

**REPORT TO: LICENSING COMMITTEE - 31 OCTOBER 2006**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: NICKII HUMPHREYS**

**Review of the current policy to restrict the number of hackney carriage vehicle licences and review of certain existing quality control measures for hackney carriage vehicles.**

**1. Purpose of report**

The purpose of this report is threefold. Firstly, the Committee are requested to consider the report by Transportation Planning International Ltd ("TPI") which was commissioned to investigate whether or not there is any significant unmet demand for the services of hackney carriages, secondly to review the existing policy of the licensing authority to restrict the number of hackney carriage vehicle licences and thirdly to review certain existing policy considerations in respect of quality control measures for hackney carriage vehicles.

**2. Recommendation**

***RECOMMENDED:***

***(1) That the Committee consider and determine which of the following options it wishes to pursue in respect of its future policy in respect of quantity control, if any, of hackney carriage vehicles:***

**Option 1:**

***To retain the existing policy of the Committee by limiting the quantity of hackney carriage vehicle licences to 234; or***

**Option 2:**

***Issue a number of hackney carriage vehicle licences as the Committee consider appropriate; or***

**Option 3:**

***To remove numerical restrictions on hackney carriage licences.***

***(2) That the Committee consider and determine whether they wish to amend their existing quality control policy so as:***

- i) to vary the current policy so as to permit those vehicles which meet the Public Carriage Office specification (i.e. "London style" cabs) to be no more than 4 years old on initial licensing and to remain licensed as a hackney carriage vehicle for up to 12 years providing it is considered to be in a good mechanical***

***and cosmetic condition or;***

- ii) the current age policy remains as existing and applications for further extensions may be considered and varied on individual merit.***

**(3) The Committee consider the representations submitted in relation to rear loading vehicles and determine whether they wish to amend the existing hackney carriage vehicle policy for suitably adapted fully wheelchair accessible vehicles so that any such vehicle should meet the minimum standard of nearside loading for any wheelchair.**

### **3. Background**

In December 2003 the Office of Fair Trading published a report entitled “The Regulation of Licensed Taxi and PHV Services in the UK.

The Government’s action plan in response to this report was given to Parliament in March 2004 and is set out in Appendix A.

On 16 June 2004 the Department of Transport issued a letter to every local authority which restricted the number of hackney carriage licences in their area requesting that they review their policies and publish the outcome by 31 March 2005. A copy of this letter is attached as Appendix B. Whilst there was no statutory obligation to do so, there was an expectation by the Government for this request to be acted upon. Notwithstanding this request, it is also important that the Council is in such a position to defend any assertion that there is unmet demand and consequently a need for further licences to be issued.

Accordingly it is appropriate and necessary for the Committee to now review its current policy in relation to the issue of hackney carriage vehicle licences.

### **4. History and current policy of the Council**

In historical terms, the policy of City Council so far as it relates to the issue of hackney carriage vehicle licences is summarised below:

<b>Date:</b>	<b>Number of hackney carriages &amp; comments:</b>
Prior to 1975	85 vehicle licences.
1975 -1978	100 licences (increase in 15 plates over the 3 year period)
1986	Further 50 licences issued to bring the number up to 150.
April/May 1987	Survey of unmet demand carried out by Lewis Corner of Sussex University – known as the “Corner” survey. This concluded that there was no evidence of significant unmet demand but also recommended issue of new licences

based on “quality control”. However, 150 vehicle licence limit was retained.

- October 1988      Portsmouth City Council –v- Brown. Crown Court appeal against decision to refuse to grant hackney carriage vehicle licence. The Court ruled that “services of hackney carriages” meant only the distinct services that a hackney carriage could provide, i.e. standing and plying for hire. Evidence in this case that the use of a London style cab (wheelchair accessible) to facilitate “contract” bookings for persons with mobility problems was NOT deemed relevant for the distinct and unique service of a hackney carriage plying for trade from the street. The appeal was dismissed and the 150 vehicle limit was maintained.
- January 1990      150 vehicle licence limit removed completely. “Quality control” policies were introduced to permit the grant of new taxi licences to vehicles meeting the Metropolitan Police Public Carriage Office specification. Vehicles were required to be wheelchair accessible and not over 4 years old on first licensing. The policy of “one person, one plate” for these licences was rescinded. The Committee also clearly recognised that a “mixed fleet” of saloon style cars and purpose built wheelchair accessible vehicles was desired and would offer the public a wide and varied choice of vehicle types.
- Vehicle fleet gradually increases from 150 to 234 vehicles.
- June 1996      The Committee resolves to defer issue of new hackney carriage vehicle licences after considering representations and further resolved to commission a survey.
- October 1997      The Committee consider survey report from MCL consultants. Survey was carried out in May/June 1997. Committee agreed to refuse the grant of further hackney carriage vehicle licences (Minute 32/97 refers).
- THIS DECISION REPRESENTS THE CURRENT POLICY DIRECTIVE AS REGARDS THE ISSUE OF HACKNEY CARRIAGE VEHICLE LICENCES.**
- March 2005      The Committee consider options for a review of its current policy and resolve to commission a survey of unmet demand for the services of licensed hackney carriage vehicles to be carried out as soon as possible and to consider such action as the survey may recommend.

