

DEPARTMENT OF REGENERATION AND ENVIRONMENT

ORIGINATING SECTION: PUBLIC PROTECTION SERVICE

REPORT TO : LICENSING COMMITTEE

16/02/2010

TITLE : REVIEW OF HACKNEY CARRIAGE VEHICLE STANDARDS

1. **PURPOSE**

That members consider:

- 1) licensing the Peugeot E7 series 11 as a hackney carriage vehicle,
(in light of High Court judgement that has implications on the review that was undertaken on Hackney Carriage Vehicle standards in February and March 2009),
and
- 2) An additional request from the Hackney Carriage trade in relation to the two tier system that is in place with the current Hackney Carriage Policy.

2. **RECOMMENDATIONS**

That Members note the report, and forward recommendations to the Executive Member for a decision for any proposed changes to the current standards, as per executive member decision of 27th March 2009.

3. **BACKGROUND**

The Council's power to licence hackney carriages is contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

Section 47(1) of the Local government (Miscellaneous Provisions) Act 1976 states:-

"A district council may attach to the grant of a licence of a hackney carriage licence under the Act 1847 such conditions as the district council may consider reasonably necessary".

The Council has adopted conditions to be attached to the grant of a licence of a hackney carriage, one of which states :-

"Only vehicles which conform to Public Carriage Offices' terms of conditions of fitness will be licensed as hackney carriage vehicles."

In June 2005 the Department of Transport responded to the Office of Fair Trading report "the regulation of Licensed Taxis and Private Hire Services in the UK" by contacting each authority that they believed were restricting the size of their fleet.
(Blackburn with Darwen currently had at that time a restricted number of vehicles licensed as Hackney Carriages)

The OFT report had stated that Councils should not restrict the number of Hackney Carriage Licences. Although the Government rejected the call for a total removal of the provisions local authorities had for restricting numbers, Councils who did restrict had to justify why, to the Department of Transport. In light of this Blackburn with Darwen Licensing service, in consultation with the trade, were considering delimiting the size of the fleet. This consultation resulted in the trade requesting an independent survey to assess whether or not there was a significant "unmet demand" for hackney carriages within the borough. The survey was commissioned by the trade, and at a cost borne by them, with a commitment from all parties to abide by the findings of the study.

The main conclusions of the study were that:-

- There was a significant unmet demand and at least 10 new licences should be issued to eliminate the identified unmet demand.

The Council had no choice but to try and eliminate this unmet demand so the following options were considered.

Option 1

The Council release 10 licence plates for issue (in addition to option A or B) to eliminate the immediate unmet demand, and, dependant on the uptake of the licence plates, if all 10 are issued within a short space of time, then consult with the public to ascertain whether there is still a perceived unmet demand and act upon the outcome of the consultation. This may mean either releasing some more plates or delimiting.

Option 2

The Council delimit the hackney carriage fleet (in addition to either option A or B) and allow market forces to eliminate unmet demand.

The Executive Member approved a consultation study for the introduction of an age policy as the minimum standard for the new licences entering the hackney carriage market which resulted in the following additional options being considered alongside options 1 and 2 above :-

Option A

Vehicles must be wheelchair accessible and comply with the Public Carriage Office (PCO) Conditions of Fitness, be less than 3 years of age to be first issued with a licence and cannot be licensed beyond its 10th anniversary unless the vehicle is in an exceptional condition with below 600k miles on the clock.

Option B

Vehicles must be wheelchair accessible and comply with the PCO Conditions of Fitness, be less than 5 years of age to be first issued with a licence and cannot be licensed beyond its 12th anniversary unless the vehicle is in an exceptional condition with below 600k miles on the clock.

The options chosen were **Option 1 with Option A.**

At the time of this decision the fleet were all wheelchair accessible vehicles that complied with the PCO conditions of fitness, however there were no age limits so the fleet was predominately old and mainly Fairways type vehicles. (Fairways have difficulty in catering for non standard wheelchairs as there was not much room inside for manoeuvring and securing wheelchairs). The newer style vehicles, TX's, offer much more room and accessibility for wheelchair users. The TX's also have hearing loops and contrasting trims and stripes to aid users who are sensory impaired. The other wheelchair accessible vehicles on the market at the time (Mercedes Vitos, and Euro cab) were licensed as private hire vehicles so it was felt unwise to licence these vehicles as hackney carriages to prevent confusion in the minds of the public in distinguishing between the two services.

The uptake on the new licences was very slow, only five of the ten plates were issued under the new policy. There were however two applicants on the waiting list who wished to licence Peugeot Euro Cabs as hackney carriages but this request was refused as the adopted policy did not permit this type of vehicle.

