

ABERDEEN CITY COUNCIL

COMMITTEE	LICENSING
DATE	6 APRIL 2016
DIRECTOR	RICHARD ELLIS (INTERIM)
TITLE OF REPORT	REVIEW OF ACCESSIBLE VEHICLE POLICY
REPORT NUMBER	CG/16/053
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

The purpose of the report is to outline the implications for Aberdeen City Council if the Committee sets aside its policy requiring all taxis to be accessible vehicles by 6 June 2017

2. RECOMMENDATION(S)

It is recommended that the Committee:

- i. agrees to continue with the implementation of the Committee's policy requiring that all taxi vehicles be accessible by 6 June 2017; and
- ii. instructs the Head of Legal and Democratic Services to write to all holders of taxi licences informing them of the decision and the implications of same.

3. FINANCIAL IMPLICATIONS

There are no financial implications at this stage.

4. OTHER IMPLICATIONS

If the Committee decides to take action in respect of the policy a full consultation shall be required in early course. This may have implications on resources and staffing within the licensing section.

5. BACKGROUND/MAIN ISSUES

5.1 **Background**

The Committee introduced a policy in 1994 whereby new taxis were required to be wheelchair accessible vehicles (now referred to as “accessible vehicles” – developments over the years now mean the vehicles provide facilities for a diverse number of disabled people). No end date was fixed for its implementation for all taxis. Taxi licences issued before 1994 were permitted to continue operating with saloon cars for a transitional period. The policy was brought in at the same time as a limit on the number of taxi licences in the city. Originally it was intended that there would be a gradual move to a 100% accessible vehicle taxi fleet and no fixed date was set for implementation.

In 2006 the Committee removed the limit on taxi licences. All new applicants for a taxi licence were still required to provide an accessible vehicle. The aim was to gradually increase the number of accessible vehicles to a 100% accessible vehicle fleet.

In 2007 an appeal challenging the validity of the 1994 policy was refused by the Court of Session in the case of *Wilson –v- Aberdeen City Council (2008 S.C. 231)*. The court held that it could not be other than wholly sympathetic to a policy which in the end envisaged that the whole taxi fleet in Aberdeen would be accessible (as had already been achieved by other local authorities in Scotland).

The Committee uses the current specification of accessible vehicle available from and encouraged by the Department for Transport. The specification includes accessibility requirements for both wheelchair passengers and those with restricted mobility. This permits a range of accessible vehicles to be used in the taxi fleet, which offers a broad choice of vehicles to suit both passengers and drivers who have a disability. New vehicles can quickly be added to the approved list provided they meet the specification.

There are already 20 or more types of accessible vehicles in service, which are based on various types of family vehicle. This list is open ended as when new accessible vehicles are produced they can be added to the list. Newer vehicles have improved adaptations to benefit passengers with a range of disabilities. In this manner the policy can keep pace with current developments in accessibility for taxis.

5.2 **Taxi Demand Survey 2011**

During 2011 taxi trade representatives on the Taxi Consultation Group submitted requests that a limit again be imposed on the number of taxi licences in the city. A Taxi Demand Survey was therefore commissioned which concluded that there was no significant unmet demand for taxi services in Aberdeen and recommended imposition of a limit.

A report by licensing officers to the Committee at its meeting on 4 April 2012 highlighted the results of the survey report and pointed out that if a limit were to be introduced, this would impact the accessible vehicle policy by reducing the introduction of new taxi licences, and thereby new accessible vehicles into the fleet. It was noted that the introduction of accessible vehicles to the taxi fleet was already slow, due in part to the continued substitution of saloon vehicles by those licence holder who had held licences prior to 1994.

Officers therefore recommended a review of the accessible vehicle policy to facilitate a 100% accessible fleet in conjunction with the introduction of a limit.

At its meeting on 4 April 2012 the Committee agreed to a limit being imposed subject to a review of the accessible vehicle policy and instructed that consultation be undertaken with the Taxi Consultation Group, the Disability Advisory Group and the Older Peoples Advisory Group in this regard.

5.2.1 Consultation Responses

Following the aforementioned consultation a report was put before Committee at its meeting on 6 June 2012. The report summarised the responses from the consultees and can be found at <http://committees.aberdeency.gov.uk/documents/g2303/Public%20reports%20pack%2006th-Jun-2012%2014.00%20Licensing%20Committee.pdf?T=10>.

In summary, the consultees were in favour of an accessible taxi fleet.

There were concerns raised at the time from some respondents who wished to see sufficient saloon taxis or suitable taxis for persons with restricted mobility to be made available in the taxi fleet on a continuing basis. However the majority of those consultees advised that they almost exclusively pre-booked their vehicles mainly due to convenience. The Committee therefore noted that the request for saloon vehicles to remain within the fleet could be accommodated by private hire cars without any significant restrictions on service to that particular group of passengers.

