

Public Document Pack

Date of meeting	Thursday, 31st January, 2013
Time	7.00 pm
Venue	Committee Room 1. Civic Offices, Merrial Street, Newcastle-under-Lyme, Staffs ST5 2AG
Contact	Geoff Durham

Public Protection Committee

AGENDA

PART 1– OPEN AGENDA

1	Guidance Notes (for information)	(Pages 1 - 16)
2	Apologies for absence	
3	DECLARATIONS OF INTEREST	
	To receive declarations of interest from Members on items included in this agenda.	
4	Hackney Carriage Fleet	(Pages 17 - 24)
5	URGENT BUSINESS	
	To consider any business which is urgent within the meaning of Section 100(B)4 of the Local Government Act.	

Members: Councillors Allport, Bailey, Hailstones, Mrs Hailstones, Mrs Heesom, Kearon, Matthews, Olszewski (Chair), Miss Olszewski (Vice-Chair), Robinson, Miss Walklate, Welsh and Mrs Williams

‘Members of the Council: If you identify any personal training / development requirements from the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Committee Clerk at the close of the meeting’

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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GUIDANCE NOTES

NATURAL JUSTICE AND FAIRNESS

These are the principles used in the determination of just or fair processes and stem from the common law legal system.

According to Roman law, certain basic legal principles were so obvious that they should be applied universally without the need to be enacted into the law.

The rules of natural justice are now regularly applied by courts in both common law and civil law jurisdictions.

Natural justice operates on the principles that man is basically good, that a person of good intent should not be harmed and one should treat others as they would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:-

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges);
- A person making a decision should declare any personal interest they may have in the proceedings;
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the Latin maxim, *nemo iudex in causa sua*: “no man is permitted to be judge in his own cause”;
- Proceedings should be conducted so they are fair to all the parties – expressed in the Latin maxim, *audi alteram* : “let the other side be heard”;
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party;
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations;
- Justice should be seen to be done. If the community is satisfied that justice has been done they will continue to place their faith in the courts.

Where a person's legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law.

THE RULE AGAINST BIAS

It is elementary to the rules of natural justice that the deciding body is to be free from bias.

The rule is that the body must be and be seen to be impartial, independent and disinterested.

There are two broad categories of bias:

- (a) Actual Bias: when the decision-maker has an economic interest in the outcome of the case (also known as a material or pecuniary interest) subject to the De Minimum doctrine;
- (b) Reasonable Apprehension: unbiased appearance is an essential part of procedural fairness. The test is whether, having regard to the circumstances, a well informed person ("reasonably informed bystander") would consider that the interest might have an influence on the exercise of the decision-maker's duties.

GUIDANCE NOTES

HUMAN RIGHTS ACT 1998

In addition to the Rules of Natural Justice, you must also have regard to the provisions of the Human Rights Act 1998.

Rights and Freedoms to be considered when determining matters

ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NOTE Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence, the goodwill of a business and liquor licences.



GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR APPLICANTS FOR THE GRANT AND RENEWAL OF LICENCES TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

GENERAL POLICY

1. Each case will be decided on its own merits
2. The Council will, as far as is possible, ensure that all persons holding a licence to drive Hackney Carriages or private hire vehicles are fit and proper persons. In doing so, the Council will take into account previous convictions including, where relevant, 'spent' convictions.
3. The Council will always put the protection of the public first when considering the relevance of convictions recorded against an applicant for a licence.
4. A person with a conviction for serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for an appropriate period, before an application is considered. However, remaining free of conviction for a specified period may not be sufficient to show that a person is fit and proper and additional evidence may be required.
5. There may be occasions where it is appropriate to depart from the guidelines when making a decision on an application. For example, where the offence is a one-off and there are mitigating circumstances or alternately, where there are many or continuous offences which may show a pattern of offending and unfitness.
6. The following examples give a general guide as to the action that might be taken where convictions are recorded against an applicant.

(a) Dishonesty

Members of the public using Hackney Carriages and private hire vehicles expect the driver to be honest and trustworthy. It would be easy for a dishonest driver to take advantage of the public.

For these reasons, a serious view will be taken of any conviction involving dishonesty. In general, if an application is made within the first 3 to 5 years from the date of a conviction or from the date of release from jail where a custodial sentence has been imposed, it is likely that it will be refused.

