

LICENSING AND APPEALS COMMITTEE
12 MARCH 2018

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

6

TITLE OF REPORT: CONSIDERATION OF AMENDMENTS TO THE HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION
EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH
COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 Hackney carriage and private hire licensing, whilst governed by national legislation, provides for local discretion. Having a clear and transparent policy will assist applicants' understanding of the process and facilitate consistent decision-making by the Council.
- 1.2 Any Council Policy should be kept under review to ensure it remains fit for purpose therefore a public consultation was recently undertaken in respect of some proposed amendments to the Policy.
- 1.3 This report seeks Members' approval of amendments to the existing Policy.

2. RECOMMENDATIONS

- 2.1 That the Committee:
 - (i) Consider the results of the public consultation and support the policy amendments;
 - (ii) Determine that the proposed amendments are minor in so far as they do not amend the licensing principles or main focus of the existing Policy;
 - (iii) Recommend that the Executive Member for Housing and Environmental Health approves the policy amendments under delegated powers.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The existing policy has worked well since its adoption with effect from 7 January 2011, having been revised by the Executive Member for Housing and Environmental Health on four occasions since then; therefore no significant amendments were deemed necessary.
- 3.2 This view was supported by the responses to the public consultation that were limited and raised no significant opposition to the proposals.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Consideration was given to a range of options as part of the public consultation however the limited responses proved inconclusive.
- 4.2 In determining the proposed amendments from the range of options included in the consultation, officers have balanced the financial and administrative impact on licence holders against the Policy objectives of safeguarding the public and maintaining the existing high standard of hackney carriage and private hire provision.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 A range of proposed amendments to the existing policy incorporating a number of options for each proposal, were highlighted in red and publicised on a specific licensing consultation webpage on the Council's website. All existing licence holders with email addresses were contacted and signposted to the consultation page.
- 5.2 To ensure that licence holders without email addresses were not precluded, the Hackney Carriage and Private Hire Consultative Forum were consulted prior to and during the formal consultation period. This Forum represents all aspects of the trade as a whole.
- 5.3 The public consultation was also publicised on the Council's social media platforms.
- 5.4 The Executive Member for Housing and Environmental Health was consulted throughout the process.
- 5.5 The proposed amended policy, including all options, published for public consultation is attached as **Appendix A**.
- 5.6 Copies of all consultation responses are attached as **Appendix B**.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 5 May 2017.

7. BACKGROUND

- 7.1 Prior to 2008, the Council had exercised its responsibility of licensing hackney carriages and private hire vehicles through a number of different policies, conditions and procedures that had been developed over a number of years.
- 7.2 The legislation regulating hackney carriages dates back to the Town Police Clauses Act 1847, whilst private hire vehicles are regulated by the Local Government (Miscellaneous Provisions) Act 1976.
- 7.3 Given the age of the regulating legislation and the piecemeal format of policies and conditions, it was considered necessary to re-evaluate the whole licensing process in relation to hackney carriages and private hire vehicles. Following a public consultation, a new Hackney Carriage and Private Hire Licensing Policy was introduced with effect from 7 January 2008 following adoption by Cabinet.

- 7.4 The Policy was initially adopted as a three year policy ending on 6 January 2011 and proved to be an effective document in ensuring consistency of approach by officers thus ensuring fairness and transparency for both the trade and public. The Policy was therefore amended on an ongoing basis by the Executive Member for Housing and Environmental Health to ensure it remained fit for purpose.
- 7.5 To assist with the promotion and development of the Policy, a Hackney Carriage and Private Hire Consultative Forum was formed. The Forum consists of a cross-section of the trade representing self-employed drivers, operating companies, and both hackney carriage and private hire licence holders. The Forum has its own Terms of Reference and is an effective liaison body between the trade and the Council. Some of the proposed policy amendments are a direct result of discussions at the Forum.

8. RELEVANT CONSIDERATIONS

- 8.1 To assist the Committee with their deliberations, every proposed amendment is highlighted in red in the proposed Policy attached as **Appendix C**.

