



## **Meeting of Minds- Britannia Hotel Bolton, Tuesday 15 April 2014**

### **Apologies:**

**Pippa A Brown, DfT- Zak Kowalski- Birmingham-Karl Stamper- Cambridge- Marie Claire Frankie, Sheffield CC**

### **Attendees:**

**Clive Stephenson- NALEO National Chair (Meeting Chair) and Sheffield CC Licensing Officer  
John Thompson- NALEO National Treasurer (Minute taker) and Knowsley MBC Licensing Officer  
Anne Aspinwall- NALEO National Secretary (Meeting Facilitator)  
Roger Butterfield- NALEO National Honorary Solicitor  
Des Broster- Leeds CC Licensing (for the 5 Yorkshire Licensing Authorities)  
James Newton- Warrington BC Taxi Licensing  
Phil Morton- Salford City Council Licensing  
Steve Garelick- GMB Professional Drivers  
Councillor Nick Peel- Bolton MBC Executive Member Licensing  
Sarah Schofield- Bolton Council AGMA Representative  
Councillor Jimmy Hunt- Salford CC Vice Chair Licensing  
Peter Cook- Stockport CC Licensing  
Councillor Chris Gordon- Stockport CC  
Councillor John Mullen- Salford CC  
Councillor John Warmisham – Salford CC Licensing Chair & GMB member  
Ian Leete- LGA Licensing Lead  
Councillor Eddie Moores- Oldham MBC Chair Licensing  
Councillor Chris Cavendish- Trafford MBC Licensing Chair  
Ian Millership- CTS Traffic & Transportation  
David Crausby, MP Bolton NE & Unite Parliamentary Secretary  
Ian Patterson- Parliamentary Secretary to Julie Hilling  
Julie Hilling- MP Bolton West  
Yasmin Qureshi- MP Bolton South East  
Ian Whistlecroft- Wigan MBC Licensing  
Councillor Gina Merett- Salford CC Assistant Mayor Environment  
Councillor Mike Freeman- Trafford CC Licensing  
Paul Brent – National Taxi Association Chair  
Wayne Casey- National Taxi Association Secretary  
Bryan Roland- National Private Hire Association General Secretary  
Donna Short- National Private Hire Association Company Secretary/ Co Director  
Tommy McIntyre- Unite National Taxi Convenor (90 minute debate 29.4.2014)  
Mike Hedges- Unite Vice Chair National Taxi Committee  
Pat Connor- GMB Greater Manchester area,  
Trevor Boaler- National Taxi Trades Group National Chair  
Dafydd Jones, Institute of Licensing Taxi group and Anglesey CBC Licensing  
Tony Lloyd, Police Crime Commissioner Greater Manchester  
Richard Percival & Jessica Uggucioni- Law Commission on Taxi/ PH Reform (observers)**

## Reason for Meeting

This meeting was called to discuss:

1. The additional "Taxi and Private Hire" clauses now added to the current Deregulation Bill before parliament. It is at the outset felt that any purported discussions/ consultations with the Law Commission cannot be regarded as validating these clauses as these clauses are outside of the Law Commission process.
2. The problems currently being experienced with Hackney Carriage vehicles licensed by one Council being used as private hire vehicles and private hire flexibuses wholly within another licensing area outside of either council's effective control.

The meeting was opened by the NALEO National Chair (CS) and attendees proceeded to go around the room with each person stating their name, position and interest and a brief view on the proposals and the Out of Borough vehicle problem.

## New Clause 10

This clause is designed to allow an operator based in and licensed by one district to subcontract work to another operator who may be based within or without the home district. This would change the position outside London to reflect the position currently within London. It was commented that the Local Government (Miscellaneous Provisions) Act of 1976, is outdated, riddled with inconsistencies, and has resulted in a whole raft of stated cases, many of which relate to cross border hire.

The current situation whereby some Councils' even issue operator licences to bases outside of their area (which we consider ultra vires of those council's powers). The current drafting of this legislation will almost inevitably result in many of the long standing stated cases being over-ruled with the statutory aims of the 1976 Act being thwarted. The Act of 1976 and indeed the Town Police Clauses Acts 1847-1889 both enshrine the principle of local control with the assistance of local knowledge.

