

TO THE CHAIR AND MEMBERS OF THE LICENSING COMMITTEE

Hackney Carriage and Private Hire Licensing Policy – Appendix 10 Private Hire Operator – Conditions of Licence

EXECUTIVE SUMMARY

1. The Doncaster Council Hackney Carriage and Private Hire Licensing Policy (HC & PH Licensing Policy) includes details of standards and conditions attached to the grant of a private hire operator's licence.
2. It has been established that once a vehicle has been licensed as a hackney carriage, it is a hackney carriage for the duration of that licence, wherever it is currently located, and can therefore be used for pre-booked (private hire) purposes in any district in England and Wales.
3. This situation creates a number of potential difficulties for us as a Licensing Authority and for other enforcement agencies, members of the public and the trade.
4. It has the potential to become a significant issue here in Doncaster because of an influx of hackney carriages into the town that are licensed by other Local Authorities.
5. In order to secure that effective safeguards are in place to mitigate against any public safety impact of this, additional conditions are being proposed.
6. A recent consultation exercise was undertaken to seek views on the proposals set out in Appendix 1. The results of the consultation are detailed in Appendix 2 and amendments to the proposed conditions, arising out of the consultation are highlighted within Appendix 1.

RECOMMENDATIONS

7. It is recommended that:
 - i. The Private Hire Operator Licence Conditions contained within the Hackney Carriage and Private Hire Licensing Policy be amended as per Appendix 1 of this report.

- ii. For all new licences or renewals these additional conditions shall take effect immediately upon grant.
- iii. For existing licence holders, steps will be taken to apply the additional conditions as expediently as lawfully possible with the proviso that, once applied, existing licence holders will have a period of 3 months to comply with the new requirements.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER

8. By implementing the recommendation of this report, the Doncaster Council Hackney Carriage and Private Hire Licensing Policy will remain up to date and fit for purpose. The safety of the travelling public of Doncaster will be enhanced by the recommendations of this report.

BACKGROUND

9. In 2010, the High Court handed down a judgment in the case of Stockton-On-Tees Borough Council v Fidler, Hussain & Zamanian. This identified that once a vehicle has been licensed as a hackney carriage, it is a hackney carriage for the duration of that licence, wherever it is currently located, and can therefore be used for pre-booked (private hire) purposes in any district in England and Wales.
10. The judgment makes it clear that it is not an offence for a licensed private hire operator to take bookings, and then dispatch a hackney carriage licensed by a district (or Transport for London - TfL) which is different from that which licences the operator, to undertake the booking.
11. It also confirms that a hackney carriage vehicle can be used for pre-booked work outside the district in which the vehicle has been licensed, even if the Licensing Authority is some considerable distance from the district in which the vehicle is undertaking the pre-booked work.
12. The situation creates a number of potential difficulties for us as a Licensing Authority and for other enforcement agencies, members of the public and the trade. These include:
 - prejudice to public safety
 - inconsistent standards
 - increase in illegal 'plying for hire'
 - the inability to enforce or undertake spot checks on these vehicles (although the Police or VOSA have jurisdiction of any licensed vehicle, regardless of where they are licensed)
 - confusion for the customer and possible reduced disability access
 - conflict amongst the two sides of the licensed trade
 - loss of income to the local authority