On 27th November 2008 a report was submitted to the Licensing Committee to inform Members of a proposed consultation for a review of the current Hackney Carriage Vehicle fleet, in relation to age and vehicle type specification. The report was commissioned by officers in an attempt to improve the overall standard of the vehicles but in particular to ensure the fleet met the Euro 111 emission standards for vehicle exhaust fumes.

Local authorities are required to check air quality and compare it to national target levels for airborne pollutants. These pollutants will affect peoples' health if the levels are too high. Experience has shown that idling, slow moving and poorly maintained road vehicles produce more pollution. Also, pollution does not disperse easily in relatively narrow and enclosed urban streets.

It was also reported that there were two standards within the fleet since the release of the ten plates in 2005. It was also reported that vehicles under 10 years of age would be Euro 111 compliant and would assist in improving air quality in the borough.

It was further reported that requests had been received from the trade to licence other types of wheelchair accessible vehicles as hackneys such as the Peugeot Euro Cab and Mercedes Vito.

It was proposed that the public protection service would commence a full consultation with travelling public and the Hackney Trade and report findings back to the Committee at the next scheduled meeting which was on 5th February 2009.

It was reported on **5th February 2009** that a full consultation had been undertaken, apart from a response from LTI vehicles, only members of the hackney trade had responded to the consultation. There had been 58 responses, 6 additional letters and a petition. The majority of the responses had indicated that the introduction of an age limit in the economic climate would be unaffordable. A number of the responses had indicated that a 14-16 year age limit would be acceptable.

The recommendations from the Licensing Committee were as follows:-

- For HC licence plates issued prior to 2005, existing and replacement vehicles should be :
10 years or under on entry
15 year age limit
- Introduction of age limit be deferred for 12 months (April 2010)
- For HC licence plates issued after 2005:

No change (maintain 3 year entry and 10 year age limit)
- Maintenance of the Public Carriage Office terms and conditions for vehicle type.
- In principal Hackney Carriage Vehicles are permitted to use bus lanes located within Blackburn and Darwen, this will be scoped on a case by case basis.

The recommendations were approved by the Executive Member on 25th March 2009.

The main reason stated for maintaining PCO standards was again public recognition. It should be noted that the Mercedes Vito had by this date, received PCO status, and is allowed to be licensed as a taxi in London.

It must be commented, that, since the introduction of the policy in March 2009, there has been a marked improvement in the standard of the hackney fleet with many proprietors investing in newer vehicles.

KEY ISSUES

Officers were made aware of the Lunt / Allied Vehicles Ltd –v – Liverpool case, and in light of the High Court judgement in Liverpool a further report was submitted to the Licensing Committee on **1st October 2009**,

The reason for submitting the report was that Blackburn with Darwen's Policy of licensing only vehicles which met the PCO terms and conditions were at serious risk of a legal challenge due to the outcome of the Judgement.

The following advice was given to members:-

Liverpool City Council lost a Judicial Review decision given that its Licensing Committee had believed that its existing fleet was accessible to all wheelchair users and any problem were due to driver error. However the 1st Claimant in the case, due to her particular disability had a wheelchair that was larger than average and therefore could not safely and comfortably use the existing hackney fleet which the court held amounted to a breach of the DDA 1995.

In summary, therefore the type of hackney fleet authorised for use at BwD must ensure that all classes of wheelchair users can safely and comfortably access/use the fleet.

Even if at BwD we can show that the existing hackney fleet is suitable for all classes of wheelchair users, we will still need to consider any future proposals for the use of a particular make/model of vehicle as a hackney fleet. Disallowing the use of the same without proper and reasonable justification could mean Art 28/30 of the EC Treaty is being infringed by placing quantity restriction on a particular vehicle which was lawfully manufactured for the particular purpose of a hackney vehicle and is being used by other member states.

The Liverpool case meant in essence that BwD's restriction on vehicle type was wrong not only on disability discrimination grounds but also against European competition rules.

Additionally a further request was received from one of the trade associations in relation to the two tier system, and members were asked to revisit the decision of March 2009 for those drivers who felt at detriment.

The recommendations from that committee hearing were as follows

- To amend existing policy in line with findings of high court ruling at Liverpool Council, which would allow alternative purpose built vehicles (Peugeot E7)
- That existing plates issued after 2005 be brought in line with all other licensed Hackney Carriage Vehicle plates (i.e. to be allowed the upper age limit of 15 years)
- That in relation to any new vehicle licence plates issued, vehicles should be under 3 years of age or under on entry to be granted a licence.