Policy Duration

- 8.2 In order to ensure that a policy is reviewed periodically, historically each policy has included the date by when it should be reviewed. If this date is passed, the policy doesn't lapse but is at risk of challenge for not being kept under review.
- 8.3 On reflection, a fixed term policy could be considered inappropriate particularly with ever-changing legislative or local requirements. A policy should be kept under regular review with the ability to amend or re-consult where necessary. As policy is a matter for Members, it is felt that the Executive Member for Housing and Environmental Health is best placed to determine when a policy should be amended or reviewed.
- 8.4 The Policy therefore has no fixed duration but will be kept under periodic review by the Executive Member who will have the authority to amend, approve for continuation or require a full consultation prior to a new policy being considered by Cabinet.

Accessibility

- 8.5 Whilst it is an offence under the Equality Act 2010 ("the 2010 Act") to refuse to transport a person accompanied by an assistance dog, the same does not automatically apply to persons travelling in wheelchairs. It is only an offence to refuse to transport a person travelling in a wheelchair if the licensed vehicle appears on a list of vehicles designated under the 2010 Act. To ensure that persons travelling in wheelchairs receive equal protection, all licensed wheelchair accessible vehicles will be designated for this purpose.

Environmental Considerations

- 8.6 In support of the Council's commitment to protecting the environment, the existing Policy has encouraged the use of cleaner, low emission vehicles however this has been met with limited success. It is proposed to continue with encouraging a move to cleaner, low emission vehicles rather than introducing a mandatory requirement however it was felt that further incentive was needed.
- 8.7 During the public consultation it was proposed to introduce a subsidised vehicle licence fee for electric vehicles which received positive feedback from the Hackney Carriage and Private Hire Consultative Forum. The Forum however suggested that the Council

should go further and extend the subsidised vehicle licence fee to hybrid vehicles too. The proposed Policy incorporates a subsidy for electric and hybrid vehicles, the level of the subsidy being set on an annual basis by the Executive Member for Housing and Environmental Health and the Head of Housing and Public Protection.

- 8.8 It is intended that this subsidy will encourage a move to cleaner, low emission vehicles now rather than wait for Government legislation to force the issue. As the car manufacturing industry evolves and cleaner, low emission vehicles become the norm, the subsidy can be phased out.

Maximum Age of Vehicles

- 8.9 The existing Policy restricts hackney carriage vehicles to a maximum age of ten years from date of first registration after which a licence will not be granted; the same restriction does not apply to private hire vehicles. This was introduced originally due to the significant mileage undertaken by hackney carriages and the concern that high mileage vehicles would not maintain the Council's high standards, in particular the risk of mechanical failure or cosmetic deterioration.
- 8.10 It is now becoming more prevalent that licensing authorities are removing upper age limits on hackney carriages due to the advance in vehicle manufacturing and improved emission standards. Additionally, Department for Transport Best Practice Guidance suggests that upper age limits may be considered arbitrary and disproportionate given that licensing authorities have the opportunity to set local testing standards.
- 8.11 Precluding a vehicle from licensing due to age, when local testing standards can still be met, is financially restrictive for licence holders not least due to the reduced sales value of an ex-hackney carriage.
- 8.12 It is proposed to standardise the position between hackney carriages and private hire vehicle whereby a vehicle can continue to be licensed until such time as the vehicle cannot comply with the Council's testing requirements.

Vehicle Testing

MOT

- 8.13 When making a determination on an application for a hackney carriage or private hire vehicle licence, an assessment of the vehicle's mechanical suitability has to be considered; the most consistent way to make this assessment is an MOT test.
- 8.14 An MOT is an assessment of the mechanical suitability at the time of the test having regard to the ability to identify MOT advisories about likely future concerns.
- 8.15 In order to ensure that the MOT remains relevant, the Policy now restricts an MOT test certificate to being dated no earlier than two months prior to the licence commencement date.