13. In order to control the situation as far as is possible, it is important for all those affected by the ruling to understand the limits of the Stockton case in relation to what is allowed, and more importantly, what is not. This has the potential to become a significant issue here in Doncaster because of an influx of hackney carriages e.g. vehicles licensed by Gedling Borough Council, Rossendale Council and West Lindsey Council in to the town.
14. Since the Stockton ruling, the licensing team have received a significant number of enquiries about the situation from elected members, members of both the private hire and hackney carriage trade and from colleagues in other licensing authorities. Until recently a means of addressing this situation has not been identified.
15. For the Council, there are two principal concerns:
 - 1) Hackney carriage vehicles and drivers currently licensed elsewhere being used by private hire operators licensed in Doncaster to undertake private hire work.
 - 2) Individuals who previously have not been considered 'fit and proper' to hold a licence by Doncaster Council, e.g. due to inappropriate behaviour, can potentially become licensed as a hackney carriage driver in another local authority area and then undertake work here in Doncaster.
16. For drivers, there could be some perceived benefit in being licensed elsewhere, as the current system we have in place is arguably more rigorous than perhaps those at some other local authorities. For example, all drivers licensed by Doncaster Council are first required to satisfactorily complete a topographical knowledge test of the Doncaster borough. Drivers licensed elsewhere will not have a proven knowledge of the Doncaster borough with the potential for the passenger experience to be less efficient than might reasonably be expected.
17. Of particular concern is point 2 of paragraph 15. For example, where a Doncaster driver's licence is either revoked or refused by Doncaster Council due to inappropriate behaviour, it is conceivable that, where this behaviour falls short of a criminal conviction, the driver could become licensed elsewhere and undertake work here in Doncaster.
18. In relation to the concerns set out in paragraph 15, the High Court judgement defines the parameters within which this activity may be carried out. In reality, as a Licensing Authority, there is nothing Doncaster Council can do to prevent such trade, but it is possible to introduce additional conditions to protect public safety. Officers already have on record a small number of complaints from fare paying passengers and other stakeholders about the adequacy of the service received by out of Doncaster hackney carriage vehicles despatched to them by local private hire firms.

19. In order to secure that effective safeguards are in place to mitigate against any public safety impact of the application of the cross border rules within Doncaster, officers have produced some additional conditions which, following a period of consultation, it is proposed should be adopted and inserted into the existing private hire operator licence conditions. The proposed conditions appear in Appendix 1.
20. On the 28th June 2016 the Licensing Committee resolved that:
 1. The Assistant Director, Environment, be authorised, to go out to consultation with private hire operators, private hire vehicle licence holders and hackney carriage vehicle licence holders, on the basis of the proposals set out in Appendix 1 of the report; and
 2. The Business Safety and Licensing Manager be tasked to report back to the Committee in respect of the outcome of that consultation and make final recommendations to the Committee.
21. The details of the consultation are outlined in the Consultation section of this report and the results are summarised in Appendix 2.
22. Analysis of the consultation responses shows significant support for each of the proposals set out in Appendix 1 and the feedback received has resulted in a number of additions which have been highlighted within Appendix 1.

OPTIONS CONSIDERED AND REASON FOR RECOMMENDED OPTION

23. Having a Policy that is clear and up to date in terms of the law and best practice is the keystone to an effective taxi licensing regime. For these reasons the recommendations in paragraph 7 are considered to be the most appropriate options.
24. The Council has an over-arching public safety jurisdiction to safeguard the interests of passengers and the public. The implications of the ruling referred to in paragraph 9 identify a number of licensing loopholes which, if not addressed satisfactorily, could impact on public safety.
25. The consultation exercise has resulted in significant support for the proposed additional conditions and an appetite to ensure they are applied to new and existing licences as expediently as possible (Appendix 2).
26. It is reasonable for the public of Doncaster, when booking a private hire vehicle from a Doncaster licensed private hire operator, to expect that Doncaster Council have determined that the vehicle is suitable and that the driver is a 'fit and proper' person. The proposed conditions will afford customers the opportunity to make an informed decision prior to

making their booking.

27. To do nothing is not considered a viable option. There remain legitimate public interest concerns that need to be addressed in order to maintain robust regulatory control within Doncaster for the benefit of the fare paying public and licence holders.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

28.

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Be a strong voice for our veterans</i> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	<p>The Policy ensures that licensing decisions can be made fairly and in a timely manner with the overriding aim of protecting the public.</p>
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	<p>The Policy ensures that licensing decisions can be made fairly and in a timely manner with the overriding aim of protecting the public.</p>
	<p>People in Doncaster benefit from a high quality built and natural environment.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	<p>The Policy ensures that licensing decisions can be made fairly and in a timely manner with the overriding aim of protecting the public.</p>
	<p>All families thrive.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	<p>None</p>
	<p>Council services are modern and value for money.</p>	<p>Functions are delegated in the interests of speed, efficiency and cost effectiveness wherever</p>

		possible.
	Working with our partners we will provide strong leadership and governance	None

RISKS AND ASSUMPTIONS

29. It is accepted good practice that a Licensing Authority adopts a statement of licensing policy in respect of taxi licensing. By not having a policy, decisions of the Licensing Authority are more open to challenge.

