

Body: General Licensing Committee
Date: 20th July 2009
Subject: Review Of Decision To De-limitation of hackney carriage proprietor licences, linked to a policy of Quality Control.
Report Of: Karen Plympton, Licensing Manager
Ward(s): All
Purpose: Following a decision to remove restrictions on the number of hackney carriage proprietor licences available, to review the Council's Policy in relation to Quality Control, linked to de-limitation of hackney carriage proprietor licences.
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1.0 Overview

- 1.1 The purpose of the hackney carriage and private hire licensing regime is to ensure the provision of a safe, accessible service. Public safety is of paramount importance.
- 1.2 The service provided by the hackney carriage and private hire trade plays a key role in the provision of an integrated transport system. Decisions taken by the Licensing Authority should be approached in the interests of the travelling public.
- 1.3 The Full Licensing Committee agreed to remove the limit on the number of hackney carriage proprietor licences, adopting de-limitation linked to a policy of quality control following meetings in March and April 2009.
- 1.4 The Authority is not permitted to dictate or control the number of private hire vehicle licences or operators in the Borough.

2.0 The Decision

- 2.1 On 9th March 2009, the Full Licensing Committee met to determine its future approach in relation to the provision of hackney carriage proprietor licences in the Borough.
- 2.2 The review came about following pressure from Central Government to relax the restriction on licences, the expiry of the current unmet demand survey in October 2009, a petition from the Disability Involvement Group, and a need for the Council to review its overall future approach.

2.3 In March 2009, the Full Licensing Committee agreed to remove the limit on the number of hackney carriage proprietor licences, adopting a policy of delimitation linked to a policy of Quality Control. The terms associated with the Quality Control Policy were agreed on 21 April 2009, with the decision effective from 22nd April 2009. A copy of the Quality Control Policy adopted is included at Appendix 1.

3.0 Background

3.1 At the time of writing this report, the Borough has 314 licensed private hire vehicles, and 94 hackney carriage licensed vehicles.

3.2 Hackney carriage proprietor licences were released in 1976, taking the number to 84. In 2006, following an unmet demand survey, the Committee agreed to release a further 6 licences, subject to a series of terms and conditions.

3.3 The 6 hackney carriage proprietor licences issued in 2006 making the total at that time to 90, will continue to have conditions aligned to their use, these being that vehicles are wheelchair accessible, not more than a specified age when entering the Trade, must meet European Whole Vehicle Type Approval, and associated safety standards.

3.4 A mixed fleet of licensed vehicles is being retained, ranging from saloon to multi-seater vehicles. The 84 hackney carriage licences already issued prior to 2006 without conditions aligned to use remain, and be replaced on a "like for like" principle, fulfilling the principles of a "mixed fleet" to meet the differing needs and requirements of the travelling public

3.5 At the meeting on 21st April 2009, Members also agreed that delimitation linked to a policy of quality control be reviewed after 5 new hackney carriage proprietor licences have been issued or after 3 months of the implementation date of the policy, which ever is the sooner.

3.6 Following the decision to delimit linked to a policy of quality control, and at the time of writing this Report, the Licensing Team have received 51 enquiries from "interested parties" wishing to obtain a hackney carriage proprietor licence. The majority of enquiries have been from existing hackney carriage and private hire drivers.

3.7 To date, 4 applications have been received and approved by the Licensing Team and these have been issued to those already licensed as drivers by the Authority either as a private hire driver or as a journeyman. A journeyman is an individual who pays a premium to rent the licence and vehicle from an existing hackney carriage proprietor who already holds a licence and has a vehicle. The average cost of "renting" the plate by journeyman costs approximately £100 a week.

3.8 This demonstrates that a number of existing "drivers have been prevented from obtaining a hackney carriage proprietor licence. Those who want to enter the taxi market and provide a service to the public

have been prevented from doing so"* until now because of the decision to restrict the number of hackney carriage proprietor licences.