## 5. Other relevant information

A small number of formal enquiries have been received by the licensing section concerning the grant of additional hackney carriage vehicle licences. The Committee considered one such application on 28 January 2005 when it was resolved to defer making a decision in order that the Committee could undertake a review of the existing policy of quantity control relating to hackney carriage vehicle licences.

The Office of Fair Trading report firmly recommends that licensing authorities with quantity controls should remove them.

The Government statement (as set out in Appendix A) specified that local authorities that place limits on the numbers of hackney carriages are requested to justify their policies and carry out a review by 31 March 2005 and for those conclusions to be reported to them by no later than 30 April 2005.

The Department of Transport letter dated 16 June 2004 (as set out in Appendix B) requested that Councils review local policy to restrict hackney carriage vehicle licences and to make that review public. The letter states:

- In the Government Action Plan for Taxis and Private Hire Vehicles, restrictions should only be retained where there is shown to be a clear benefit for the consumer;
- Councils should publicly justify their reasons for the retention of restrictions and how decisions on numbers have been reached; and
- That unless a specific case can be made, it is not in the interests of consumers for market entry to be refused to those who meet the application criteria.
- However, local authorities remain best placed to determine local transport needs and to make the decisions about them in the light of local circumstances.
- If Councils retain quantity restrictions then a review should be undertaken of such policies on a triennial basis.

## 6. Recommendations arising from survey undertaken by TPI

The final report from TPI was received in late August 2006.

A copy of the full report has been made available in each of the members room and a copy of the executive summary is attached to this report as Appendix C.

On the basis of the analyses conducted by TPI, they conclude that significant unmet demand for hackney carriages in Portsmouth does **NOT** exist at this time.

Based on their analyses, they consider that the Committee has the discretion to either:

- i) maintain the limit at 234 licences;
- ii) issue that number of hackney carriage vehicle licences as it sees fit;  
or
- iii) remove the limit on hackney carriage vehicle licences.

A representative from TPI will be at the Committee meeting to explain the report and its implications in detail.

## **7. Options for consideration**

In accordance with recommendations from TPI, the Committee have three options to consider:

**Option 1 – To retain the existing policy of the Committee by limiting the quantity of hackney carriage vehicle licences to 234.**

### ***Advantages:***

- Retains the current restriction which is likely to satisfy elements of the existing taxi trade;
- The survey and conclusions provide a lawful defence for the Council against any assertion that there is unmet demand and consequently a need for further licences to be issued.

### ***Disadvantages:***

- A survey will be required on a 3 yearly basis, estimated to cost between £23,000 - £26,000 which would amount to a considerable single year surcharge on hackney carriage licence holders.
- The additional fee would need to be advertised and, in the event of objections, the Committee would need to consider whether it remained reasonable to impose such additional costs on current hackney carriage licence holders or whether the budget should be found from central funds.

**Option 2 – Issue a number of hackney carriage vehicle licences as the Committee consider appropriate.**

### ***Advantages:***

- A better service for consumers, albeit a gradual increase over a considerable period of time. The number of licences issued annually should not be limited as to be of little or no significance.

- Partially accords with the recommendation of the Office of Fair Trading and the Government.
- Gradual impact upon the hackney carriage trade.

***Disadvantages:***

- If applications exceeded the limit of licences available in any particular period, unsuccessful applicants would have rights of appeal or may seek judicial review on the basis of the reasonableness of the decision.
- Potential dissatisfaction by the taxi trade due to extra competition.
- Further consideration would need to be given of what would be deemed to be an appropriate level of limited numbers of licences to be issued on an annual basis. Evidential analysis would probably be required with an associated cost implication to the Council.
- Consideration as to whether a “waiting list” would be required to be maintained which would have resource and cost implications for the Council.
- Further evaluation will be necessary of the City’s taxi ranks and whether expansion of these facilities will be required to accommodate any additional hackney carriage vehicles.
- Would need to be reviewed on a triennial basis as option 1.