LEGAL IMPLICATIONS

30. Section 55 of the Act states that, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence:
Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence.
31. A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary. Any applicant aggrieved by the refusal of a district council to grant an operator's licence under this section, or by any conditions attached to the grant of such a licence, may appeal to a magistrates' court.
32. Section 62 of the Local Government (Miscellaneous) Provisions Act 1976 provides that a district council may suspend or revoke, or (on application therefor under section 55 of this Act) refuse to renew an operator's licence on any of the following grounds:
- 1 (a) any offence under, or non-compliance with, the provisions of this Part of this Act;
(b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;
(c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
(d) any other reasonable cause.
 - 2 Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the operator notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal.
 - 3 Any operator aggrieved by a decision of a district council under this section may appeal to a magistrates' court.
33. If the Council decide to revoke existing licences in order to renew with additional conditions, the licences would be revoked under (d) above,

i.e. any other reasonable cause. If the Applicant appealed, the Council would have to demonstrate that the revocation was necessary to ensure the safety of the public.

FINANCIAL IMPLICATIONS

34. The costs associated with the applications and their determinations are met from fees paid to the Council by applicants for Taxi Licences under the relevant legislation. Ultimately drivers taking up licenses elsewhere could result in a reduction in income achievable and would bring about a cost pressure within the Licensing service.
35. Since the Stockton 2010 High Court ruling, income levels have remained constant within the Taxi Licensing budgets.

HUMAN RESOURCES IMPLICATIONS

36. Not applicable

TECHNOLOGY IMPLICATIONS

37. Not applicable

EQUALITY IMPLICATIONS

38. Decision makers must consider the Council's duties under the Public Sector Equality Duty at s149 of the Equality Act 2010. The duty requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. There are no specific equality implications arising from this report. However, any activities arising from this report will need to be the subject of separate 'due regard' assessments.

CONSULTATION

39. A public consultation, on the proposals set out in Appendix 1, ran from 12th October up to 15th November 2016. The consultation was conducted online with the facility for anyone that was unable to respond electronically to take part at the Civic Office.
40. The consultation was published on the Council's website and promoted via pop-ups and social media. In addition, the following were consulted directly:
 - Age UK
 - All of Doncaster Council's ward councillors
 - Barnsley, Rotherham and Sheffield licensing authorities

- Doncaster Chamber
 - Doncaster Childrens Service Trust
 - Doncaster Council's pupil transport team
 - Doncaster Safeguarding Children's Board
 - Doncaster Women's Centre
 - Federation of small businesses
 - Known representatives of the taxi trade
 - National Private Hire Association
 - Parish Councils
 - Personal letter sent to all private hire operators (70)
 - Personal letter sent to all hackney carriage and private hire drivers (856)
 - The Local Authority Designated Officer (LADO)
 - South Yorkshire Police
 - The office of the Police and Crime Commissioner
41. 84% of the consultation responses were from people directly involved in the Doncaster taxi trade as a licensed driver, licensed private hire operator and/or the proprietor of a licensed vehicle. The results of the consultation are detailed in Appendix 2.

BACKGROUND PAPERS

42. Doncaster Council's Hackney Carriage and Private Hire Licensing Policy.
43. Item 5 - Licensing Committee 28th June 2016.

<http://doncaster.moderngov.co.uk/ieListDocuments.aspx?CId=137&MId=2449&Ver=4>

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Appendix 1

It is proposed that the following condition be added as an additional condition to Doncaster Council's existing Private Hire Operator Licence Conditions.

