

REPORT TO: LICENSING COMMITTEE

DATE: 23 JANUARY 2018

TITLE: TINTED WINDOWS IN PRIVATE HIRE VEHICLES

LEAD OFFICER: MICHAEL PITT ENVIRONMENT AND LICENSING MANAGER (01279) 446114

CONTRIBUTING OFFICER: DAVID TAYLOR PRINCIPAL EHO (LICENSING) (01279) 446164

RECOMMENDED that:

- A That the Licensing Committee considers the information set out in the report and appendices and determine whether to recommend to Full Council any change of licensing policy with regard to each of the options set out at paragraph 11 of the report.**

BACKGROUND

1. Harlow Council regulates private hire driver, vehicle and operators in accordance with the Local Government (Miscellaneous Provisions) Act 1976. Section 48 allows the Council to license a private hire vehicle where the Council is satisfied that the vehicle is;
 - Suitable in type, size and design for use as a private hire vehicle,
 - Not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage,
 - Is in suitable mechanical condition,
 - Safe and, comfortable.

A Council may attach to the grant of a licence such conditions as they consider reasonably necessary.

2. Revised vehicle licence conditions were approved by the Licensing Committee on 11 July 2017. These revised conditions require that all newly licensed vehicles must have windows that allow not less than 50% light transmittance. Suitable optical equipment was purchased by the Council to measure the light transmittance value. This condition replaced the 'Compliance Test' requirement approved by the Licensing Committee on 20 January 2015 which stated:

Tinted windows usually are not permitted unless these have been fitted at the point of manufacture of the vehicle. In any case, passengers in the rear of the vehicle must be visible from the outside of the vehicle. Authorised officers of Harlow Council Licensing Team must be consulted in any other circumstances.

This condition has led to uncertainty because it relied on subjective judgement and led to a number of vehicles being licensed with 'privacy glass' which does not allow a person to be seen in the vehicle from outside. The replacement condition is more objective.

The Council has refused to licence vehicles with dark tinted windows under the old and revised vehicle conditions. Vehicle proprietors have elected to change vehicle glass under both the old and revised conditions where the vehicle had not previously been licensed.

3. Harlow Private Hire Association petitioned the Licensing Committee in November 2017 and asked that the condition be removed. Signatures were gathered for the petition during July 2017 and signed by 91 licensed drivers (39% of all licensees). The Licensing Committee requested that a further report be made to address the matters raised by the petition.

In their petition, the Private Hire Association raised the following concerns;

- a. That no other licensing authorities are currently imposing conditions to restrict the use of tinted windows,
 - b. That 2 authorities who had previously introduced conditions on tinted windows had reversed their conditions,
 - c. That no research findings or statistical data had been made available to the Licensing Committee,
 - d. The condition will restrict the availability of suitable vehicles,
 - e. The condition will bring an end the use of some 8 seat vehicles in Harlow.
 - f. That a large operator who licenses Ford Galaxy's with other licensing authorities would need to change their entire fleet of vehicles if subjected to the same condition dealing with tinted windows,
 - g. Proprietors may choose to licence their vehicle with a neighbouring authority,
 - h. The Licensing Team is unwilling to issue a list of compliant vehicles,
 - i. The petition drew attention to a select list of vehicles and asked that the Council clarify whether these vehicles would be eligible to be licensed in the future,
 - j. That there are advantages to using vehicles fitted with tinted windows which have not been recognised by the Council,
 - k. The evidence required to support the requirements on grounds of public safety had not been established.
4. The private hire trade in Harlow is served by two large operators whose services include short trips, airport transfers and some premium services. Harlow Council has also licensed a number of smaller operators who state that they provide specialist high quality chauffeuring services to clients in the entertainment and business sectors. Two of these operators have raised concerns with the licensing team about the effect that the policy will have on

their business and they have put forward reasoned arguments in support of their request to be granted an exemption from the condition. Their reasons are summarised below;

- a. Only high specification executive vehicles are used,
- b. Their investment is substantial and recouped through higher charges,
- c. Their businesses offer a high quality service,
- d. They do not undertake 'school runs' or routinely transport unaccompanied children,
- e. Clients include persons connected with the entertainment industry, entrepreneurs, celebrities and business people who demand anonymity because of their public profile,
- f. Their businesses differ from 'normal' private hire work which ought to be recognised by the Council
- g. Their vehicles qualify for exemption under S75 of the Act regarding the display of licence plates.