**Option 3 – To remove numerical restrictions on hackney carriage licences**

***Advantages:***

- A better service for consumers (e.g. decreased waiting times and more choice) and any perception or potential allegation that market forces are necessarily interfered with by restricting entry to the trade is removed.
- No need for a costly three yearly survey.
- Lets market forces dictate the number of hackney carriages without Council intervention.
- Accords fully with the advice from the Office of Fair Trading and the Government.

***Disadvantages:***

- Potential dissatisfaction within the taxi trade due to extra competition.

- Further evaluation will be necessary of the City's taxi ranks and whether expansion of these facilities will be required to accommodate any additional hackney carriage vehicles.

## 8. Additional policy considerations

Whichever option members wish to pursue, if any new licences are issued, they will be subject to the Council's current policy on quality control for wheelchair accessible vehicles which states:

- A suitably adapted vehicle (SAV) that may, or may not, include vehicles meeting the Public Carriage Office conditions of fitness.
- For SAVs, a proprietor must produce written confirmation that the vehicle concerned has obtained a minimum low volume (small series) type M1 approval from the Vehicle Certification Agency;
- Vehicle to be brand new on first licensing and may remain licensed up to 8 years old;
- That any vehicle to be licensed is of a silver colour; and
- Display of corporate livery

In respect of the vehicle age criteria, formal representations have been made by Mr Viv Young, taxi trade representative, asking that the Committee reconsider its current policy.

He has requested that the Committee give due consideration to amending its current policy as follows:

*"In respect of vehicles which have undergone suitable adaptations for wheelchair accessibility (i.e. Eurocabs, Peugeot Euro 7 etc) these vehicles remain subject to existing policy criteria but in respect of "London type" wheelchair accessible vehicles (i.e. approved by the Public Carriage Office) that the Committee revert to its earlier policy of issuing a licence to vehicles up to 4 years old and allowing the vehicle to remain licensed until it attains the age of 12 years old".*

The reason he puts forward for such a request is that the purpose built London style cabs cost significantly more to purchase than suitably adapted vehicles and the viability of investing in such purpose built vehicles is severely compromised if the purchaser is only permitted, by way of policy, to licence the vehicle for no more than 8 years.

Mr Young has indicated that he wishes to attend the meeting and make deputations on this issue to the Committee.

When Members are considering the proposal put forward they should also have regard to the fact that there have been cases where older "London

Style” hackney carriages have been poorly maintained and as a consequence, have failed to meet the minimum standard of mechanical suitability required for licensed vehicles.

During the current licensing year (i.e. from 1 May 2006 until 30 April 2007) at least 6 “London style” wheelchair accessible vehicles have either failed spot checks or other mechanical/visual inspections and the proprietors were advised that your reporting officer would not support the renewal of the vehicle licences.

In all cases, significant bodywork and mechanical defects were apparent and total mileages ranged from 147,313 to 451,549 miles. The average mileage covered by the 6 vehicles was 333,017 miles and the average age of the vehicles was 10.3 years.

This has subsequently led to replacement of those older vehicles with newer vehicles.

From a legal point of view, the adoption of age limits to enhance standards is considered proportionate and reasonable provided that the Council adopt a degree of flexibility on individual merit.

In addition, the criterion for “brand new” vehicles reflects the fact that there are constant ongoing design changes to such vehicles that brings about improvements to the vehicles which benefit both the proprietor and passengers alike.

The current policy for vehicle suitability permits a range of wheelchair accessible vehicles to be licensed for hackney carriage use whether they are suitably adapted wheelchair accessible vehicles or meet the London Carriage Office specification. Adopting a change of age policy for the latter type of vehicle will create a “2-tier system” within the existing policy which may be difficult to justify.

Members may wish to consider an alternative proposal whereby the current age policy remains at a maximum of 8 years, however, applications for further extensions could be considered and varied on individual merit rather than instituting an overall change to the existing policy.

Should the Committee decide not to issue further hackney carriage vehicle licences, they may still revisit their current policy as it relates to existing licensed vehicles and amend as and how they consider appropriate.