CONDITION: 'OUT OF TOWN' HACKNEY CARRIAGES ACTING AS PRIVATE HIRE VEHICLES IN THE DONCASTER COUNCIL LICENSING DISTRICT.

i. SCHEDULE OF DRIVERS

- a) The Private Hire Operator shall notify the Licensing Authority forthwith, and in any event within 72 hours of each and every Hackney Carriage driver employed or used for Private Hire bookings on the Operator Driver Schedule (Form OPDS/HCD); this will include Hackney Carriage drivers licensed by this or any other Licensing Authority. **(Note 1)**
- b) Where a Private Hire Operator ceases to employ or use any such licensed Hackney Carriage driver, the Operator shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing/email and present the form OPDS/HCD to the Licensing Authority for amendment by, or on behalf of, the Licensing Officer. **(Note 1)**
- c) The Private Hire Operator shall retain a copy of the Hackney Carriage driver licence granted by another Licensing Authority along with a copy of the driver's DVLA licence, and any other driver of that vehicle, and forward a copy of those documents to the Doncaster Council Licensing Office forthwith, and in any event within 72 hours of registering that driver on the form (OPDS/HCD). **(Note 1)**

ii. SCHEDULE OF VEHICLES

- a) The Private Hire Operator shall notify the Licensing Authority forthwith and in any event within 72 hours of each and every Hackney Carriage vehicle employed or used by the operator on the Operator Vehicle Schedule (Form OPVS/HCV), this includes those Hackney Carriage vehicles licensed by this or any other Licensing Authority. **(Note 1)**
- b) Where a Private Hire Operator ceases to employ or use any such licensed Hackney Carriage vehicle, the Operator shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing/email and present the form OPVS/HCV to the Licensing Authority for amendment by, or on behalf of, the Licensing Officer. **(Note 1)**.
- c) The Private Hire operator shall retain a copy of the Hackney Carriage vehicle licence granted by another Licensing Authority along with a copy of the MOT certificate, certificate and policy of insurance and vehicle registration document and forward a copy of those documents to the Doncaster Council Licensing Office forthwith and in any event

within 72 hours of registering that vehicle on the form (OPVS/HCV).
(Note 1).

iii. ADVERTISING ON VEHICLES

- a) Where a Hackney Carriage vehicle is licensed by another Licensing Authority, such a Hackney Carriage driver or Hackney Carriage vehicle is expressly prohibited from using any literature, any documentation, any advertising or displaying any signage associated to the Private Hire Operator or Doncaster Council which suggests or might lead to a misunderstanding that the vehicle is licensed by this Authority.

iv. RECORD OF BOOKINGS ALLOCATED TO VEHICLES NOT LICENSED BY DONCASTER COUNCIL AND THE PROVISION OF INFORMATION TO CUSTOMERS (Note 2)

- a) The receipt of advance bookings by the licensed Operator for Hackney Carriage vehicles licensed by another Licensing Authority or which are subsequently allocated to a Hackney Carriage Vehicle, licensed by another Licensing Authority, must be maintained in a completely separate register of bookings and in the same format as condition 1. If a computerised booking system is in place those booking records must be kept in a completely separate and distinct area of the systems hard drive to enable easy inspection by the Council.
- b) A separate telephone line and telephone number must be used and installed by the Private Hire Operator and used for Hackney Carriage vehicles licensed by another Licensing Authority which are undertaking Private Hire bookings within that operating base.

There must be a pre-recorded intercept message on the unique booking telephone line which clearly states to prospective customers the following:

“The driver and vehicle you are about to book are not licensed by Doncaster Council and Doncaster Council is not empowered to take licensing action against them in the event of a complaint. In the event of a complaint customers will have to deal with that other Authority where they may be licensed.”

- c) The caller should then be reminded of the Private Hire Operator main telephone number and given the option to be redirected to “a Doncaster Council licensed driver and vehicle”.
- d) Where a booking is made in person, the Private Hire Operator must, at the time of making a booking, inform the customer verbally or by any means likely to bring the information to the attention of the customer of the following statement:

The driver and vehicle you are about to book are not licensed by Doncaster Council and Doncaster Council is not empowered to take licensing action against them in the event of a complaint. In the event of a complaint customers will have to deal with that other Authority where they may be licensed.