Following the committee hearing a petition from members of the Blackburn with Darwen Hackney Carriage Association (Not the association who originally requested the removal of the two tier system) was received in response to these recommendations. This trade association opposed the recommendations and stated they had not been consulted.

Procedurally the actions of officers and the Licensing Committee in making the above recommendations were compliant with the Council's standing orders. The report was in the public domain and the Chairman of the association had been forwarded a copy of the agenda, unfortunately he was out of the country at the time.

Some individual hackney carriage drivers had been in attendance at the committee hearing on 1 October.

It should be noted that the recommendation to amend the policy to allow alternate vehicles was in response to a point in law and not at the request of any individual driver or trade association.

The petition was reported to the Licensing Committee on 26th November 2009 and, in light of the representations heard at the hearing, the Licensing Committee Members changed their recommendations to the following:

- To maintain the current hackney carriage policy (of 27th March 2009) where the only vehicles that will be licensed will be vehicles that fulfil the conditions of fitness as determined by the Public Carriage Office
- The 3 vehicle owners affected by the two tier system are brought in line with all other licence owners

The other 2 vehicles which had been licensed in 2005 had since been sold and their licences relinquished)

- That there will be a freeze on the issue of the seven remaining plates. This situation to be reviewed on an annual basis.

These recommendations were considered by the Executive Member and his decision published on 24 December 2009.

The executive member decision form included these recommendations and other available options:-

- To amend the existing policy in line with findings of high court ruling which would allow an alternative purpose built vehicle, the Peugeot E7 to be licensed, All Peugeot E7s to be black in colour and brand new at the date of first licensing as a hackney carriage. Peugeot E7s would be permitted to have an upper age limit whilst remaining as a hackney licensed vehicle of 7 years.
- That the existing plates issued after 2005 be brought in line with all the other licensed hackney carriage vehicle plates. (i.e. to be allowed the upper age limit of 15 years).
- That in relation to any new vehicle licence plate issued, vehicles should be under 3 years of age or under to be granted a licence.
- To maintain the two tier system
- Or any combination of the above options.

Officer Recommendation

- To amend existing policy in line with the outcome of the high court ruling without additional conditions. This would allow alternate purpose built hackney carriage vehicles to be licensed within the Borough.

Decisions Taken

- The 3 vehicle owners affected by the two tier system are brought in line with all other licence owners
- The Council sees no need at this stage to increase the size of the fleet therefore

there will be a freeze on the issue of the seven remaining plates. This situation to be reviewed on an annual basis.

- To amend the existing policy in line with findings of high court ruling which would allow an alternative purpose built vehicle, the Peugeot E7 to be licensed, All Peugeot E7s to be black in colour and brand new at the date of first licensing as a hackney carriage. Peugeot E7s would be permitted to have an upper age limit whilst remaining as a hackney licensed vehicle of 7 years

The Executive Member's decision of 24th December was subjected to a call in, the reasons were as follows:

The chaotic nature of the 26th November Licensing Committee meeting led to confusion amongst the hackney carriage drivers, their representatives, councillors and officers as to the agreed outcomes. The decision of the Executive Member will do nothing to clarify this current confusion as this is, in part contrary to the recommendations made on 26th November 2009.

The reasons for the Call in of this decision are therefore as follows:

- *Lack of clarity in the decision making process*
- *Lack of equality impact assessment and appropriate health and safety analysis*
- *Lack of appropriate consultation*
- *Confusion around legal advice*

The following representations have been received in relation to this matter.

- A letter from Bindmans Solicitors who are acting on behalf of Allied Vehicles who supply the Peugeot E7s. Notice has been given that they intend to seek a judicial review of the decision. (appendix 1)
- Representations from the Hackney Drivers Association Ltd in relation to the decision on the E7 and the freeze of the 7 remaining plates, especially the freezing of the 2 plates which have previously been issued but since rescinded. (appendix 2)
- Expressions of interest received for hackney carriage plates for licensing E7 vehicles as and when they are permitted and licences are available. (appendix 3 – 3 f)
- Legal advice supplied by LTI (appendix 4)
- Letter from the Public Carriage Office, informing of how they intend to proceed in light of the Lunt Judgement. (appendix 5)
- Consultation has been undertaken via the EHCnet to ascertain whether age restrictions are applied to alternative purpose built hackneys, where vehicles other than PCO vehicles are licensed. No such restrictions have been identified from the 19 Licensing authorities that have responded. (appendix 6)

In response to this the Executive Member for Regeneration & Environment has asked for a more detailed report focusing on the complex issues which need further consideration.