Where an application is made within the first three years since the conviction or the date of release from jail, where a custodial sentence has been

imposed, for any of the following offences, the application will normally be refused:-

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss11A and 112 of the Social Security Administration Act 1992)
- Blackmail
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Or similar offences to those above which may replace any of the above offences

When a period of three years from conviction or the date of release from jail, where a custodial sentence has been imposed has passed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

(b) Violence

As Hackney Carriage and private hire vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violence. Where the commission of an offence involves loss of life, a licence will normally be refused. In other cases, a period of three to ten years free of conviction from the date of conviction or the date of release from jail, where a custodial sentence has been imposed will generally be required before an application is likely to be considered favourably. The nature and seriousness of the offence(s) will be taken into consideration.

In particular:-

- (i) An application will normally be refused where the applicant has a conviction for an offence of:-
 - Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Or similar offence or offences which replace the above offences
- (ii) An application will normally be refused for a period of five years from the date of the conviction or the date of release from jail, where a custodial sentence has been imposed if the applicant has a conviction for:-
 - Arson
 - Malicious wounding or grievous bodily harm which is racially aggravated
 - Assault occasioning actual bodily harm which is racially aggravated

- Assault with intent to cause grievous bodily harm
- Assaulting a police officer in the execution of his duties
- Malicious wounding
- Robbery
- Racially aggravated criminal damage
- Racially aggravated fear or provocation of violence
- Racially aggravated intentional harassment, alarm or distress
- Racially aggravated harassment
- Racially aggravated putting people in fear of violence
- Riot
- Possession of an offensive weapon
- Possession of a firearm
- Violent disorder
- Or any arrestable offence involving violence (an arrestable offence is defined as an offence committed by a person of age 21 years or over and on conviction for the first offence may be sentenced to a term of imprisonment of five years or where the penalty is fixed by law)

(iii) An application will normally be refused for a period of three years from the date of conviction or the date of release from jail, where a custodial sentence has been imposed, where the applicant has a conviction for:-

- Common assault
- Racially aggravated common assault
- Assault occasioning actual bodily harm
- Affray
- Racially aggravated harassment, alarm or distress
- Resisting arrest
- Obstructing a police officer in the execution of his duty
- Criminal damage
- Any similar offence or offences which replace the above offences

(c) Drugs

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five to ten years before the date of the application. However, after five years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, the circumstances of the offence and any evidence which shows that a person is now a fit and proper person to hold a licence will be taken into consideration.

An application will normally be refused where the application is made within three to five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed for an offence relating to the possession of drugs. However, after a period of three years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances

of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five years before the date of the application.

Where evidence is available that an applicant who has convictions for drug related offences has been addicted to drugs, they will have to produce evidence that shows that they have been free of drug taking for at least five years after successfully completing a drug treatment programme.

(d) Sexual and Indecency Offences

As the driver of Hackney Carriages and private hire vehicles often carry passengers who are alone, or may be vulnerable, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a licence.

Where an applicant has a conviction for a sexual offence such as indecent exposure, they will normally be refused a licence until they can show a substantial period usually between five and ten years free of any such convictions from the date of conviction or the date of release from jail where a custodial sentence has been imposed before an application is made.

After a period of five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

When considering applications, the Council may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

(e) Motoring Convictions

(i) Disqualification

Where an applicant had been disqualified from driving by the Courts for a serious traffic offence under Category 'A' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence.

Where an applicant has been disqualified from driving by the Courts for a serious traffic offence under Category 'B' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence unless the offence was an isolated one, in which case, a period of not less than 2 years shall have passed.

Where a disqualification is imposed by a court in a 'totting-up' case, i.e. where an applicant has been disqualified because of several

driving offences, an application will generally be refused unless a period of one year free of conviction has elapsed since the return of the DVLA driver licence.

In 'totting-up' cases where a court does not impose a disqualification because of exceptional circumstances, then because the Council apply different criteria to the courts, an application will generally be refused unless an applicant can show a period of 1 year free of conviction from the date of the last court appearance.

(ii) **Serious Traffic Offences**

Where an applicant has a conviction for a serious traffic offence in Category 'A' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction.