The customer should then be given the option to be redirected to a 'Doncaster Council licensed driver and vehicle'. **(Note 3)**

e) Where a booking is made via:

- a) The internet;
- b) Mobile App; or
- c) Anything similar to a) or b)

The Private Hire Operator must inform the customer, by written terms visible when booking, of the following statement:

The driver and vehicle you are about to book are not licensed by Doncaster Council and Doncaster Council is not empowered to take licensing action against them in the event of a complaint. In the event of a complaint customers will have to deal with that other Authority where they may be licensed.

The customer should then be given the option to be redirected to a 'Doncaster Council licensed driver and vehicle'. **(Note 3)**

f) In any advertising literature or web information, a form of words must be used which clearly states to prospective customers the following:

The driver and vehicle you are about to book are not licensed by Doncaster Council and Doncaster Council is not empowered to take licensing action against them in the event of a complaint. In the event of a complaint customers will have to deal with that other Authority where they may be licensed.

Note 1: Amended to permit electronic communications and to require the use of prescribed forms produced by the Licensing Authority, both matters arising from the consultation.

Note 2: Amended from Telephone Bookings to address other booking options such as internet, web based apps, bookings made in person etc. arising from the consultation.

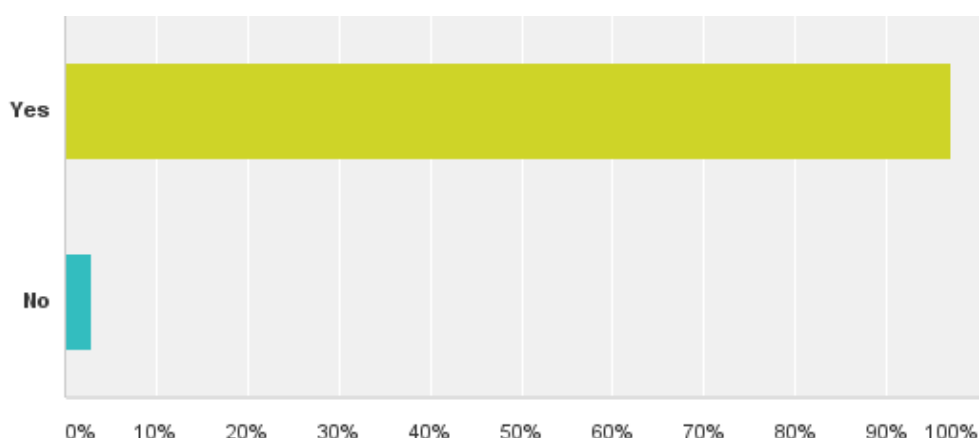
Note 3: The highlighted sections are proposed further additions to the conditions that have arisen out of the consultation exercise to address bookings that are made other than by telephone e.g. in person or via web Apps etc.

Results of the Consultation

Note: Everyone consulted was provided with full details of the proposed conditions.

Q1: The proposed conditions will afford customers the opportunity to make an informed decision prior to booking a private hire vehicle. Should these new conditions be added to all private hire operator licences that are granted / renewed by Doncaster Council?

Answered: 100 Skipped: 24



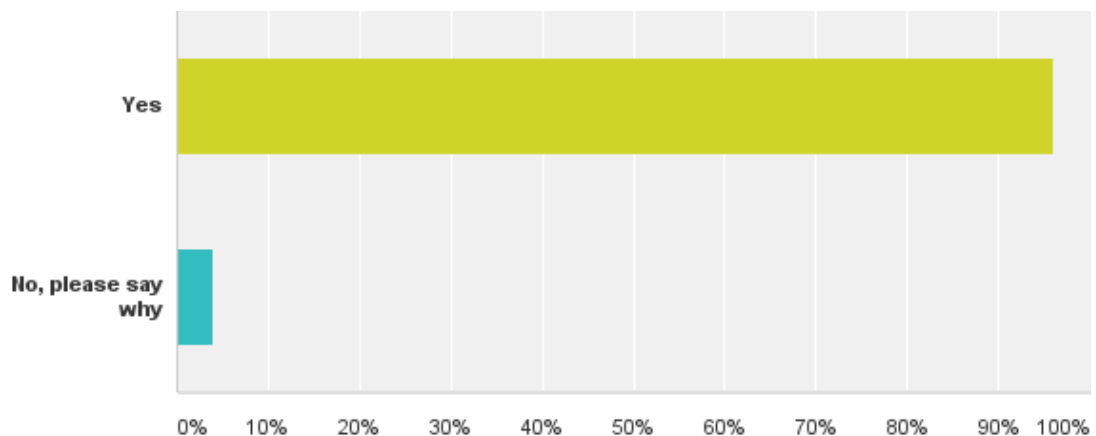
Answer Choices	Responses
Yes	97.00% 97
No	3.00% 3
Total	100

Comments made by those respondents that answered No to Q1.