The Committee was also advised that elderly persons and mobility restricted persons who were capable enough to walk to a taxi rank would also be capable to gain entry and exit from accessible taxis which all have adaptations for the mobility restricted. It was, and still is, a condition of licence that a driver provides assistance to these passenger groups and in particular assisting said passengers into the priority seat by the driver.

5.2.2 Equalities and Human Rights Assessment

An Equalities and Human Rights Assessment was completed prior to the decision by the Committee on 6 June 2012. It is attached as appendix 1 to this report. The Committee was cognisant of the fact that its duties under the equalities legislation were a primary consideration in the decision to implement a 100% accessible vehicle policy.

5.2.3 Committee Decision

Having regard to the consultation responses and following recommendations from officers, the Committee concluded that the 100% accessible vehicle policy was the best option to comply with the public sector equality duty, having its foundation in the premise that disabled persons should have equal access to taxi services. The goal of the policy was to ensure that there was proper provision of taxis and private hire cars to enable persons with a range of disabilities to access these services, whether on the street, at a taxi rank or by pre-booking.

The Committee recognised that it was appropriate to fix a date by which all taxis should be accessible. It was considered fair and reasonable to set an end date 5 years ahead (at the time five years was considered to be the average life of a taxi), partly to allow licence holders to plan ahead and provide an appropriate accessible vehicle. The Committee therefore agreed a deadline of 6 June 2017 by which time all taxis will have to be accessible.

5.3 Conclusions and Recommendations

In considering whether or not to undertake consultation on amending the policy of 6 June 2012, the Committee should give consideration to the following issues:-

5.3.1 Consultation

A full consultation will require to be carried out prior to any decision being taken by the Committee on amending the policy. There was comment at the Committee's meeting on 8 March 2016 that any amendment should aim to be completed by 1st June 2016 given the implications for drivers who are leasing vehicles annually. That leaves a very short timescale and would raise questions as to whether any meaningful consultation can in fact be undertaken and responses analysed in order to enable the introduction of an amended policy by 1st June 2016.

As noted in this report, the Committee carried out a full consultation prior to agreeing the policy in 2012 and the issues presently before the Committee were before it at the time the decision was made. The Committee had due regard to the views of various passenger groups, including those who expressed a preference for saloon vehicles. It was recognised that not all disabled persons use a wheelchair and that some groups had a preference for saloon cars. However the range of accessible vehicles was considered wide enough to meet a range of

need. Indeed, the range has widened considerably since the Committee's decision in 2012. Drivers were bound by the conditions of their licence to assist such passengers in entering and exiting the vehicle, thereby minimising any difficulties for the passenger. Further it was also noted that saloon vehicles would be available for pre-booking as private hire cars.

The Committee was aware that it had to balance the needs of a number of different groups in agreeing the policy. Having a 100% accessible taxi fleet, complemented by a private hire fleet, was considered the best way of ensuring that the needs of passengers were met.

It is difficult to see therefore what new information is now before the Committee that was not before it when the decision was taken on 6 June 2012. It is noted that there has been mention of the downturn in the city economy and taxi licence holders being unable to afford an accessible vehicle. However officers understand that the cost of second hand accessible vehicles is now on a par with saloon vehicles. The original decision to move to an accessible fleet was taken by the Committee in 1994; in 2012 an implementation date of 6 June 2017 was set for all taxis to be accessible. The Committee has therefore afforded licence holders a significant transitional period. Further, whilst the Committee can have regard to the views of licence holders, in seeking to promote the public sector equality duty it must give precedence to protected groups and the public interest as a whole.

5.3.2 Issues posed by a mixed fleet

If the Committee agrees to set aside the policy of 6 June 2012, the Council will be left with a mixed taxi fleet with no workable alternative that will comply with the public sector equality duty. There have been suggestions from some members of the trade that a similar model to that currently operated in Dundee could be implemented, namely having a fixed quota of accessible vehicles in the fleet.

A fixed quota would however raise the question of how vehicle types will be allocated. The concern is that such an arrangement would create perceived unfairness and resentment between those drivers who have to purchase an accessible vehicle and those who can operate a saloon. This has always been a contentious issue and was raised with the Government after the introduction of the Disability Discrimination Act 1995 (since superseded by the Equality Act 2010). A two tier system would be created which is contrary to the intention of the taxi licensing legislation.