Where an applicant has a conviction for a serious traffic offence in Category 'B' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction unless the offence was an isolated one.

Where an applicant has had more than one conviction for a serious traffic offence in either Category 'A' or 'B' of Annex (i) and the courts have not imposed a period of disqualification, an application will normally be refused where an application is made in five years following the date of the last conviction.

(iii) **Other Traffic Offences**

Normally, isolated convictions for other traffic offences should not prevent someone obtaining a licence. However, the number, type and the frequency of these types of offence will be taken into account. If there are several convictions for these types of offence, an applicant will normally be expected not to have been convicted of an offence in the six months before an application is made.

A list of relevant offences is shown at Annex (ii). However, this is not an exhaustive list and there may be other offences which may be relevant.

(f) Offences Under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and any Hackney Carriage Byelaws (The Acts)

One of the main purposes of the licensing regime set out in 'The Acts' is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire, when deciding if a person is a fit and proper person to hold a licence.

In particular, an application will normally be refused where an applicant has more than one conviction for an offence under 'The Acts' in the two years preceding the date of the application.

(g) Drunkenness

(i) In a Motor Vehicle

The manner in which drunkenness in a motor vehicle will be dealt with is outlined in Motoring Offences at paragraph 'e' of these guidelines.

(ii) Not in a Motor Vehicle

Where an applicant has an isolated conviction for drunkenness, this need not stop an applicant from getting a licence. In some cases, a warning may be appropriate. However, where an applicant has a number of convictions for drunkenness, it could indicate a medical problem, which would require further investigation including a medical examination and the possible refusal of a licence.

(h) Spent Convictions

The Council will only take 'Spent Convictions' into consideration if it is considered they are relevant to the application.

(i) Formal Cautions and Fixed Penalty Notices

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

SERIOUS TRAFFIC OFFENCES

CATEGORY 'A'	
Offence Code	Offence
Careless Driving	
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for analysis
Reckless/Dangerous Driving	
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
Miscellaneous Offences	
MS50	Motor racing on a highway
Theft and Unauthorised Taking	
UT50	Aggravated taking of a vehicle

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

CATEGORY 'B'	
Offence Code	Offence
Accident Offences	
AC10	Failing to stop after an accident
AC20	Failing to give particulars or report an accident within 24 hours
BA10	Driving whilst disqualified by order of the court
BA30	Attempting to drive whilst disqualified by order of the court
Careless Driving	
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
Construction and Use Offences	
CU10	Using a vehicle with defective brakes
CU20	Causing or likely to cause danger by use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
Drink or Drugs	
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving or attempting to drive when unfit through drugs
DR70	Failing to provide a specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle while unfit through drugs
Insurance Offences	
IN10	Using a vehicle uninsured against third party risks
Licence Offences	
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle after having failed to notify a disability
Miscellaneous Offences	
MS70	Driving with uncorrected defective eyesight

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'A'** offence.

OTHER TRAFFIC OFFENCES

Offence Code	Offence
LC20	Driving otherwise than in accordance with a licence
LC50	Driving after a licence has been revoked or refused on medical grounds
MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS60	Offences not covered by other codes
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver etc
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with a moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with a stationery vehicle
SP10	Exceeding goods vehicle speed limits
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with 'stop' sign
TS40	Failing to comply with direction of a constable/warden
TS50	Failing to comply with traffic sign (excluding stop signs, traffic lights or double white lines)
TS60	Failing to comply with a school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'B'** offence under Annex (ii).

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HACKNEY CARRIAGE FLEET

Purpose

To inform the Committee of the evolving expansion of the Hackney Carriage fleet, and the request of the Hackney Carriage trade for the Council to look at the ratio of wheelchair accessible vehicles.

Recommendation

That a decision be taken.

1. Background

1.1 Members will recall that at their meeting on 6 August 2012, they resolved to remove the limit on the numbers of Hackney Carriage licences.

2. Issues

2.1 The anticipated expansion of the Hackney Carriage fleet has begun, and with that expansion the ratio of wheelchair accessible vehicles (WAVs) within the fleet is likely to change.

2.2 The Councils current position is:-

There is no general requirement to have WAVs but of course it is desirable to maintain a certain percentage within the fleet for the reasons given below.