1. All the above are reasonable requirements, except the need for a separate phone line, which seems to me to be a step too far.
2. No comment
3. I don't agree to section 3 and 4 of the policy. Doncaster council already has a very strict policy in place this will be an extra burden on operators especially on small taxi companies.

Q2: Private hire operator licences are granted for up to 5 years. There are in the region of 70 private hire operators licensed by Doncaster Council each of which have in the region of 4 years to go before their licence is due for renewal. The proposed conditions will afford customers the opportunity to make an informed decision prior to booking a private hire vehicle. Subject to a lawful process, should these new conditions be added to all existing private hire operator licences that have been granted by Doncaster Council?

Answered: 100 Skipped: 24



Answer Choices	Responses	
Yes	96.00%	96
No, please say why	4.00%	4
Total		100

Comments made by those respondents that answered No to Q2.

1. Yes, except all the above are reasonable requirements, except the need for a separate phone line, which seems to me to be a step too far.
2. Should this not be a decision for the Licensing dept not the drivers.
3. No comment
4. I think all the private hire drivers who passed their Hackney test somewhere else but working in Doncaster borough as private hire drivers should be allowed to work here freely. There shouldn't be no separate phone line or any such thing for them. In case of any incidents taxi company who that driver works with should be reported. I am sure taxi companies can sort the matter out. If they have passed their driving

test for Hackney carriage in their area they should be allowed to work anywhere in the UK. For example if someone takes training for a job in London but he works in Doncaster that's not a problem then why so much complications for a taxi driver. An UBER driver doesn't even do any sort of tests but still do the same job as any private or Hackney driver does in Doncaster. UBER drivers never do knowledge tests, driving tests, first aid courses, Safeguarding course or nvq level 2 courses but still they are number 1 company in the world. And as far as area knowledge concerns, everyone has smart phones and sat navs so there is no problem for going from A to B. So I think no matter where they pass Hackney carriage they should be allowed to work anywhere in the UK.

Selection of general comments

1. Where notifications are required to be made in writing consideration should be given to permitting electronic communication methods.
2. Good to see, customers have been confused and unknowingly using taxis they assume are Doncaster regulated, and any complaints are confused if they take a number from front of car a completely innocent driver could be accused if the numbers are the same
3. I feel the public should expect that the hackney carriage/private hire vehicle that they use should hold a licence issued by the authority that they are operating in.
4. It's about time our profession is tightened up. Please don't be afraid to bring these changes in.
5. Doncaster licensing dept should contact the authorities where out of town Hackney's have obtained their licences to make them aware as some authorities have a primary usage policy which these drivers may be in breach of.
6. I am greatly concerned that out of town hackney cars are allowed to apply their trade via some private hire companies and yet the revenue from their plates taxi badge and taxi test goes back to their local authority and not our DMBC of where they are actually working. Also local drivers are seeing their customers and fares being reduced due to the amount of out of town hackney cars now available within the DMBC area.
7. These proposals are well and good but once implemented would need to be "policed" in order for compliance. The council licensing department is over stretched as it is with the normal every day running of the office I am concerned that these proposals will become only rhetoric.

8. Our policy at Alpha has always been not to employ out of town taxis. We believe in protecting and safe guarding the general public, who put their trust into our company day and night and the out of town taxis do not fit that criteria. We have great trust in Doncaster Councils Licensing Committee's decisions to grant a drivers licence, that we can then employ them in our company with confidence. These changes should be implemented as soon as possible.
9. Will bookings made through an online booking system be subject to the same controls for 'out of town taxis'?