

REPORT TO: LICENSING COMMITTEE - 31ST MARCH, 2011
REPORT ON: POLICY ON TAXI LICENCES
REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)
REPORT NO: 187-2011

1.0 PURPOSE OF REPORT

1.1 To consider the Committee's policy on the grant of Taxi Licences in the City of Dundee.

2.0 RECOMMENDATIONS

2.1 The following options are available to the Committee if it wishes to change the policy:-

Option 1 - Re-impose a Limit with an Accompanying Change in Vehicle Specification

A survey would require to be instructed to ascertain the level of demand for taxis in the City. This would also require to contain a mechanism for regularly reviewing the level of demand pending the carrying out of any future surveys. The Committee would then set a programme for existing operators with non-wheelchair accessible vehicles to convert to wheelchair accessible vehicles (WAV's). **A transitional period would require to be fixed in this regard and also whether the list of vehicles to be approved should be limited to those with European Whole Volume Type Approval or extended to include Low Volume vehicles. This would require further consultation with interested parties.**

Option 2 - Keep the Existing Policy and Require Non-WAV Operators to Convert their Vehicles

Under this option, the Committee would not instruct a survey and would continue to grant Taxi Licences to new applicants with WAV's. However, existing non-WAV operators would require to convert to WAV's by a set date and consideration given as to which vehicles would be approved as suitable by the Committee, similar to Option 1 above. **This would also require further consultation before being implemented.**

2.2 In the event that the Committee decides to implement Option 1, it is recommended that existing saloon Taxi Licence holders be allowed to apply in corporate names for new licences for WAV's from the list ultimately approved following consultation and that such applications would be exempt from the policy to limit the number of taxis provided they are prepared to surrender their current licence.

3.0 FINANCIAL IMPLICATIONS

3.1 In terms of Paragraph 15 of Schedule I to the Civic Government (Scotland) Act 1982, the Council is legally obliged to recover the costs in administering the taxi licensing scheme through the fees received. There should, therefore, be no financial implications for the Council arising from the contents of this report. **In the event that a demand survey is to be undertaken under Paragraph 2.1 above, the cost of this (and any interim update surveys) will require to be recovered from future application and renewal fees for Taxi and Taxi Drivers Licences. It is estimated that a full demand survey will cost in the region of £25,000 and an interim survey would be around £10,000.**

4.0 BACKGROUND TO POLICY ON TAXI LICENCES

4.1 The Committee has the power to limit the number of taxis by virtue of Section 10(3) of the Civic Government (Scotland) Act 1982 which states *inter alia* that the Committee "may refuse taxi licences if, but only if, they are satisfied that there is no significant demand for the services of taxis in their area which is unmet".

- 4.2 Over the past 30 or so years since the introduction of the above Act there have been periods when the Committee have limited the numbers and there have been other periods where no limit has been set and the market left to determine the number of taxis in operation.
- 4.3 On 29th June, 2000 the Committee approved a report following a survey by Halcrow Fox Ltd and resolved that the number of taxis operating in the City be fixed at 507 and that should the number fall below this figure then the first applicants on the waiting list would be invited to apply for licences. This decision was reaffirmed in June 2001. According to Halcrow, the result of the 2000 survey (which was based on data collected in late 1999) had a "shelf life" of three years and this age of report had been successfully defended by them in the courts. The Committee, with the agreement of the taxi trade, therefore agreed to commission a new survey in 2002 and this was also carried out by Halcrow.
- 4.4 On 5th September, 2002, the Dundee Taxi Cab Co Ltd applied for 71 Taxi Licences, 9 of which were for wheelchair accessible vehicles. They were not on the waiting list and the number of licences at that time was 507. The Committee relied on the survey published in June 2000 to come to the view that there was no significant unmet demand for taxis in the City and refused all 71 applications. This decision was appealed to the Sheriff Court.
- 4.5 The Sheriff upheld the appeal and granted all 71 licences. He took the view that the 2000 survey, albeit only two years old, was historic and could not be used to come to the view that there was no significant unmet demand for taxis in September 2002. He further observed that information on unmet demand for taxis should be updated on each occasion the Committee meet to consider applications for taxi licences although he did not comment on the practicalities of this. In coming to his view the Sheriff relied on a Court of Session case (Coyle -v- Glasgow City Council). Since the Court of Session is a higher court than the Sheriff Court the Sheriff was bound to follow its decision.
- 4.6 Having considered the Sheriff's decision, the Depute Chief Executive (Support Services) decided not to appeal the decision to the Court of Session. The Dundee Taxi Association, who were a party to the appeal to the Sheriff did appeal to the Court of Session and the appeal was refused in March 2005 for essentially the same reasons given by the Sheriff as summarised above.
- 4.7 In November 2003, the Committee decided to abolish the numerical limit on Taxi Licences in Dundee. However, the Committee resolved that new licences would only be granted in respect of WAV's. Such vehicles required as a minimum to have "Low Volume Type Approval". In April 2005, the Committee further refined its policy to require new applicants to place vehicles with European Whole Volume Type Approval on service.
- 4.8 As can be expected, there was a substantial increase in the number of taxis following the abolition of the limit. From 507 in November 2003, the numbers peaked at around 678 in January 2006. The total number of taxis has reduced since then and, in February 2011, stood at 603. Since May 2005, the number of WAV's has remained in the 200's. The current total number of WAV's in February 2011 was 269 (44.6% of taxi fleet). There has been, as might be expected, a corresponding increase in the number of private hire cars (PHC's). This has gone up from 70 in May 2005 to 178 in February 2011 (includes 7 special events PHC's).
- 4.9 At a meeting of the Taxi Liaison Group on 27th May, 2010, the Dundee Taxi Association (DTA) and Unite the Union requested the Committee to consider the possible re-imposition of a limit on the number of taxis in the City. Consequently, at its meeting on 3rd June, 2010, the Committee instructed that this report be prepared.