The additional vehicles licensed in 2009 were licensed as a result of a previous survey and were in fact required to be WAVs

2.3 Members will of course recall that the Council does however provide an incentive to have WAVs in that this type of vehicle can be up to ten years of age when first licensed as against five years of age for saloon type vehicles, and that these vehicles are currently allowed to be relicensed regardless of their age.

2.4 Prior to the decision to remove the limit on the number of Hackney Carriage licences the ratio of WAV's was 27% of the fleet. Current applications have in fact increased that percentage. Whilst no directives are available it is up to each local authority to determine its own level. In an effort to determine a suitable level a local disability group, Disability Solutions has suggested that the ratio of WAV's should be the same ratio as Blue Badge holders within the population; this currently stands at 5% (DFT figures).

2.5 The following highlights the legal position and precedents about equality and taxis.

Equality and Taxis

It is estimated that around one-fifth of the population in the UK is disabled – over 10 million people (DOT statistics).

A key impact in providing an accessible transport system is ensuring access for disabled persons in wheelchairs. However, it is important to remember that there are many forms of disability or reduced mobility which may impact on the ability of people to use public transport. A policy which improves accessibility is therefore beneficial to a wide range of people including the elderly.

There are many types of wheelchair of varying designs and use. A vehicle in which one passenger in a wheelchair may be able to travel in safety and comfort may not provide the same experience to a passenger in a different wheelchair.

Further, stakeholders have emphasised that wheelchair accessible vehicles are not suitable for all disabled users and could, in fact, inhibit some people's ability to travel. Some people may prefer a lower, saloon type vehicle which is easy to get into whilst others might prefer handrails available in wheelchair accessible vehicles.

Hearing impaired users can have difficulties in vehicles with dividers between drivers and passengers as they are unable to lip read. Passengers with impaired vision may need prominent signage or tactile surfaces.

It is generally acknowledged both within licensing authorities and the trade itself that provision for disabled persons is essential. How this can be properly achieved is, however, a very difficult question.

It is again generally recognised that it would be impossible to design a vehicle suited to the needs of all disabled people given the wide variety of needs present within the disabled community. Consideration therefore needs to be given to the range of vehicles available in the area in order that disabled passengers can exercise choice over how they travel.

The Equality Act 2010 contains provisions to make wheelchair accessible vehicles compulsory but the relevant section is not yet in force.

Some jurisdictions use licensing incentives to encourage the uptake of wheelchair accessible vehicles e.g. for cheaper licences for vehicles that meet particular specifications, other jurisdictions have put in place schemes to assist drivers with the cost of adapting their vehicles.

Current statistics show that 62 local authorities (around 18%) require all licensed taxis to be wheelchair accessible, but as has been said, this may not be entirely satisfactory.

Some user groups have suggested that putting a quota for the number of wheelchair accessible vehicles in any fleet (including PHVs) would be a favoured solution but trade groups have highlighted formidable practical difficulties in implementing and maintaining any system based on quotas. This is due to the fluidity of the trade and the fact that many taxis and PHV drivers are sole traders.

These difficulties were judicially recognised in R v City of Newcastle ex p Blacke (1997) where a policy allowing new licences to be granted only in respect of wheelchair accessible vehicles was challenged. Mr Justice Jewitt noted the difficulty of deciding which applicants should have wheelchair accessible vehicles and, as such, be subject for an increased financial burden. He also recognised that quotas would not necessarily ensure that a wheelchair accessible vehicle would be available when needed.

Equality Act 2010

There are two duties under the Equality Act 2010 which apply directly to taxis and PHV's. The first is the general requirement not to discriminate against a disabled person in the provision of goods and services and the second concerns accessibility. Legislation relating to the first is fully in force whereas that relating to the second is only partially so.

In connection with the provision of goods and services, the service provider is under a duty to make "reasonable adjustments" in the provision of the service. This duty consists of three requirements.

- (1) Changing the way in which the service is provided.
- (2) Making physical adjustments to the way in which the service is provided.
- (3) Providing auxiliary aids to enable a disabled person to use the service.

These are qualified by the fact that it would never be reasonable for the provider of a taxi or PHV service to have to take steps which would involve the alteration or removal of a physical feature of a vehicle used in providing the service.