Operators of chauffeur services have indicated that they will suffer a decline in business if they continue to be subjected to the condition.

5. Unite The Union represents the Hackney Carriage Trade at national level and has for many years opposed the use of private hire vehicles fitted with dark tinted windows. Unite's national position is supported by the Harlow branch.
6. Harlow Council in common with most authorities will only license a vehicle which is of appropriate size and design to enable passengers to travel safely and in reasonable comfort. A range of issues will make certain types of vehicles unsuitable, for example:
 - a. Vehicles with fewer than four doors,
 - b. Small vehicles such as a Vauxhall Corsa, Ford Fiesta, Skoda Citigo, Volkswagen UP, Peugeot 108
 - c. Large Sports Utility Vehicles high door sills which would be likely to cause accessibility problems for people with restricted mobility.
 - d. Sports cars and cabriolets
 - e. Vehicles with insufficient power to make reasonable progress in traffic
 - f. Highly modified vehicles

Harlow Council does not place any age restriction on licensed vehicles. Many licensing authorities do so: some require a vehicle to be no more than 2 or 4 years old when entering service and no more than 8 or 10 years old prior to being decommissioned, for example. There is a wide variation in the practice of licensing authorities. The Harlow licensed private hire fleet ranges from new vehicles to those over 15 years of age.

7. An internet search to determine whether other authorities restrict the use of

tinted windows in private hire vehicles was conducted during December 2017. Information that was readily available is shown at Appendix 2 and may be summarise as follows:

- a. A number of licensing authorities restrict the use of tinted windows in the rear of the vehicle.
 - b. Some licensing authorities require only that the vehicle complies with the legal requirement for windscreens and front windows.
 - c. Some licensing authorities do not impose any restrictions or their policy is silent on this issue.
 - d. Of those authorities that choose to restrict tinted windows, some rely on a subjective judgement while others specify a minimum light transmittance expressed as a percentage. This percentage varies widely from 70% for example as specified by Runnymede and Sunderland (equivalent to the legal standard for front passenger windows) to 32% which is specified by Bedford and Carlisle and, 22% specified by Spelthorne. Dudley has 40% following extensive consultation with their trade representatives.
 - e. Some licensing authorities including Maidstone have chosen to exempt executive vehicles/stretched limousines from restrictions on tinted windows where the vehicle will not be used for school runs. Sevenoaks has adopted 50% where the vehicle is to be used for transporting unaccompanied children unless this is done with parental consent.
8. The Licensing Team has conducted on-line searches and visited local dealers to determine the availability of vehicles without dark tinted windows. These searches included the type and model of vehicles currently licensed by the Council and, other vehicles listed as being of concern to the Private Hire Association. The results show that all models are available without dark tinted windows. Some higher end model variants such as Ford Galaxy Titanium are routinely fitted with privacy glass and therefore would be ineligible to be licensed under the current policy. New and used Ford Galaxy Zetec models are available without dark tinted windows. Many but not all high specification Mercedes and BMW vehicles are available without dark tinted windows. The results from these searches may be found at Appendix 1.
9. The Licensing Team has considered concerns raised by the Private Hire Association in (3) above and has responded below:
- a. Many licensing authorities impose similar conditions on the use of tinted windows. A selection of policies may be seen at Appendix 2,
 - b. Oxford City Council and Slough Borough Council policies on tinted windows currently available on their respective websites may be found in Appendix 2. The Licensing Team is aware that Epping Forest District Council has recently rescinded its policy dated 26th March 2013 on tinted windows,.
 - c. The Council has no knowledge of any statistical data collected by law enforcement agencies regarding the direct association between crime and