5.0 DEPARTMENT FOR TRANSPORT CONSULTATION

- 5.1 In February 2009, the Department for Transport (DfT) issued a consultation document on improving access to taxis for disabled people. Section 32 of the Disability Discrimination Act 1995 (DDA) had made provision for the Government to introduce regulations to require taxis to be wheelchair accessible. However, this power has never been used. One of the options contained in the consultation document was the implementation of such regulations and this was the option supported by the Council in its response. The other options were the issuing of

guidance by the DfT or continuing with the status quo, ie leaving decisions on taxi policies to each individual licensing authority with no guidance or other intervention by Government.

- 5.2 Following the completion of the consultation, the Right Honourable Sadiq Khan MP, the then Minister of State for Transport, announced on 29th October, 2009 that the Department intended to implement the second of the options summarised at Paragraph 5.1 above, namely, "to issue comprehensive guidance to licensing authorities to assist them with improving the availability of taxis and private hire vehicles for disabled passengers". Part of this process would involve the DfT "undertaking demonstration schemes in licensing authority areas, to research the needs of disabled people when using taxis and private hire vehicles, how to tailor the fleet to demand and use patterns, and how driver training can assist disabled passengers."
- 5.3 As a result of this announcement, the Council made tentative enquiries at the beginning of 2010 with a view to being considered for inclusion in the demonstration schemes. The process of inviting local licensing authorities to participate in this project was supposed to have been completed in March 2010, with the demonstration schemes themselves being launched in April 2010. The Council was advised in March 2010 that the timetable had been delayed due to the imminent enactment of the Equality Act 2010 and the General Election. There have been no further announcements from the DfT since then.

6.0 LOCAL CONSULTATIONS

- 6.1 In 2008, the Licensing Committee decided to carry out a local consultation with regard to the provision of taxi and private hire car services in the City of Dundee. Although this came about following requests from sections of the local taxi trade to limit the number of taxis in the city, the consultation sought to cover other issues such as the type of vehicles which should be licensed as taxis and PHC's, whether there should be a 100% WAV policy, etc.
- 6.2 The consultation questionnaire was sent to all Taxi and PHC Licence holders and also to a range of groups and organisations representing persons with disabilities and mobility problems. Copies were also available to the general public at Council offices and on the DCC website. In total, 214 responses were received. 78.7% of respondents supported a limit on the number of taxis, whilst 21.3% were against. As to whether there should be a 100% WAV taxi fleet, 31.2% were in favour and 68.8% opposed this.
- 6.3 The Committee decided that it would defer any decision on taxi policy issues until the outcome of the national (DfT) consultation referred to above. There was broad support for this approach at the Taxi Liaison Group until the request from the trade representatives on 27th May 2010 outlined in Paragraph 4.9 above.
- 6.4 Following the decision of the Licensing Committee to call for a report into the issues connected with the possible re-introduction of a limit, a further brief consultation was undertaken with a number of disabled persons' groups and associations in the summer of 2010, seeking their views on the types of vehicles which they preferred to use when travelling by taxi. Only nine responses were received and there was no consensus of opinion derivable from such a minimal return.