* Button on Taxis, Licensing Law & Practice, James TH Button, 2009

3.9 Quality Control Policies, set alongside the current economic climate, "provides a natural mechanism to effectively manage the type and number of hackney carriage proprietor licences being issued and therefore licensed vehicles entering the trade. They also seek to raise driver standards."* However, ongoing assessment needs to be undertaken to establish the overall impact of the decision.

4.0 Investment And Market Forces

4.1 The Council's Quality Control Policy acts as a mechanism to manage the number of licences, requiring those wishing to be issued with a new hackney carriage proprietor licence to:

- Purchase a vehicle which is wheelchair accessible and which meets European Whole Vehicle Type Approval. Cost is in the region of £27,000 - £32000 for a London style taxi..
- Annual cost of a new hackney carriage vehicle licence is £187, alongside the cost of the hackney carriage drivers licence is £255 for three years.
- It is anticipated that the current grant from Central Government available to fund the VRQ2(BTEC) qualification in "Transporting Passengers by Taxi and Private Hire Vehicle" will be withdrawn imminently, requiring individuals to further invest somewhere in the region of £800 to attain the qualification.

4.2 The Council has no control over the commercial premium associated with hackney carriage proprietor licence "plate" in the Borough and this ranges from £15000 - £20000, plus the cost of a suitable vehicle.

4.3 Should a person wish to purchase an existing hackney carriage proprietor licence "plate" issued prior to 2006 from an existing hackney carriage proprietor, other than than the standard vehicle conditions, these do not have further terms and conditions aligned to vehicle standards and/or driver qualification.

4.4 Additionally, the level of investment required to purchase such a licence "plate" is less. Vehicles are permitted to be up to seven years of age when entering the trade, and are therefore significantly cheaper when compared to the cost of a new Wheelchair Accessible Vehicle, which ranges from £27000 - £32000.

5.0 Sussex Perspective

- 5.1 Research undertaken by the Licensing Team in July 2009, provides an overview of the Sussex wide approach in relation to hackney carriage proprietor licences and is shown in the table below.
- 5.2 Where the table refers to a Quality Control policy, this generally means that licences are only released to vehicles meeting European Whole Vehicle Type Approval, which are wheelchair accessible and/or which, when entering the trade are no older than a specified number of years in age. This ranges from 1 year old to under 4 years.

Authority	Approach
Arun	Delimited/No Quality Control Policy
Brighton & Hove City	Managed Growth of 5 per annum & Quality Control. 20 WAVs released last year following complaints re a lack of wheelchair accessible vehicles
Worthing	Delimited & Quality Control – WAVs/Age requirements
Adur	Delimited & Quality Control –WAVs
Rother	No limits ever imposed
Mid Sussex	Limit on the number of licences
Hastings	Limit on the number of licences
Eastbourne	Delimited & Quality Control – WAVs/Age requirements/Qualification
Crawley	Delimited & Quality Control – WAVs/Age requirements
Chichester	Delimited/Quality Control Policy-WAVS only
Horsham	Delimited – No quality control
Lewes	No limits ever imposed
Wealden	No limits ever imposed

- 5.3 Members will see from the table above that, including Eastbourne, 10 of the 13 Sussex Authorities have delimited the number of hackney carriage proprietor licences. It is worth noting that 3 Authorities have never imposed any limits.
- 5.4 The Licensing Team have spoken to all of the Authorities that have delimited and this does not appear to have a detrimental affect on the Borough, particularly where a quality control policy is in place. Delimitation in their view, has improved service provision for the travelling public and anecdotally, has not negatively impacted upon rank space availability.
- 5.5 Crawley and Worthing have both delimited with a quality control policy that new licences are linked to WAVs and not older than a specific number of years when entering the trade.

- 5.6 Since delimiting in Sept 2002, Crawley have released 23 licences in the past 6 years. Between April 2008 and March 2009, 2 licences were issued, but 2 licences were surrendered, representing no increase in the number of licences.

