

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 Council's 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 WAV,s to its overall fleet it was suggested by Disability Solutions (a local disability group) that the ratio of WAV,s 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.