7.0 ASSESSMENT OF CURRENT POLICY AND CONSEQUENCES OF CHANGING THE POLICY TO REQUIRE A 100% WAV FLEET WITH A LIMIT ON THE NUMBER OF TAXIS

- 7.1 If the current policy is changed.
- (a) The number of WAV's operated as taxis will increase;
 - (b) A mechanism will require to be developed to ensure that the demand for taxis is kept regularly under review in the interim periods between full surveys;
 - (c) Meeting the Council's statutory duties under equality legislation;

- (d) Meeting Dundee City Council's commitment contained within its Single Equality Scheme to: tackle inequalities and for all citizens to have a right to equal access to life opportunities.

These are now analysed in more detail below.

- 7.2 The figures show that just fewer than 45% of the taxi fleet in Dundee are WAV's. Section 160 of the Equality Act 2010 (EqA) replaces Section 32 of the DDA but is in largely similar terms in that it contains the power to make regulations requiring taxis to be wheelchair accessible. Given the outcome of the DfT consultation referred to at Paragraphs 5.1 to 5.3 above, there have to be questions as to whether these powers will ever be used. Accordingly, merely imposing a limit on taxi numbers based on the current vehicle specifications in Dundee will leave the composition of the taxi fleet as it is for the foreseeable future.
- 7.3 The Council is subject to the "public sector equality duty" contained in Section 49A of the DDA (to be replaced by a similar duty later this year under Section 149 of the EqA). The Council requires in the exercise of its functions to have due regard to:-
- (a) The need to eliminate unlawful discrimination;
 - (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 to take 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.
- 7.4 To re-impose a limit in these circumstances and thus effectively "locking" the present percentage of WAV's would be incompatible with the duty outlined in the preceding paragraph. Such a policy could make no provision to require any new WAV's to be placed on service whilst the number of taxis identified in any survey to meet demand is being exceeded, unless the policy contained a built-in exception for new licence applicants with WAV's. The current policy is to all intents and purposes a policy which operates in that way and is accordingly more compatible with the DDA duty than the simple imposition of a limit with no other measures. This is borne out by statistics recently produced by the National Private Hire Association (NPHA). These show that 17 local authorities in Scotland currently limit the number of taxis in their areas. In 11 out of these 17 areas, there has been either no increase or a decrease in the number of WAV's as a percentage of their respective taxi fleets since 2007. Conversely, the percentage of WAV's has increased in 12 of the 15 local authority areas where there is no limit on numbers. At present, five local authorities in Scotland have 100% WAV fleets and at least one other authority (Renfrewshire) is in a transitional phase towards achieving this. Of these six authorities, four have a limit on numbers.
- 7.5 There are a number of further reasons why having only a percentage of the fleet as WAV's is not recommended. In an earlier English case (*R. v City of Newcastle, exp. Blake* [1997] EWHC Admin 162), the judge (Jowitt J.) put it this way,

"28. The third consideration calls upon one to look at the situation through the eyes of the person who is bound to a wheelchair. It may be that there is an adequate number of wheelchair access Hackney carriages if one simply looks upon it as a statistical problem. If there are say five percent of wheelchair-bound potential passengers and already ten percent of vehicles which have wheelchair access, one might say that is an adequate provision. But what of the person who is waiting on the rank in his wheelchair for a Hackney carriage and he is fifth in the queue. The first two may be the older type of vehicle with no wheelchair access. Then along comes vehicle number three which has a wheelchair access. It may be that the people who are number three in the queue may not be willing to stand down and let the wheelchair bound person take their place. They go off in the Hackney carriage with the

wheelchair access and then it may be that another such vehicle does not come to the stand for a long time.

29. *The disabled person has to keep standing back again and again in the queue. That is not an unreal situation. The mere fact that you have a set percentage of vehicles, if that is the way it is to be done, which have wheelchair access, does not always mean there is roughly a sufficient number of such vehicles waiting or arriving roughly at the right time at this, that or the other rank.*

30. *In those circumstances, I can see very cogent arguments in favour of saying new licences should only be issued in respect of vehicles with wheelchair access so as to make sure the service is adequate for all. I bear in mind what is said in paragraphs 5.2 and 5.4 that there should not be invidious discrimination between one operator and another and that all new vehicles which are newly licenced should have wheelchair access."*

- 7.6 The trade representatives have brought to the Council's attention a report produced in 2007 by the European Conference of Ministers of Transport (ECMT) which appears to endorse the principle of a mixed fleet of WAV's and saloon cars. However, even this report acknowledges that there are good reasons for having a 100% WAV policy where there is a high level of street work, as the following extract makes clear:-

"For understandable reasons, many wheelchair users and other disabled people would like to see entire fleets of fully accessible vehicles. This does not apply, however, to all disabled people. In the research mounted into the proposed UK regulations for accessible taxis it was found that some disabled people preferred using conventional saloon car taxis because they were easier to get into and out of. This applied particularly to people with arthritis and similar conditions.