- tinted windows,
- d. The revised condition places limited restrictions on the availability of suitable vehicles.
 - e. The condition will not bring an end to 8 seater vehicles.
 - f. Large operators licensed by other authorities who specialise in seven or eight vehicles with privacy glass are not currently licensed by Harlow Council. Under the current licence conditions, proprietors could licence Ford Galaxy models in Zetec trim but not Galaxy models with Titanium trim level. These vehicles share the same capacity and seating arrangements however.
 - g. Private hire vehicles may only be driven by a person licensed by the same authority and the vehicle may only be dispatched by an Operator licensed by that authority. The law permits a person to apply for a driver and vehicle licence from any other authority.
 - h. The Licensing Team is not aware of any licensing authority that issues lists of vehicles suitable for licensing. In England, vehicles are available from over 80 vehicle manufactures and with thousands of models and optional extras, it would not be practicable for the Council to produce a list.
 - i. Of the 11 vehicles listed by the Private Hire Association, all vehicles are available without dark tinted windows and would be eligible for licensing provided all other conditions were met. Further information is given in Appendix 1.
 - j. It would be reasonable to assume that passengers traveling in the rear of vehicles with dark tinted windows would be exposed to less sunlight. However, the majority of journey times are less than 1 hour and passengers are protected by the roof and tinted windows up to 50%. Any additional protection from dark tinted windows would be marginal and would not under any event enhance protection for drivers and front seat passengers. It would be reasonable to assume that some customers would prefer to travel in a vehicle with dark tinted windows when travelling to attend court or counselling services. The Private Hire Association has not provided any statistical information on the number of vehicle journeys taken by persons who wish to travel incognito.
 - k. The licensing team is not aware of any wrongdoing in Harlow of the kind highlighted the investigation into child sexual exploitation in Rotherham but recognises the need to create a system of licensing which reasonably reduces the opportunities for criminal activity so safeguarding the interests of licensed drivers and Harlow Council.
10. Harlow's current policy does not prohibit the use of tinted windows but it is intended to limit the use of very dark tinted windows for the following reasons;
- a. To allow licensing officers to see inside the licensed vehicle to determine the number of passengers (each vehicle is licensed to transport between 4 and 8 persons),
 - b. To allow law enforcement officers to see inside the vehicle,
 - c. To provide reassurance to vulnerable passengers who may otherwise feel

- unsafe when travelling in vehicles with dark tinted windows,
- d. To allow unaccompanied schoolchildren to be seen inside the vehicle when undertaking school contract work or when being transported unaccompanied,
 - e. To increase driver safety by ensuring that potential assailants travelling in the rear of the vehicle may be seen from outside,
 - f. To make licensed vehicles less attractive to persons distributing or supplying drugs,
 - g. To reduce the likelihood of passengers misbehaving or engaging in inappropriate behaviour,
 - h. To ensure that as far as is reasonably practicable the likelihood or any suspicion of wrongdoing is eliminated.

PROPOSALS

11. Members of the Licensing Committee wish to consider the following options:

<i>Policy Amendment</i>	<i>Advantage</i>	<i>Disadvantage</i>
<i>Remove the condition on dark tinted windows</i>	Proprietors will be able to purchase new or used vehicles without reference to the degree of tint. Proprietors of chauffeur driven vehicles would be able to provide a service to customers who require anonymity.	Customers seated in the rear of the vehicle cannot be seen from outside. The protection detailed elsewhere in this report would be unavailable to customers.
<i>Adopt a less stringent light transmittance value.</i>	A wider number of used vehicles would be available for purchase	There is a direct correlation between being able to see inside the vehicle and the degree on tint. Darker tinted windows reduces the ability to see person inside the vehicle.
<i>Provide an exemption for executive or chauffeur driven vehicles where these vehicles are not used for school runs and for transporting unaccompanied children. Each exemption to be</i>	The condition would provide flexibility for those vehicles used to transport customers who require anonymity where the proprietor gives an undertaking that the vehicle would not be used	Customers seated in the rear of the vehicle cannot be seen from outside. The protections detailed elsewhere in this report would be unavailable to customers save for

<i>considered individually by the Licensing Subcommittee.</i>	to transport unaccompanied children.	children.
---	--------------------------------------	-----------

IMPLICATIONS

Place (includes Sustainability)

As set out in the report.

Author: **Graeme Bloomer, Head of Place**

Finance (Includes ICT)

None specific.

Author: **Simon Freeman, Head of Finance**

Housing

None specific.

Author: **Andrew Murray, Head of Housing**

Community Wellbeing (includes Equalities and Social Inclusion)

Measures that may avoid crime and disorder are expected to benefit community wellbeing.

Author: **Jane Greer, Head of Community Wellbeing**

Governance (includes HR)

The Council must ensure that any amendment to this licensing condition is enforceable and provides transparency to enhance the safeguarding of the general public. Provided the Council have due regard to the representations received, and is reasonable in its approach to policy making, the Council will minimise the risk of legal challenge.

Author: **Dimple Roopchand Assistant Solicitor for Brian Keane, Head of Governance**

Background Papers: A number of links to media coverage and relevant Council reports may be found in Appendix 3.