Crawley has 103 hackney carriages in total and 500 private hire vehicles. Their Quality Control Policy stipulates that vehicles cannot be more than 4 years old when entering the trade and must be wheelchair accessible.

- 5.7 In March 2007, Worthing released an additional 8 hackney carriage proprietor licences, of which only three were taken up. In March 2008, the Authority de-limited, alongside a policy of quality control. Since then, a further 2 licences have been released, taking the total number of hackney carriage licences currently in service to 84 and 209 private hire vehicles. Their Quality Control Policy stipulates that vehicles cannot be more than 3 years old when entering the trade and must be wheelchair accessible.
- 5.8 When compared with Crawley and Worthing, the Quality Control Policy adopted by Eastbourne is very robust, and is an effective means of managing the number of hackney carriage proprietor licences being applied for or granted.
- 5.9 The experiences of Worthing and Crawley provide a useful insight into the longer term impact of delimitation linked to a policy of quality control. This is that ultimately, the market has been allowed to find its own level for the number of hackney carriage proprietor licences which a Borough can sustain.
- 5.10 In Eastbourne, to date, 4 hackney carriage licences have been issued, however, we are only 3 months into the process, and research has indicated that it is taking 1-2 months for applicants to source an appropriate vehicle and be booked on the appropriate course which meet the requirements of the Quality Control Policy.
- 5.11 Evidence has been submitted by Eastbourne and Country Taxis, and Peter Smith, independent Hackney Proprietor. This is included at Appendix 2. Reference is made to several other Authorities, and any issues arising from such will be covered at the meeting, since research by the Licensing Team is ongoing.

6.0 Legal Perspective

- 6.1 The law does not offer authorities a straight choice between a restricted and unrestricted policy.
- 6.2 The rationale behind the introduction of Section 16 of the Transport Act 1985 was that local authorities would no longer be able to control the number of hackney carriage licences and points licensing authorities towards a market led and unrestricted system for the issuing of such.

- 6.3 Section 16 provides that the grant of a hackney carriage licence may be refused for limiting the number of licensed taxis but only if the Authority is satisfied that there is no significant unmet demand for the services of hackney carriages.
- 6.4 If the Council decides to revert back to a policy of restricting the number of licences, it may face a legal challenge through the Courts if it is minded to refuse licences, unless there is a sound evidence base to demonstrate that there is no significant unmet demand.
- 6.5 Case law allows restrictions to be imposed if the Local Authority is satisfied that there is no unmet demand for hackney carriage services in the area.
- 6.6 Unmet demand can only be properly measured through conducting a comprehensive survey. If a policy restricting the numbers of licences were to be adopted and no survey or an inadequate survey had been undertaken, then the decision would be unlawful and open to challenge through the courts and/or judicial review. This could have financial consequences for the Authority as well as significant risk and reputation issues.
- 6.7 The Department For Transport Circular 4/87 states:
- a) A council may adopt a policy of removing the restriction on the number of taxi licences that it issues without considering the issue of demand
 - b) It is not open for a Council which is unsure of the presence or absence of significant unmet demand to refuse to grant an application for a hackney carriage licence for the purpose of limiting the number of licences
- 6.8 Most Local Authorities do not impose quantity restrictions and in the Department of Transport's Good Practice Guide which was published in 2007 this is regarded as best practice. It suggests that any decision relating to issues of restricting the number of licences should be approached in the interests of the travelling public and it asks what benefits or disadvantages arise for them as a result of the imposition of restrictions and conversely, the removal of these restrictions.
- 6.9 In accordance with case law and good practice, decisions taken by the Committee should in the first instance take into account the interests of the travelling public, with particular regard to health and safety.
- 6.10 In addition, due weight should be given to the various groups representing disabled people in the town and disabled people, as well as the view of the businesses in the town and taxi and private hire trade. However, any decision that is taken should be evidence based.