One factor which has a bearing on this issue is the extent to which taxis in a given area are hailed on-street or taken at taxi ranks rather than being booked by telephone. In the report "Taxi Regulation in Europe" commissioned by the IRU very wide variations were found between the cities included in the study. At one extreme approximately 90% of taxi use was street work (hail and rank) in Brussels and 70% in Paris and Amsterdam. At the other extreme in Oslo, Geneva and Stockholm the proportion was around 30%

As a rule street work is not very important in rural areas; most taxis are booked by telephone.

One of the reasons for advocating that the whole taxi fleet should be accessible is that, where the level of street work is high, disabled people (particularly wheelchair users) are at a disadvantage if only a proportion of the taxis are accessible. They will have to wait longer to find a taxi than a non-disabled person or to telephone for one. This argument, however, carries less weight where street work is of less importance, though of course the argument remains that there must be some accessible taxis within the fleet. The proportion of the fleet in areas such as these that should be accessible is a matter of debate. Among other things the proportion may depend to some extent on the structure of the local taxi trade."

- 7.7 The most obvious way of reconciling the introduction of a limit with the Council's duty under the DDA would, of course, be to accompany this with a programme to require existing non-WAV operators to convert to WAV's. In addition, the operators of accessible vehicles are aggrieved at having to place more expensive vehicles on service, whilst those with saloon cars are not being required to convert to WAV's. In the Court of Session appeal James Wilson -v- Aberdeen City Council [2008] CSIH 8, the Court suggested that a way to eliminate any unfairness in this regard would be to prescribe a date by which saloon car operators would have to convert to WAV's. If the Committee are minded to go down the route of introducing a policy of 100% WAV's (with or without a limit on the number of taxis), there would require to be further detailed consultation with the taxi trade, disabled representatives and other interested parties as to the timetable for any such conversion and the types of vehicle to be approved eg should Low Volume WAV's be re-introduced on the list?

- 7.8 It is also recognised that not all disabled persons use a wheelchair and that some groups have a preference for saloon cars as opposed to some of the WAV's on the Council's current approved list of vehicles. However, the range of accessible vehicles which are available now is wider than it was and some share the characteristics of saloon vehicles in terms of being lower at the front. The range of vehicles would be a matter for further consultation in the event that either of the recommendations at Paragraph 2.1 above is adopted. Taxi drivers and operators of WAV's must have appropriate training in safely operating accessible features within WAV's and discussions should be held with the suppliers of WAV's over their role in delivering such training. In addition, taxi drivers having a duty of care for their passengers and should have an awareness of disability good practice. Discussions should be held between taxi operators and disability organisations on how this can be taken forward and funded.
- 7.9 If a limit is to be imposed once again on the number of taxis in Dundee, then there will require to be a mechanism in place for keeping the information on the level of demand up-to-date to comply with the views expressed by the courts over the years. Reference is made to Paragraphs 4.4 to 4.6 above in this regard. It appears to be the general practice in areas where there is a numerical limit to carry out a "full survey" every 3 years, with "mini-surveys" at periodical intervals in the intervening period. The main unknown factor is the attitude of the courts to the robustness of those interim surveys. There have been no reported court judgements since the cases referred to. The Courts have at no time given any detailed guidance as to what will be required to satisfy the test in Section 10(3) of the 1982 Act. The nearest that the Courts have come to laying down anything specific was in the Coyle case where it was suggested that all that was required was that the matter should be kept under review by an official who has the information to judge whether demand has increased since the matter was last considered. There is therefore no guarantee of knowing how the courts will react in relation to these interim assessments of demand until a licensing authority's decision is actually challenged. Therefore, in deciding to instruct a survey and impose a limit on the number of taxis, there is a risk that such a policy would not survive its first legal challenge, meaning that the time and effort (not to mention the considerable costs of surveys) would be wasted. This was one of the deciding factors in the Committee's decision to abolish the quantity limit in November 2003 and to control the size of the taxi fleet by quality criteria for vehicles instead.
- 7.10 A limit with a mixed fleet would always be vulnerable to a challenge from any new applicants willing to place a WAV on service. The judgement of the Sheriff in the Dundee Taxi Cab Co. Ltd. case made it clear that there would need to be good reasons given if any such applications are refused. This is because such applicants would be offering a potential enhancement to the travelling public by being prepared to put a WAV on service. Conversely, if the fleet is already (or working towards) 100% WAV, these applicants would not be offering something different to that already being provided and the limit would be less vulnerable to challenge in these circumstances.
- 7.11 One further issue which the Committee has been asked to consider is the conditions under which it would allow Taxi Licences to be held in corporate, i.e. company/partnership, names. Since November 2003, when the Committee discontinued the previous limit on taxi numbers, a large proportion of the new Taxi Licences issued have been in corporate names. With a handful of exceptions, the non-WAV Taxi Licences are in individual names. The trade has requested that these non-WAV licences also be allowed to be held in corporate names. Since the company or partnerships would be a separate legal person from the individual licence holders, and the fact that the 1982 Act does not allow the transfer of a Taxi Licence, this could only be achieved by means of a new application. If the Committee decided to adopt a policy requiring all taxis in the city to be WAV's (or even continued with the current policy which only requires new applicants to place WAV's on service), then any such applicants would require to substitute a WAV for existing saloon cars. If the Committee was also to adopt a limit, there would need to be built into the policy an exception to allow new applications in corporate names, accompanied by the surrender of the current licence held by the individual. To allow any existing non-WAV operators to obtain licences for saloon cars in corporate names would not be compatible with the Council's equality duties since the likelihood is that such licences would never be surrendered or expire given that new company owners/directors/partners could take over the running of the vehicles. This would be all the more so if a limit is introduced based upon the current composition of the fleet. There would be little or no natural wastage of non-WAV's and therefore no corresponding increase in WAV's as a percentage of the taxi fleet. Conversely, if the whole fleet is to be made up of WAV's, the trade's request can