The NALEO Chair (CS) outlined an example where NE Derbyshire DC has licensed an operator based in Sheffield who now uses hackney carriages licensed by Gedling BC to undertake private hire journeys. **This effectively means that no one council has regulatory control and the home authority of Sheffield CC is effectively powerless when complaints of overcharging, poor driver behaviour etc are received.**

The NPHA Chair (BR) then provided figures for out of area hackney carriages licensed by various areas which are now being used as private hire vehicles in Manchester City Council's area totally outside that council's regulatory control. Rossendale was cited as one council which has over 1000 hackney carriages licensed, the majority of which are used elsewhere and therefore without effective compliance checks on a routine basis.

The GMB Professional Drivers representative Steve Garelick (SG) then detailed the three types of subcontracting:

1. London model which appears to work reasonably well;
2. Cross Border Hire which can be fraught with danger;
3. Apps used for bookings.

SG suggested that a National Register would seem to be a necessary prerequisite to allowing such multi licence use. BR stated that the Law Commission had confirmed that a T1 TAXI category could not be placed on a DVLA licence as it did not meet the European directive constraints.

**It was also suggested that the different strengths of licensing rules and policies makes it advantageous to licence where cheapest with least constraints. This leads to a lowest common denominator service to the public rather than the best appropriate level of service to best ensure the safety of the public in any particular area.**

This then could lead to low quality vehicles/ drivers working elsewhere outside of effective control. Also the point was made (BR) that councils cannot charge for enforcement only compliance and with local authority financial pressures it is clear many councils cannot afford this. Des Broster (DB) stated that Rossendale does often refuse driver applicants but that the ability to check out unsupported references is limited and councils can be effectively hamstrung. Poor or low quality vehicle conditions however help no-one especially not the travelling public.

SG made the point that fare prices are artificially low and so investment in vehicles can often be lacking. SG also made the point that were council's to advertise apps on their websites they may be giving an unfair advantage to large firms.

NALEO National Treasurer John Thompson (JT) then advised the meeting that he was aware should this clause be enacted then one major operator intended to open booking offices nationwide which would pass all bookings to one centralised control and then we would then not know what would turn up from where at any point of hire. Surely what was needed was National Licensing Conditions as suggested by the Law Commission which would ensure that there was need to go to other areas as the rules would be the same.

This meeting considers that, in the absence of the granting of extra powers to licensing officers, as currently being considered by the Law Commission, this clause would create a free-for-all which would make it impossible to ensure the safety of the public.

### **New Clause 8**

This clause proposes that, as confirmed by Pippa A Brown of the DfT, any persons, who do not hold valid private hire driving licences, could drive a licensed vehicle for social domestic and pleasure purposes. It further proposes that there would be a reverse burden of proof which means any such driver would have to prove their observed use was not for hire and reward.

The Yorkshire authority's representative Des Broster (DB) opened this item by stating that this suggestion that any person could drive a vehicle for non private hire use filled him personally with great concern. It appears that to allow this leaves the travelling public (worse for wear or otherwise) at significantly increased risk from unlicensed drivers and un-vetted vehicles.

SG then expanded on a suggestion from the (sadly deceased) Bill Edwards that plates should be adopted which will display whether the vehicle is on or off duty at any time. This symbol would be placed above the GB part of most vehicle registration plates. The Unite National Taxi Convenor Tommy McIntyre (TM) asked if the suggestion was for the information of the police, licensing officers or the public at large?

BR then also stated that he believed this clause to be a rapists charter and that as Council officers had no power to stop a vehicle and indeed no power to require, at risk of penalty, the name and address of drivers (or indeed passengers).

Yasmin Qureshi MP then queried why we do not have a full vetting pre issue for drivers. She also asked why vehicles have different standards.

JT then explained and gave examples of unlicensed persons who have already been found to be driving licensed vehicles even before this clause is enacted. The meeting generally accepted that this clause would be a backward step.

The Greater Manchester Police and Crime Commissioner Tony Lloyd (TL) then stated that he understood why this clause could cause problems and undertook to circulate the briefing note to his fellow PCC's countrywide to alert them to this problem. He stated that this legislation as it currently stands is a clear danger and is frankly a backward step. Several speakers then stated that they did not believe that this legislation in any way aided public safety and would inevitably result in danger.