The provisions which are not in force (taxis accessibility) depend upon the Secretary of State making regulations to ensure that it is possible for disabled persons, including a disabled person in a wheelchair, to get into and out of taxis in safety and to travel in safety and reasonable comfort. If such regulations were in force, which currently they are not, the grant of a taxi licence would be conditional on the vehicle conforming to the relevant provisions in the taxi accessibility regulations. Apparently the drawing up of an acceptable regulation for an accessible taxi proved to be very complex because of the reasons referred to above.

Most stakeholders that the Government have spoken to have understandably therefore agreed that the goal of a single universally accessible vehicle is, for all the reasons set out above, misguided. In fact in May 2011 the Transport Minister, Norman Baker MP, announced that the Government had no intention of making such regulations.

The Local Government (Miscellaneous Provisions) Act 1976

Section 47(2) allows the local authority to impose conditions specifically in relation to the design or appearance of Hackney Carriages which they licence and this has been subject to a number of Court Cases.

R v Wirral Metropolitan Borough Council, ex p the Wirral Licensed Hackney Carriage Owners Association 1983

Notwithstanding subsequent cases, possibly the most important is the case of R v Wirral Metropolitan Borough Council, ex p the Wirral Licensed Hackney Carriage Owners Association as it forms the basis of the later decisions. Wirral Metropolitan Borough Council resolved that from a certain date, all hackney carriages licensed by the Council would have to be of a purpose-built type. Originally, the resolution specifically stated 'FX4', but it was suggested, and accepted, that this might conflict with art 30 of the Treaty of Rome. The resolution was amended to become a specification, rather than a specific make or model of vehicle. One of the reasons for this policy was that it was important for the public to be able to distinguish between hackney carriages and private hire vehicles. Another reason concerned the general suitability of that type of vehicle for hackney carriage work. The Wirral Licensed Taxi Drivers Association challenged the decision. In dismissing the application, Glidewell J said:

"What are the Council's functions under this legislation in relation to the licensing of taxi cabs? As I see it they are to achieve, so far as they can, the safety, convenience and comfort of passengers in hackney carriages, the safety of other road users and to ensure that there is some way in which those who wish to use either hackney carriages or private hire vehicles can readily distinguish the one type of vehicle from another. That the last is a proper object is to my mind made clear by section 47(2) of the 1976 Act. I conclude, on the material before me, that the Council's primary purpose was, indeed....to introduce a requirement which served to distinguish hackney carriage vehicles from private hire vehicles.

But I cannot find that it was the sole purpose, nor can I find that in arriving at its decision, the Council did not take into account other factors. Putting it the other way round, I am satisfied on the material before me that the Council did take into account other factors: safety and convenience. It was not only entitled to do so, but was obliged to do so and it did so".

R v Lincoln City Council, ex p King and Cook, R v Luton Borough Council, ex p Mirza 1995

This has been followed in the joined Court of Appeal cases of R v Lincoln City Council, ex p King and Cook, R v Luton Borough Council, ex p Mirza. Both were appeals against unsuccessful applications for judicial review which determined that requirements for wheelchair accessibility were not necessarily unreasonable or in conflict with EU law

Other cases followed the logic of the judgements given above and remove any doubt that may have lingered that an "all purpose built" hackney carriage policy is lawful.

The adoption by local authorities of such a policy of only granting hackney carriage proprietor's licences to London-style cabs has become increasingly popular in urban areas and is often referred to as a 'mandatory order'. This has no legal meaning, but is generally accepted to refer to a situation where an all-London-style cab policy is in force.

As was outlined in the *Wirral* case, such policies must be worded extremely carefully to avoid any change of anti-competitive behaviour under European Law. The Court of Appeal reinforced this by approving the policies of both Lincoln City Council and Luton Borough Council and reinforcing the fact that such policies did not infringe art 30 of the Treaty of Rome. Policies that refer to specific makes of vehicle are unlikely to succeed should such a challenge be mounted. The most successful way of wording the policy is by measurement of internal and external features, door openings, turning circle etc. The specification adopted by the Public Carriage Office (PCO) in London appears to satisfy the most stringent criteria available, but does not allow Eurotaxis to be used as hackney carriages. Accordingly, if a local authority wished to allow MPVs and Eurotaxis to be licensed, some variation to the PCO specification would be required.