As a consequence of this, he rescinded the decision he made on the 24th December 2009 in relation to this matter and has requested that this matter be taken back to the full Licensing Committee for consideration as soon as possible.

RATIONALE

Access for people with disabilities and impairments

Section 49A(1) of the Disability Discrimination act 2005 provides as follows:

"Every public authority shall in carrying out its functions have due regard to –

- (a) the need to eliminate discrimination that is unlawful under this Act;
- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (c) the need to promote equality of opportunity between disabled persons and other persons;
- (d) the need to take steps that take into account of disabled persons' disabilities even where that involves treating disabled persons more favourably than other persons;
- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life

This means that the council as a public authority has a 'general duty' to ensure that disabled people are not disadvantaged as a result of any policy decision, and that the council is able to promote equality of opportunity. This should be interpreted as meaning the council ensures that as many options as possible are available for people with disabilities in Blackburn with Darwen considering the range of disabilities involved.

The council is under a statutory duty to conduct a Diversity Impact Assessment (DIA) on all its policies, including the policy of only licensing as hackney carriages vehicles that meet the PCO conditions of fitness.

The letter received from Bindmans have requested why the Council have not conducted an equality impact assessment, (when this issue was considered in October and November). As a similar equality impact assessment has been undertaken by Norwich City Council, the public protection service sought consent to use their assessment, as a way of achieving efficiencies through the shared working principles.

Firstly an initial screening exercise was carried out to identify whether the policy impacted adversely on any of the identified groups. A copy of this assessment can be found at (appendix 7(a)). On the basis of the screening it was determined that a full impact assessment should be carried out and a copy can be found at appendix 7 (b)

Department of Transport Guidance

In October 2006 the Department of Transport published a Best Practice Guidance for Local Authorities in respect of Taxi and Private Hire Licensing. Consultation on a draft revised version took place earlier this year, with a closing date of 28th July 2009 for comments. At the time of writing this report no revised guidance has been published. The extracts below remain unaltered in the draft consultation version and the 2006 guidance.

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).

For Members information a copy of the specifications of the Peugeot E7 can be found at appendix 8.

5. POLICY IMPLICATIONS

Revision of existing policy (additional vehicles)

The existing hackney carriage vehicle specification details that vehicles must comply with the Public Carriage Office conditions of fitness before they can be licensed. The E7 does not comply with the specification in relation to the turning circle of the vehicle. The current specification states :-

“(i) the vehicle must be capable of being turned on either lock so as to proceed in the opposite direction without reversing between two vertical parallel planes not more than 8.535 metres apart.

(ii) the wheel turning circle kerb to kerb, on either lock must not be less than 7.62 metres in diameter”

If members are minded to approve the E7 for use as a hackney carriage in Blackburn with Darwen, the existing vehicle specification will have to be amended. In doing so this will allow other vehicles other than the E7 to be licensed as hackney carriages.

Members have been concerned about licensing alternate vehicles with issues concerning public recognition. There are Peugeot E7s and Mercedes Vito's licensed as private hire vehicles with Blackburn and Darwen, Members could consider the livery/colour of the vehicles to eliminate public confusion.

At this stage, the only impact assessments to have been measured are the existing hackney carriages licensed in Blackburn and the Peugeot E7; members could consider whether and when other assessments should be undertaken on other alternate purpose built cabs that are available.

As the executive member decision was rescinded Blackburn with Darwen still has a two tier system in existence, a request was received from the hackney carriage trade to reconsider this in particular for the 3 existing vehicle owners who feel at detriment with the policy.

6 FINANCIAL IMPLICATIONS

If the council are subjected to a judicial review claim, the costs the council would be liable for would probably be similar to the costs of the Liverpool City Council case. This resulted in a £200,000 award of cost against Liverpool City Council.

7 LEGAL IMPLICATIONS

The Council have already received a proposed Judicial Review claim in respect of the decision made by the Executive Member, whilst this claim can no longer be issued given the rescinding of the decision – Should the implications of the Lunt case not be followed and the committee recommend to refuse the licensing of the E7 it is inevitable that the Council would be subject to another Judicial Review Claim.

Legal Advice following the Lunt case can be found at (appendix 9).

8 **RESOURCE IMPLICATIONS**

There are no resource implications.

9 **CONSULTATION**

The Hackney Carriage vehicle proprietors have been consulted, other licensing authorities via the EHC Net; and Norwich City Council for findings of the impact assessments.

10. **CONTACT OFFICER**

Donna Riding Principal Officer (Licensing) Extension 2505

11. **DATE PREPARED**

4th February 2010