**Recommended: That the Committee consider and determine whether they wish to amend their existing quality control policy so as:**

- i) to vary the current policy so as to permit those vehicles which meet the Public Carriage Office specification (i.e. “London style” cabs) to be no more than 4 years old on initial licensing and to remain licensed as a hackney carriage vehicle for up to***



***12 years providing it is considered to be in a good mechanical and cosmetic condition or;***

- ii) the current age policy remains as existing and applications for further extensions may be considered and varied on individual merit.***

Additionally, representations have been received from The Spinal Injuries Association, RADAR (Royal Association for Disability and Rehabilitation) and LTI Vehicles (manufacturers of purpose built TXII “London style” taxis) in relation to concerns over the licensing of hackney carriage vehicles where the passenger is loaded from the rear of the vehicle. These letters of representation are attached as Appendix D to this report.

The use of rear loading wheelchair accessible vehicles can present safety difficulties both for the driver of the licensed vehicle and the public when embarking and disembarking passengers in relation to:

- risks to the safety of passengers when they are gaining access/egress to the vehicle from the highway as opposed to the pavement;
- potential safety concerns if a taxi rank is located in close proximity to a road junction;
- height of gradient when loading passengers from the road to the vehicle as opposed to loading from pavement height.

Other local authorities, namely Southampton City Council and Bournemouth Borough Council have adopted similar policies in relation to the requirement of a minimum standard of nearside loading for passengers.

**Recommended that the Committee consider the representations submitted and determine whether they wish to amend the existing hackney carriage vehicle policy for suitably adapted fully wheelchair accessible vehicles so that any such vehicle should meet the minimum requirement of nearside loading for any wheelchair.**

## **9. The legal provisions**

The Town Police Clauses Act 1847 is still the primary legislation controlling hackney carriage vehicles, proprietors and their drivers. By virtue of Section 37 of this Act, the Council previously had an absolute unfettered discretion to determine the number of hackney carriage vehicle licences that could be available at any one time.

Without exception, such restricted practices of quantity control introduced a “monopoly” scenario with plates only being made available by a culture of “buying and selling”. Inevitably, waiting lists from applicants who wished to obtain a hackney carriage vehicle licence were commonplace with the Council receiving multiple enquiries from potentially suitable applicants in the extremely rare event of a plate becoming available.

Strict quantity controls measures also attracted hard and inflexible conditions of licence and policy directives requiring full-time driving, proprietors having no other work interests and a requirement for proprietors to personally drive their own vehicles.

However, Section 16 of the Transport Act 1985 qualified the absolute discretion to limit the number of hackney carriage vehicle licences by requiring the local authority to be satisfied “... **that there is no significant unmet demand for taxi services** ...” within its area. The burden therefore shifted to the Council to be satisfied as to the demand or otherwise rather than for the applicant to show evidence of demand when submitting an application.

This does not mean that a local authority **MUST** limit numbers if satisfied that demand for the services of hackney carriages is met but instead prevents, by way of statutory provision, local authorities from restricting vehicle numbers for any other reason.

Interestingly, Part II of the Local Government (Miscellaneous Provisions) Act 1976 (the legislation which regulates private hire licensing) specifically prohibits the local authority from controlling private hire vehicle numbers.

This change in the law had significant implications upon local authorities and hackney carriage vehicle proprietors alike. The Department of Transport consequently issued advice to local authorities (Circular 3/85) in relation to the grant of hackney carriage vehicle licences which is summarised below:

*“District Councils may wish to review their policy on the control of taxi numbers in the light of this new section. A limitation of taxi numbers can have many undesirable effects – an insufficiency of taxis either generally or at particular times or in particular places, insufficient competition between the providers of taxi services, detrimental customer satisfaction and prices for the “transfer” of taxi licences from one person to another which may imply an artificial restriction of supply.*

The circular gave a clear indication that Councils should not rely on the assertion of local taxi licence holders that demand was already catered for as they had evidence only of demand which they satisfied. The circular stated that it was for the Council to examine the evidence of unmet demand using local knowledge and circumstances.

Councils were encouraged to consider whether persons had given up trying to use taxis because of an inadequacy of service or whether there would be a latent demand in parts of the local authority area that had not been adequately served. In other words, those that might wish to use taxis may not have demonstrated their demand since there had been no opportunity of having it satisfied.

Equally, the circular advised that general overcrowding at designated taxi stands was not in itself evidence of unmet demand but rather that the provision of taxi stands was too limited.

The circular accepted that an immediate policy of “de-restriction” could lead to an abandonment of quality control with an initial oversupply of taxis before market forces could bring about an appropriate equilibrium.