MOT advisories

- 8.16 In the past twelve months there has been a marked increase in the number of advisories appearing on MOT certificates, in particular with regard to tyres and brakes. Whilst an advisory would not preclude the issuing of an MOT certificate, it does highlight an issue that will need rectification in the near future.
- 8.17 Given that one of the objectives of this Policy is public safety, the Council expects licensed vehicles to be of the highest standard possible with no identifiable risk to the

public; the public have a legitimate expectation that the issuing of a licence is an indication that the Council believes the vehicle is safe to transport the public.

- 8.18 For that reason, the Policy introduces a new section relating to MOT advisories that precludes the issuing of a licence when the MOT contains brake and/or tyre advisories, with the option to extend this to other concerns if the Council believes there is a risk to the public. Requiring a brake and/or tyre advisory to be rectified prior to the issuing of a licence is a justifiable requirement to ensure public safety, indeed the Hackney Carriage and Private Hire Consultative Forum endorsed this approach.

Testing facilities

- 8.19 Historically, since the transfer of the Council's housing stock, North Herts Homes undertook all hackney carriage and private hire testing on behalf of the Council at its depot in Letchworth Garden City. Unfortunately, with no advanced notice, North Herts Homes closed their depot at the end of September 2016.
- 8.20 To ensure continuity of testing facilities, the Council temporarily allowed an MOT to be obtained from any authorised testing station with licensing officers undertaking the compliance testing element of the assessment. The compliance test consists of non-mechanical checks not undertaken as part of an MOT such as cosmetic appearance, taximeter rates, non-smoking signage, etc.
- 8.21 As part of the consultation, a number of options were offered in relation to testing facilities to gauge trade opinion. The limited responses are inconclusive as they form such a small percentage of the overall trade.
- 8.22 The two biggest concerns relating to future testing arrangements are:
- (i) Consistency
As the compliance testing is subjective, there are concerns that different testing stations will apply different interpretations of Council standards.
 - (ii) Commercial opportunity
As part of the Service Level Agreement with North Herts Homes, they were precluded from undertaking any repair work on vehicles failing an MOT or compliance test. It is unlikely that a garage would sign a similar agreement therefore there would be a risk of subjective decisions being made with a view to securing additional work.
- 8.23 As the current testing arrangements of any authorised MOT testing facility plus a compliance test undertaken by licensing officers has proved effective, it is proposed to formalise this arrangement within the Policy.

Vehicle Type

- 8.24 Under the existing Policy, all new hackney carriages have to be wheelchair accessible whereas existing licence holders can renew their licence and replace non wheelchair accessible vehicles on a like for like basis in perpetuity. There is no similar requirement for private hire vehicles.
- 8.25 Whilst this ensures that the Council fulfils its duty under the Equality Act 2010 to ensure transport provision for those persons travelling in a wheelchair, it does act as a deterrent to new licence holders entering the trade due to the increased cost of a wheelchair accessible vehicle.

- 8.26 The current wheelchair accessible vehicle provision for hackney carriages in North Hertfordshire is approximately 7% of the fleet and the combined hackney carriage/private hire vehicle wheelchair accessible vehicle provision is approximately 8% of the total fleet.
- 8.27 The public consultation considered a number of options to address this issue with the small number of responses from the trade proving indecisive and no indication of a shortage of provision from the public.
- 8.28 The proposed Policy incorporates a new provision whereby all new hackney carriages must be wheelchair accessible until such time as a minimum of 10% of the hackney carriage fleet is wheelchair accessible. Once this percentage is achieved, the wheelchair accessible requirement will be relaxed provided the minimum 10% requirement remains. This strikes a proportionate balance between ensuring sufficient wheelchair accessible provision and not precluding new entrants to the trade.

