary records and a requirement to notify the Council of any internal disciplinary findings.
NOTE: PLANNING CONSENT	Other consents may also be required, for example building regulation and landlord. It is suggested that a line be added that “Other consents may also be required and it is the Operator’s responsibility to ensure they have all necessary consents”.
I2.3.1 (i)	Should it read “grant or renew...” Should the option for adding further conditions to a PHV driver’s licence be included as an enforcement option?
I5.4	It is suggested that reference be made to it being an offence to drive when the suspension is in place
I6.2	Should be “notification” not “notifications”
I7.1	Delete the word “legitimate” as this suggests that some of the requirements are not legitimate.
I9.3 (i)	Amend to read “...offence and where appropriate what needs...”
I9.3(ii)	Amend to read “...contravened and where appropriate measures...”
J2	Is it possible to appeal against the award of points? If so, how? Consideration should be given to being explicit on this point.

I trust that these suggestions have been useful and am happy to explain any points which are unclear within the table above.

If I can assist further please do not hesitate to contact me.

**Anthony Roche**

For and on behalf of  
Corporate Legal Manager  
North Hertfordshire District Council