Such a policy must now be viewed in the light of the *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* issued by the DfT in October 2006. Although not statutory guidance to which local authorities are duty bound to have regard to, it must be recognised as being a relevant consideration in *Wednesbury* terms which must be taken into account when considering matters it covers. One such area is the kind of vehicle that the local authority will licence as a hackney carriage.

Vehicles

Specification of Vehicle Types That May Be Licensed

18. The legislation gives local authorities a wide range of discretion over the types of vehicle that they can license as taxis or PHVs. Some authorities specify conditions that in practice can only be met by purpose-built vehicles but the majority license a range of vehicles.
19. Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.

20. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle. For example, the Department believes authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies. (There are at present only two designs of purpose-built taxi). But of course the purpose-built vehicles are amongst those which a local authority could be expected to license. Similarly, it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).

Wheelchair-Accessible

R v Manchester City Council, ex p Reid and McHugh 1989

Some authorities have gone further and have required not only an all-London-style cab fleet, but that the fleet itself should be comprised of all wheelchair-accessible vehicles. This was pioneered in the late 1980s by Manchester City Council and was challenged in the case of *R v Manchester City Council, ex p Reid and McHugh*.1989. In the mid-1980's Manchester City Council was concerned about the provision of transport services for disabled people who used wheelchairs and, when they decided to increase the size of the hackney carriage fleet in Manchester by 100 vehicles, they imposed a condition upon those licences requiring the successful applicants to provide vehicles which were not only based on a London-style cab, but also either already converted for wheel-chair access or to be converted within a specified period of time at their own expense. This condition was challenged as being unreasonable. The Court held that a facility for transporting the wheelchair-bound disabled is directly relating to the safe, comfortable and convenient functioning of the taxi.

Ultimately, it must always be a question of fact and degree whether a minority is so small or the advantage to them is so slight or the cost of complying with the provision is so great that the imposition of such a condition cannot be justified.

The phrase "reasonably necessary" is within the condition-making power. What is clearly desirable in the interests of safety and comfort can by the same token properly be regarded as reasonably necessary.

The Court also considered there was no objection to the Council having regard to the existence or lack of alternative facilities for the disabled when deciding how to exercise this condition-making power.

In fact subsequent developments prior to this hearing took the policy of Manchester City Council even further. They had by then imposed a condition requiring all existing licensed hackney carriages within the City to be converted to carry wheelchairs, or failing that, the replacement of the vehicles with purpose-built, wheelchair-accessible vehicles. The cost for this was to be recovered through an increase in fares and, as a consequence, by the beginning of 1992 Manchester had the first English fleet of hackney carriages which were all accessible for wheelchair-using travellers.

Similar policies have now been adopted by a number of local authorities throughout England and Wales and challenges rejected removing any doubts as to the legality of a policy and conditions subsequently attached to licences requiring wheelchair accessible hackney carriages

However, the suitability of wheelchair accessible vehicles for disabled people who are not wheelchair bound is open to question. This is considered in the *DfT Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* in the following terms:

Accessibility

12. Local licensing authorities will want to consider how accessible the vehicles they license as taxis are for disabled people (which includes – but is not limited to – people who need to travel in a wheelchair).
13. Licensing authorities will know that the Department has for some years now, been working on proposals which would substantially improve taxi provision for people with disabilities. This work is continuing and an announcement will be made in due course. In the meantime licensing authorities are encouraged to introduce taxi accessibility policies for their areas. The Department's letter to local licensing authorities of 9 September 2002, the relevant part of which was repeated in the letter of 16 June 2004, gave more detailed guidance.
14. Different accessibility considerations apply as between taxis and PHVs. Taxis can be hired on the spot – in the street or at a rank – by the customer dealing directly with a driver; but PHVs can only be booked through an operator. It is important that a disabled person should be able to hire a taxi on the spot with the minimum delay or inconvenience, and having accessible taxis available helps make that possible. For PHVs, it may be more appropriate for a local authority to license any type of saloon car, noting that some PHV operators offer accessible vehicles in their fleet.

It remains to be seen what view will be taken in the future by the Courts in relation to proposals by local authorities for all purpose built/wheelchair accessible hackney carriages.