Private Hire Signage

- 8.29 Currently, private hire vehicles are not permitted to have roof signs as there is a risk that the public may mistakenly perceive the vehicle to be a hackney carriage. If a member of the public were to travel in a private hire vehicle without pre-booking it is likely that the vehicle would not be insured.
- 8.30 One of the existing private hire operators requested an amendment to the existing Policy to allow private hire vehicles to display roof signs therefore a number of options were included in the public consultation.
- 8.31 In the absence of significant support for allowing roof signage, it is not proposed to relax this requirement. Additionally, to ensure that the public are not put at risk by travelling in a private hire vehicle without having pre-booked the vehicle to validate insurance, it is proposed that all private hire vehicles display Council-approved door signage stating the pre-booking requirement.

Livery

- 8.32 The consultation included a number of other proposals to assist the public in understanding the difference between hackney carriages and private hire vehicles including specific vehicle colours and/or a Council logo door sign.
- 8.33 Having regard to the new proposal to require private hire vehicles to display door signage in addition to not displaying roof signs, further livery requirements are not considered appropriate at this time. The cost to the trade of implementing any such requirement would be disproportionate to the likely benefit.

Taximeters

- 8.34 The most frequent complaints received in relation to hackney carriages are allegations of overcharging. Invariably these complaints are difficult to prove as the customer and driver have differing accounts of the incident. Additionally, the complainant often only has partial details of the driver and/or vehicle making the alleged perpetrator hard to trace. The fact that the onus is on the driver to manually select the appropriate tariff on the taximeter based on day and time adds to the problem.
- 8.35 With the advancement in technology, taximeters now exist whereby the correct tariff is automatically selected based on the day and time; these are called calendar meters.

Additionally, all major taximeter suppliers now offer separate printers that connect to the taximeter with the facility to print a receipt containing details of the journey, tariff and vehicle details.

- 8.36 A number of options relating to taximeters, calendar meters and printers were included in the public consultation however there was no significant response.
- 8.37 Whilst the preferred option is to require all hackney carriages to be fitted with a calendar meter and printer, with a mandatory requirement to provide a receipt for every journey, it is acknowledged that this will have a significant financial impact on the trade. Replacing a taximeter with a calendar meter and printer is likely to cost in the region of £400 however there are clear benefits to the public of changing to this new system.
- 8.38 For these reasons, the proposed Policy allows all hackney carriage owners to continue with their existing taximeters in the short-term however introduces a new requirement for a calendar meter and receipt printer to be installed in all hackney carriages by 1 April 2021.

Intended Use

- 8.39 Whilst hackney carriages can only ply for hire on the streets and park on hackney carriage ranks within the geographical boundary of the district/borough of the licensing authority that issued the licence, they are able to undertake work outside the district/borough by way of telephone/electronic/social media bookings. No geographical restrictions apply to private hire vehicles.
- 8.40 The legislation only authorises officers of the issuing authority to undertake enforcement duties therefore there is a risk that hackney carriages licensed by North Hertfordshire could operate predominately outside of the district with little prospect of enforcement.
- 8.41 Case law has established that a licensing authority is entitled to consider the likely operating area of a hackney carriage as part of its determination therefore it is proposed to include a section whereby hackney carriages intending to operate predominately or significantly outside of North Hertfordshire will ordinarily be refused a licence.

Right to Work

- 8.42 Licensing authorities now have a duty to ensure that hackney carriage and private hire drivers have a right to work in the UK before being granted a licence. Details of this duty have been included within the Policy, including a specific appendix listing the various documents required to satisfy this requirement.

Expired plate/badge returns

- 8.43 A recent audit of the hackney carriage and private hire licensing function was undertaken by the Shared Internal Audit Service (SIAS). This audit identified a risk where expired/expiring licence plates and badges are not returned to the Council; this could lead to these plates and/or badges being used to mislead the public.
- 8.44 Historically, new licence plates and badges have been issued to licence holders prior to the expiry of their existing licence to ensure continuity. This was due to the misconception that the plate and/or badge was a licence and only had effect between

the dates of validity and so could not be displayed until the specific start date of the new plate or badge.