be accommodated as outlined earlier in this paragraph upon conversion from a saloon car to a WAV.

- 7.12 One procedural aspect of the potential re-imposition of a numerical limit which will require to be taken into account is the six month period within which applications for licences must be determined by the Committee under Section 3 of the 1982 Act. It is likely that applications for new Taxi Licences would be received before any final survey report is available. In that event, the Committee could not competently refuse such applications on the basis of significant unmet demand. The trade have requested the Committee to impose a moratorium on issuing any new licences until a survey report is available. The Committee cannot simply refuse an application on this ground, which has no statutory basis. The only avenue open to the Committee (other than to grant the licences) would be to hold back applications in the hope that the survey report is available within the six month period referred to above. The consequences of failing to determine an application within the six month period are that the licence is deemed to be granted unconditionally for one year. The trade argue by reference to the Edinburgh Sheriff Court decision in City of Edinburgh Council -v- 3 Maxblack LLP 2005 S.L.T. (Sh. Ct.) 86 that an extension of the six month period can be obtained in these circumstances, i.e. when a survey is awaited. However, this has been superseded by a later decision of the Court of Session in City of Edinburgh Council -v- Salteri 2007 S.C 463, where it was said that awaiting a survey was a "self-imposed burden" which was not a good reason for extending the six month period. This decision is binding upon every Sheriff in Scotland meaning that any applications which this Council might make in similar circumstances would almost certainly be refused. The trade have also referred to a recent decision by Cardiff City Council to impose a temporary moratorium on issuing new licences pending receipt of the results of a demand survey. This, however, fails to take into account the fact that the "six month rule" does not apply in Wales and also that the survey in question had been instructed some time previously and the final report was imminent (it was actually received around two weeks into the moratorium). Accordingly, unless a survey is available within the six month period, it will not be practicable either to hold back applications for new licences or apply for any extension of this period as outlined above.

8.0 POLICY IMPLICATIONS

- 8.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. An Equality Impact Assessment has been carried out and will be made available on the Council website <http://www.dundee.gov.uk/equanddiv/equimpact/>

9.0 CONSULTATIONS

- 9.1 The Chief Executive, Director of Finance and the Equality and Diversity Co-ordinator have been consulted in the preparation of this Report.

10.0 BACKGROUND PAPERS

- 10.1 (i) Equality Impact Assessment
(ii) Report by the European Conference of Ministers of Transport (ECMT)
(iii) List of Taxi/WAV Fleets in Scotland, National Private Hire Association

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