Whilst the Council do not have a policy as such on the proportion of WAVs to its overall fleet it was suggested by Disability Solutions (a local disability group) that the ratio of WAVs should be the same as the ratio of blue badge holders within the population which according to DFT figures stands at 5%

As mentioned previously there is an incentive to provide WAV vehicles in that they can be up to ten years of age when first licensed, as against five years of age for saloon cars and that these vehicles have no upper age limit .

It would appear that, in this connection, the Council have the following options:

- (1) Take no action at the present time with regard to the provision of additional wheelchair accessible vehicles and wait to see what proposals are put forward by the Government.
- (2) Resolve that, from a certain date, all Hackney Carriages licensed by the Council will have to be wheelchair accessible vehicles.
- (3) As 2 above but only in connection with new Hackney Carriage licences.
- (4) Resolve that a certain percentage of the Council's fleet only shall consist of wheelchair accessible vehicles and that this percentage be maintained.
- (5) To set an interim position while carrying out a consultation exercise.

Your officers' views upon these options are:-

Option 1

This would appear to be a practical option for the time being in view of the existence of 13 licensed WAVs, and the fact that 3 further vehicles of this type have applied since the removal of the cap. With the incentives to provide this type of vehicle and the possibility of Government legislation it seems likely that the existing ratio will be maintained.

The fact that only a small number of authorities have sought to specify WAVs suggests a reluctance to alienate other groups with disabilities who would be in the majority and who would not benefit from these types of vehicles.

Option 2

If the Council were to seek to adopt a policy of adopting WAVs this would appear to be a fair way of treating the matter.

It would be questionable to require all new applicants to be put to the expense of purchasing or converting new vehicles whilst accepting that there was no problem with the current fleet.

As has been seen, there is plenty of case law to support such policies but, as has been said, this would not address the issue of improving taxi provision for disabled persons who were not wheelchair users.

Further the detailed specifications of vehicles to be adopted would have to be carefully worded to avoid challenge in the Courts.

This option may, of course, lead to a number of persons leaving the taxi trade and becoming PHVs.

Option 3

The Council could adopt a policy that only new applications will be approved for WAVs. This would have no effect upon the current fleet but could be said to be unfair to new applicants who would have to bear the additional costs. This could also have the effect of limiting the numbers of people who could afford to come into the trade and may have a detrimental effect upon the fleet. This option would not necessarily mean that a wheelchair user would be able to get access to the type of vehicle that would suit him at any given time and, of course, this option would, like option 2, do nothing to improve the experience of people with disabilities who were not wheelchair users.

Again if this option were adopted the same work in relation to specifications would need to be undertaken.

Option 4

In the past the Council has consulted with disability groups to try to estimate what proportion of the fleet would need to be wheelchair accessible. As with options 2 and 3 above it would be impossible to cater for a standard size of wheelchair as they are all of differing specifications but this information has served to assist in trying to ascertain the approximate number of persons who may require such vehicles.

As has been said, trade groups have highlighted formidable practical difficulties in implementing and maintaining a system based on quotas due to the flexibility of the trade and the fact that many taxi and PHV drivers are sole traders.

In connection with the suggested percentage of WAVs Disability Solutions method of calculation would suggest that a minimum of 5% of the fleet should be sufficient for practical purposes.

2. **Proposal**

2.1 That the Committee considers the options

3. **Reason for the Proposal**

3.1 To continue to ensure the requirements of the public using this type of transport are met.

4. **Links to Corporate Priorities**

Creating a cleaner, safer and sustainable Borough

Creating a Borough of Opportunity

5. **Human Rights**

Article 6(II) guarantees a fair hearing.

Article 14 guarantees no discrimination

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 Creating a cleaner, safer and sustainable Borough

People have access to enjoy and feel safe in our towns, shopping centres and places of work.

6.2 Creating a borough of opportunity

People who are able to work can do so and so there is improved prosperity. There is an entrepreneurial culture

7. **Equality Impact Assessment**

7.1 The report deals with equality issues for disabled persons.

8. **Financial Implications**

There are no financial and resource implications identified within this report

9. **Major Risks**

None

10. **Earlier Committee Resolutions**

On 6 August 2012, the Council's Public Protection Committee resolved to remove the limit on Hackney Carriage Vehicle licences.