- 8.45 This has subsequently been established as incorrect as the plate or badge is a symbol of the existence of a licence not the licence itself which is issued in paper format with a specified start and expiry date. This means that where an existing licence has been renewed, the new plate or badge can be displayed immediately as it merely indicates the existence of a licence (i.e. the continuation of the current licence and the existence of a renewed licence).
- 8.46 To satisfy the risk highlighted by SIAS and further protect the public, the proposed Policy includes a new section that precludes the collection of a renewed licence plate or badge without the surrender of the existing plate or badge. On a limited number of occasions, renewed licence plates or badges are posted to the licence holder in which case there is a requirement to return the expired plate or badge within seven days.

Online DBS registration

- 8.47 Currently hackney carriage and private hire drivers are required to provide an enhanced DBS (Disclosure & Barring Service) certificate upon grant and renewal of a driver licence (in practice, every three years). It is a Policy requirement that existing licence holders inform the Council of any convictions during the period of the licence however there is a risk that they fail to do so and the conviction not being identified until the next licence renewal.
- 8.48 The DBS now offer an online registration scheme whereby a driver can register online for a small annual fee and the Council can undertake periodic checks throughout the licence duration and upon renewal. The check would establish whether or not there had been any change to the original DBS, instantly highlighting any areas of concern.
- 8.49 Despite having to pay a small annual fee for the service, the licence holder would then only have to complete a full three yearly DBS if a conviction was received therefore saving time and cost in the long term.
- 8.50 The proposed Policy introduces a mandatory requirement for hackney carriage and private hire drivers to register with the online DBS service.

The relevance of cautions and convictions

- 8.51 It is an important component of the Policy to have a clear statement on the relevance of cautions and convictions to enable applicants and licence holders to understand how the Council will assess the subjective 'fit and proper' test required by the legislation.
- 8.52 Whilst every application is determined on its own merits, the Council is entitled to have a stated position on the relevance of convictions even if that position is one of refusal. This does not fetter the Council's discretion as the applicant knows in advance that the stated position is refusal however has the opportunity to demonstrate mitigating circumstances that they believe justifies a departure from policy. Ordinarily, applicants have been given the right to appear before the Head of Housing and Public Protection to offer their mitigation however this proves time consuming and costly. The proposed Policy clarifies that the Council will now consider written mitigation and only requires attendance by the applicant if further clarification is required. Case law has established that a policy of only accepting written mitigation is lawful and that there is no automatic right of appearance before the decision maker.

- 8.53 The existing Policy has proven to be generally effective however policy in relation to the most serious of offences has been enhanced to become more consistent with neighbouring authorities. The public rightly expect that convictions for certain offences would preclude the issuing of a licence and the proposed Policy clearly indicates the Council's position.

Driver code of conduct

- 8.54 The existing Policy is not particularly user-friendly as it lists a range of requirements for driver licence holders in various different sections. The proposed Policy combines all of these requirements into the Driver Code of Conduct for transparency.

Penalty point scheme

- 8.55 Historically the Council has operated a penalty points system as a transparent and fair method of assessing minor non-compliance or low level enforcement action. The existing scheme is problematic as it seeks to address virtually every transgression leading to inconsistency in the level of points available; additionally a set number of points often precludes flexibility to allow for cooperation and acceptance of low level enforcement issues.
- 8.56 The proposed Policy simplifies the number of transgressions into more generic headings with a range of points to allow for maximum flexibility.

Procedural clarifications

- 8.57 Since the adoption of the existing Policy, a number of minor administrative issues have arisen whereby some clarification of the wording of the Policy was necessary in addition to the incorporation of some procedural amendments. All such amendments were included within the public consultation.