7.0 Options Open To The Committee

- 7.1 The Council's policy of delimitation linked to quality control will have been in place for 3 months by the time of the meeting on 20 July 2009.
- 7.2 Members may take the view that it is too soon to fully or robustly assess the impact of the decision to delimit linked to quality control, and consideration needs to be given to the possibility of a challenge through the Courts.
- 7.3 The Committee has a range of options open to it:
- (1) Maintain the current position. That is de-limitation linked to a policy of quality control.
 - (2) Maintain the current position. That is de-limitation linked to a policy of quality control and review again at a future point to be determined.
 - (3) To re-impose a limit on a number of licences; or
 - (4) Consider a policy of managed growth.
- 7.4 It must be emphasised again that if the Committee is not minded to adopt options 1 or 2 all it can lawfully resolve to do is to commission a survey and then consider all the options afresh based on the outcome of a survey.
- 7.5 Members may wish to consider whether the re-imposition of restrictions and limits on the number of licences in the best interests of the travelling public, and would limits offer the best service, whilst also being mindful of the views of other "interested parties," including the trade.
- 7.6 Members may determine that a decision which has only been in place for 3 months and its impact cannot be properly assessed after such a short time and this needs to be further explored.
- 7.7 A review could seek to consider the extent to which the Council's policy of delimitation, linked to a policy of quality control, has been successful and met its objectives of meeting the needs of the travelling public.
- 7.8 By taking views from "interested parties, as well as using local and national research to provide the contextual information, it is hoped that this will provide a mechanism to inform the decision making process.
- 7.9 A Review Group could conduct interviews to give evidence and allow "interested parties" to express personal or professional experiences, alongside legislative requirements and guidance. The Review Group could include representatives from the taxi and private hire trade, the travelling public, Members and Licensing Team.

7.10 A list of those who could be consulted as part of the review process may include:

- Service users and providers
- Local Business Groups
- Council Members and Officers as appropriate
- Leisure Sector
- Disability Involvement Group
- ESCC Highways
- Sussex Police
- Other groups as appropriate

7.11 The formulation of a Review Group would help inform the Council's future approach and to enable the impact of the decision to delimit, linked to the quality control policy to be properly assessed. If there is a need to commission detailed consultation, then the Council's procurement procedures will need to be followed and incorporated into the review timetable.

8.0 Community Safety Issues

8.1 The overriding concern that as the Licensing Authority, the Council must consider is the provision of an accessible service where public safety is of paramount importance. The hackney carriage and private hire trade play a key role in the provision of an integrated transport system.

8.2 The safe transportation of the public and the provision of a service at key times facilitate dispersal and have an impact on wider community safety objectives. Any decision taken should primarily consider the needs of the travelling public.

9.0 Human Resource & Financial Implications

9.1 The cost of administering the Taxi & Private Hire Licensing function is fully recovered via the licence fee income. Should members decide that an unmet demand survey is required, at an approximate cost of £25000; this will need to be recovered via the hackney carriage trade licence fees.

10.0. Human Rights Act 1998

10.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Full Committee when taking licensing decisions. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property.

10.2 Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right.

10.3 Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:

- Has a basis in law;
- Is intended to pursue a legitimate purpose
- Is necessary and proportionate; and
- Is not discriminatory.

Background Papers

- Local Government (Miscellaneous Provisions) Act 1976
- Town Police Clauses Act 1847
- Halcrow Fox Study For Unmet Demand, 2000
- MCL Study of Demand For Hackney Carriages August 2006
- Department For Transport, Taxi and Private Hire Vehicle Licensing.
- R V Swansea City Council ex parte Jones
- Taxi s, Licensing Law and Practice, Edition 2. James Button.
- R V City of Newcastle ex parte Blake
- Department of Transport Guide Best Practice Guide – Taxi and Private Hire Licensing 2006
- Department of Transport “Taxi Licensing: Review of Local Authority Quantity Control Policy 2008
- White Paper, “A New Deal For Transport, Better For Everyone,” HMO 1996
- Department For Transport Good Practice Guide 2006
- Taxis – Licensing Law and Practice. James Button Third Edition 2009
- Kelly and Smith V Wirral Metropolitan Borough Council 2006