As a consequence to the Transport Act 1985, there have been a number of court decisions which have clarified the view and thinking that a local authority can take into consideration when deliberating on the question of demand for the services of hackney carriages:

***R –v- Great Yarmouth Borough Council ex parte Sawyer (1988)***

*“... If demand for the services of hackney carriages is met a local authority can still issue licences. The licensing authority can adopt a reasonably broad approach in asking itself whether or not it is satisfied that there is no significant demand for the services of hackney carriages within its areas to which the licence would apply which is unmet ...”*

*“... The authority in my view is entitled to consider the situation in relation to the area as a whole and is also entitled to consider the position from a temporal point of view as a whole. It does not have to condescend into detailed consideration as to what may be the position on every limited area of the authority in relation to a particular time of the day...”*

***Ghafoor –v- Wakefield District Council (1990)***

*“... If an assessment of the number of hackney carriages to meet a significant unmet demand has been approved, and the Council grant up to that number, it may refuse further applications provided it is satisfied afresh as to the absence of any further demand ...”*

***R –v- Brighton Borough Council ex parte Bunch (1989)***

*“... A local authority does not have to show that demand is satisfied at all times and may, for example, conclude there is no significant unmet demand where there are sufficient taxis – except for period during which existing drivers are reluctant to work anti-social hours ...”*

***R –v- Castle Point Borough Council ex parte Maud (2002)***

*“... There may be more than one method of assessing the current demand for taxis. The appropriate methods are not necessarily confined to counting passenger queues or calculating the delays to passengers. If there is convincing evidence of suppressed demand that may be relevant. For example, if it can be established by interview that there are a number of people in the district who wanted a taxi on certain occasions but could not find one and in the end, as second best, resorted to choosing a less satisfactory alternative solution, that would be relevant evidence of current demand. The local authority would have to be satisfied that the demand was, first, and foremost, for a taxi, so that inconvenience was being caused to the public*

*through the shortages of taxis. It is in the end all a question of evidence ...”*

The above case, therefore, permitted local authorities to take into consideration latent as well as patent demand for the services of hackney carriage vehicles.

## **10. Consultation with interested parties**

A summary of the conclusions reached by the survey undertaken by TPI has been forwarded to interested parties together with information concerning the options available to the Committee when determining their future policy.

Such interested parties include:

- Existing hackney carriage vehicle proprietors;
- Private hire operators licensed in the city;
- Hackney carriage and private hire drivers;
- Individuals who have expressed an interest in licensing a vehicle for hackney carriage purposes;
- Hackney Carriage trade representatives
- Ward Councillors
- Chief Officer of Police
- Safer Portsmouth Partnership
- Evening & Late Night Economy Partnership
- Representatives of Clubwatch/Pubwatch Groups
- Head of Community Safety
- Passenger Transport Group Manager
- Portsmouth Council of Community Service
- Portsmouth Disability Forum

Interested parties were invited to make representations in respect of the findings of the survey and responses received are attached as Appendix E.

Members may also receive deputations in person from parties on the day of the hearing.

## **11. Conclusions**

It is clear from the findings of the Office of Fair Trading and the Government's response that they wish to see de-restriction of the number of hackney carriage vehicle licences issued by Councils.

Whilst the Council is entitled to retain such quantity controls, it must have a very good reason for doing so and demonstrate that it has acted in a reasonable manner in reaching such a conclusion.

The Council's statutory role in licensing such matters is the safety of the public. Economic or business reasons to impose restrictions on the hackney carriage trade are not legitimate considerations.

The Committee needs only to have regard to the results and recommendations of the TPI survey if they consider it appropriate to adopt a policy of quantity control and there is shown to be a clear benefit for the consumer. The survey provides evidential grounds to the Council for maintaining a policy of restricting the numbers of vehicle licences.

However, it is equally lawful and perfectly reasonable for the Committee to follow the Government advice and de-restrict notwithstanding the results of the survey.

As regards the other policy considerations which the Committee are requested to consider in relation to hackney carriage vehicles, notwithstanding which option the Committee wishes to pursue in respect of whether or not they issue more licences, they are at liberty to review policy considerations which affect existing licence holders at any time.

## **12. Appendices**

- A. Government's action plan in response to the report issued by the Office of Fair Trading;
- B. Letter issued by the Department of Transport in June 2004;
- C. Executive summary of TPI survey;
- D. Letters of representation concerning rear loading accessible taxis;
- E. Letters of representation from interested parties in relation to the outcome of the TPI survey.



Licensing Manager  
For City Solicitor