The National Private Hire Association Company Secretary Donna Short (DS) stated that the existing legislation requires that the plates etc must be displayed. It is mandatory and requires primary legislative change to be varied. Councils cannot do it on their own initiative.

SG also commented that the new apps in existence did present the possibility of unlicensed persons accessing a licensed person's app and acting illegally for hire and reward. It currently would be simple to do.

The National Taxi Association Secretary Wayne Casey (WC) stated the NTA policy to be that only licensed drivers should drive licensed vehicles at any time. This proposal would be a backward step to pre Benson v Boyce days. **The view was expressed that in respect of this proposal the response should be "just say no."**

The ramifications from this were stated to even extend to bus lane access. If a council allows bus lane access to private hire vehicles then how would non-licensed use be monitored and would that not remove the sense of having such restrictions as unlicensed drivers would be almost certain to "nip through" to save time.

### **3.New Clause 9**

Currently Councils may not issue a drivers licence for more than three years but may issue for a lesser period. Many councils mandate a one year or three year period.

This meeting considered that the ability to mandate a one year licence or three year was an unnecessary burden to the trade and unhelpful to process.

JT reminded the meeting that the previous Meeting of Minds had It was recommended that: *"the Council should initially set its' administration and issue fees based upon a one year licence as standard but legislation should also allow for the following:*

- (i) One year licence at a fee to cover 100% costs OR;*
- (ii) Three year licence at a pro rata reduced fee (based from the 1 year fee);*
- (iii) Or such a licence length as the driver might request/ Council may specify at a monthly base calculated from the one year rate.*

*Currently councils can issue a one year up to a 5 year licence either as they see fit or on request. This meeting sees no need to mandate a five year licence but recommends that:*

- (i) One year licence at a fee to cover 100% costs OR;*
- (ii) Three year licence at a pro rata reduced fee (based from the 1 year fee);*
- (iii) Or such a licence length as the operator might request/ Council may specify at a*

*monthly base calculated from the one year rate.”*

**In response to a question from the GMB Representative Pat Connor (PC), Julie Hilling MP (JH) stated that the Bill is waiting for the Report stage and as the clauses were inserted at Committee stage it is unlikely to come back before the 25 May 2014 (possible but unlikely).**

**She continued to say that the best course of action would be to get interested parties like Private Hire Operator Associations etc who are opposed to these clauses to lobby ministers and every MP and Member of the House of Lords possible. In the absence of such lobbying these clauses may well be enacted.**

**Any party or grouping present needs to highlight to all MP's just why these proposals are such a danger to public safety and face-to-face meetings are most likely to secure parliamentary support for these clauses to be removed from the Deregulation Bill. Bolton MBC representatives stated that it was their intention to get Bolton-licensed operators to lobby relevant MP's and the Minister in a sustained effort to negate these clauses.**

**SG suggested that approaching Cross party Members of the House of Lords to act against these clauses would also be effective and TM confirmed that the Bill had originated in the Commons so this could be effective, if pursued.**

*(The meeting then adjourned for luncheon and then reconvened at 1330 hours).*

#### **Out of Borough Hackney Carriage Vehicles**

The Meeting Chair Clive Stephenson (CS) restarted the meeting and handed the discussion open to NALEO's Honorary Solicitor Roger Butterfield (RB) to open the event. RB then discussed the legality of what fees can be charged, how those fees can be disposed of and whether or not such Out-Of-Borough Hackney Carriages are in fact validly insured when used as a private hire vehicle. It should also be considered as to whether the driver has informed the insurer of the area within which the use takes place.

RB continued to query what policy such issuing authorities (such as Rossendale and Gedling BC's) had put into place so as to ensure the Council performed its' duties and in particular in the absence of policies could the council be made a party to proceedings under the Corporate Manslaughter legislation.

BR then detailed the law post the Berwick BC case. The judge indicated council's could pose the question "Is the HCV to be used as an HCV in this district" and if the response was "No" to normally refuse the issue of such a licence. BR continued that a Council could adopt such a policy which, if first consulted on, would then only be challengeable via Judicial Review.