Definition of Minor Amendments

- 8.58 The Council's Constitution reserves *"to prepare and agree to implement policies and strategies other than those reserved to Council"* for Cabinet and all new licensing policies, other than those reserved to Council, have been referred to Cabinet for adoption. Once a policy has been adopted by Cabinet, an Executive Member has the authority for *"making minor amendments to adopted strategies, policies and procedures"*.
- 8.59 The Constitution is however silent on the definition of a minor amendment therefore a definition can be sought from the existing adopted Policy. The current Policy adopted by Cabinet included a section entitled "Amendments to Policy". Within that section, a *substantial amendment* was defined as one that is likely to have:
- (i) *a significant financial impact on licence holders or the public; or*
 - (ii) *a significant procedural impact on licence holders or the public; or*
 - (iii) *may not be perceived by the trade or the public to be consistent with the published objectives detailed in ... this policy.*

The Policy then clarifies that a minor amendment is defined as any amendment that does not fall within the scope of a *substantial amendment*.

In the absence of a definition of minor in the Constitution, the existing Policy can be considered an indication of Cabinet's interpretation of minor when considering the initial adoption of the Policy.

- 8.60 It is suggested that none of the proposed amendments fall within the scope of the *substantial amendment* definition therefore are classified as minor amendments that can be made by the Executive Member. This is further supported by the fact that the four licensing objectives of the Policy remain unchanged.
- 8.61 If the Committee support the contention that the amendments to the existing Policy are minor then the amendments can be authorised by the Executive Member. If however the Committee believe the amendments are not minor and, in effect, a new Policy should be adopted then the proposed Policy should be referred to Cabinet.

9. LEGAL IMPLICATIONS

- 9.1 By virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, adoption of a local policy in respect of hackney carriage and private hire regulation is a matter for the Council's Executive.
- 9.2 The Licensing and Appeals Committee's terms of reference within the Council's Constitution includes at section 8.2.3:

"to consider all Licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director of Planning, Housing and Enterprise."

The Committee's role therefore is to consider the draft policy in light of the public consultation and decide whether to make a recommendation to the Executive in respect of adopting the proposed amendments.

As part of that consideration, the Committee should determine whether or not the proposed amendments should be considered 'minor amendments' that could be dealt with by the Executive Member under delegated powers.

In the absence of a definition of 'minor' within the Constitution, the Committee should have regard to the definition of 'minor amendment' within the existing adopted policy.

- 9.3 If the Committee determine that the proposed amendments are 'minor', section 14.8.1(l) of the Constitution states that an Executive Member has authority for:

"making minor amendments to adopted strategies, policies and procedures."

- 9.4 If the Committee determine that the proposed amendments are not 'minor' based on the definition included within the existing adopted policy then authority for adopting a new policy falls with Cabinet by virtue of section 5.6.1 of the Constitution that includes within the terms of reference for Cabinet:

"to prepare and agree to implement policies and strategies other than those reserved to Council."

10. FINANCIAL IMPLICATIONS

- 10.1 The amended policy would have no additional financial implications for the Council. Case law has determined that a Council can recover its reasonable costs of administration and enforcement through licensing fees.

11. RISK IMPLICATIONS

- 11.1 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of judicial challenge.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and licence holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met.
- 12.3 The Policy deals specifically with the duty under the Equality Act 2010 to protect the vulnerable using hackney carriages and private hire vehicles, specifically persons relying on assistance dogs and persons in wheelchairs. Section 167 of the Equality Act 2010 provides for the Council to designate licensed wheelchair accessible vehicles under this section making it a criminal offence to refuse to carry passengers in wheelchairs; the Council has designated all licensed wheelchair accessible hackney carriages and private hire vehicles.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The policy will not place any new human resource implications on the Council.

15. APPENDICES

- 15.1 Appendix A Hackney Carriage and Private Hire Licensing Policy published for public Consultation.
- 15.2 Appendix B Schedule of consultation responses.
- 15.3 Appendix C Proposed Hackney Carriage and Private Hire Licensing Policy (incorporating the proposed amendments).

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17. BACKGROUND PAPERS

- 17.1 [Town Police Clauses Act 1847](#)
- 17.2 [Local Government \(Miscellaneous Provisions\) Act 1976](#)
- 17.3 [Existing Hackney Carriage and Private Hire Licensing Policy](#)