BR continued to ask why sorely affected councils such as Manchester CC have not inserted a similar licensing conditions on their Private Hire Operators which again, if adopted by policy after consultation could again only be challenged via Judicial Review. BR invited discussion on this proposition.

It was stated that whilst this could work it would not remove the possibility of persons setting up in an area as a “private hire” operator using solely Out-Of-Borough Hackney Carriage Vehicles and who would therefore not require a S55 Operator licence. BR conceded that point but restated his view that such conditions should be pursued as the best method currently available to affected authorities.

The suggestion was then made that the question which should be asked is “*whether a private hire operator licensing condition is appropriate given that the licence in question is covering a vehicle type which, by statutory definition, is excluded from the term private hire*”. The view was expressed that such a condition could well be challengeable via the courts and likely to be overturned but that perhaps only a court decision will resolve the matter.

BR then asked for Councillors opinions. One Stockport councillor stated that their council has asked for and obtained authorised officer status from Rossendale so that these vehicles can at least have Rossendale’s conditions applied to it to ensure the safety of the travelling public within the Stockport area. It was stated to be a working solution not a 100% cure to the problem.

Councillor Freeman from Trafford MBC stated that in an effort to deal with this joint police/Licensing operations are being arranged to deal with these possibly unfit vehicles. Councillor Freeman then expressed the view that a National Register of drivers and vehicles seems to be needed to assist with this problem. SG suggested that the principle of a National Register was becoming more and more valid if this problem is to be effectively addressed.

The suggestion was then raised that by imposing a condition on Operators that any operators using such Out-Of-Borough HCV’s should be required to keep records of all such vehicles, drivers, insurance cover etc. This could deal with bona fide operators in the interim pending any legislative changes which may occur.

One representative who was also an AGMA attendee stated that Rossendale have stated an intended use policy is to be implemented at an as yet unspecified future date. Ian Millership (IM) of CTS Traffic and Transportation stated such a declared intention could backfire with more applications being received prior to the policy introduction.

As regards to national standards it was confirmed that, should the Law Commission’s work be enacted, then it is envisaged that any setting of national standards would be subsequent to public consultation and via a technical panel of trade experts, licensing officers and similar stakeholders. That of course presupposes that such a recommendation was taken up by the Government of the day.

It was then detailed to the meeting that if this situation is favourably resolved then attendees should be aware of the problems that can arise from a flexibus service under a Traffic Commissioner issued restricted Bus Service licence. Such a service requires all vehicles used to be licensed in the name of the “Bus” Operator licence holder(s), that stringent records are kept and that VOSA expects the licensing authority issuing the vehicle licence to ensure vehicle compliance. Any failure to

fully comply with the “flexibus” rules almost always constitutes an offence under taxi and private hire legislation.

**Following a discussion it was proposed that:**

**All relevant persons present advise their members of the serious concerns expressed in relation to the proposed Deregulation Clauses and the use of Out of Borough Hackney Carriage and Flexibus services. Relevant attendees are actively encouraged to contact all Licensing Committees, Councillors, Local MP’s, Members of the House of Lords and Ministers to ensure all are aware of the serious concerns these matters cause in relation to ensuring the continued safety of the travelling public.**

**Unanimously agreed.**

**ADDENDUM**

The Local Government Association have today sent the following information and requested that it is added to the Minutes from yesterday’s meeting.

From Ian Leete:

Thank you very much for inviting me along to the meeting. It was very helpful from both the point of view of our work on the deregulation bill, and in better understanding the issue of cross-border work.

The LGA was specifically challenged on what it was going to do around the Deregulation Bill, but I didn’t have a chance to formally respond at the meeting so I’d be very grateful if we could slot the information into the minutes?

The LGA will be:

- Liaising with front-bench members of all parties as the Bill goes to Report stage, and Tom Brake MP as proposer of the clauses
- Issuing a briefing (on the whole bill, but covering the taxi clauses) to a targeted selection of key MPs, including the LGA’s Vice-presidents in the Commons and Lords
- Issuing a similar briefing for the debate on 29<sup>th</sup> April.
- Writing to the responsible Ministers (at Dft and the Cabinet Office) to express concern about the clauses
- Seeking a meeting with DfT at official level