In the case of *R v. Newcastle ex parte Blake* the High Court of Justice looked at the issue of a mixed fleet and Justice Jowitt made some comments on the operation of such a policy:-

“The City received conflicting representations on whether or not there were sufficient hackney carriages provided with wheelchair access. Mr

Rumbelow accepts that it was appropriate, by way of a decision, to provide that some of the new licences issued should be to vehicles which had to have wheelchair access but, he argues, that should not be a requirement in respect of all of them. That submission gives rise to three considerations. First, how does the local authority decide what ratio there should be between those new vehicles which do have wheelchair access and those which are not required to have wheelchair access? It may be that, if it were the only consideration, it would be an issue to be resolved without over much difficulty.

The second consideration concerns the invidious decision which the Council would have to make; let us suppose a number of applications were made for Hackney Carriage licences, how is the decision to be made that these vehicles, to which these licences will be given, must have wheelchair access, but these need not? How is the City Council to distinguish between one operator applying for licences and another making, he would hope, a similar application, because of course the substance of this part of challenge is acknowledged: it costs more to provide a Hackney Carriage which has a wheelchair access than one which does not and implicit in that is the further proposition that it is less profitable, if one has to provide a vehicle with a wheelchair access, than if one does not have to.

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 well be that the people who are number 3 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 that stand for a long time.

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.

In those circumstances, I can see very cogent arguments in favour of saying new licences should only be issued in respect of vehicles will 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.”

It is therefore difficult to envisage how a mixed fleet of accessible and saloon vehicles could operate in practice without some form of discrimination against licence holders and consequential impact on non-ambulant passengers. It should be noted that this issue was canvassed with the trade prior to the introduction of the policy in 1994 and no workable solution was presented.

5.3.3 Transitional period

As previously stated in this report, the Committee first confirmed its intention to move to a 100% accessible fleet in 1994 which has allowed a transition period of approximately 23 years to a 100% accessible taxi fleet. The policy was fully supported by the decision of the Court of Session in *Wilson v Aberdeen City Council* and the Committee's decision on 6 June 2012 to impose a deadline for all vehicles to be accessible follows comment from the court in that case.

The Committee agreed that a five year period would be reasonable, thereby setting a deadline of 6 June 2017. Five years was recommended as it was considered to represent the average life cycle of a taxi. It was also considered sufficient time for licence holders to arrange for the purchase of an accessible vehicle. All taxi licence holders were written to and advised of the timescales and it has been widely discussed at meetings of the Taxi Consultation Group in recent years.

There will therefore be current taxi licence holders who have incurred the expense of leasing or purchasing an accessible vehicle, having had regard in good faith to the Committee's policy. If the Committee decides to review the policy with just over a year until implementation, it may face challenge from members of the trade who have purchased vehicles in anticipation of the deadline of 6 June 2017 as well as claims for compensation.

5.3.4 Public Sector Equality Duty

The Committee's main statutory consideration in relation to its accessible vehicle policy is that it must have due regard to the public sector equality duty under Section 149 of the Equality Act 2010. Members are referred to the relevant sections of the Equality Act 2010 in appendix 1, which include Sections 6 (Disability), 149 (Public Sector Equality Duty) and 158 (Positive Action: General).

In the circumstances, the relevant protected characteristics of disability and age require to be taken into account. A disability is a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

Disability includes age related medical conditions, such as restricted mobility. The current accessible vehicle specification opted by the Committee is designed to meet, insofar as possible, the needs of both wheelchair and restricted mobility passengers as well as ambulant passengers. It is the best available taxi specification to meet broad ranging disabled passenger requirements, particular when complemented by the range of saloon cars in the private hire fleet.

The public sector equality duty requires the Committee to have due regard to the need to remove or minimise disadvantage suffered by people with relevant characteristics, and take steps to meet those needs that are different to those of people who do not share these characteristics (i.e. disability). The Committee's adoption of the wheelchair and ambulant accessibility requirements in its taxi vehicle specification assists in meeting the duty.

It was noted when the decision was taken on the policy that there were some groups who expressed a preference for saloon cars and that this will always remain the case. However, the Committee's duty is to have due regard to the needs of relevant groups, rather than to fulfil those needs.

In the 2011 case of R (007 Stratford Taxis Ltd) v Stratford-On-Avon District Council the Court of Appeal rejected a ground of appeal which sought to challenge a 100% accessible vehicle policy on the basis that there were disabled persons who could not easily access accessible vehicles. It was sufficient that the authority had due regard to the concerns of relevant groups when agreeing the policy. The courts have taken a general view that the implementation of a 100% accessible vehicle policy is a proportionate and reasonable measure and compliant with a licensing authority's duties under the Equality Act 2010. Accordingly if the Committee were to amend its policy it may face challenge by disability groups and in the face of the view from the courts to date, such a challenge may be difficult to resist.

The Committee's current policy is therefore considered the best option to comply with the public sector equality duty.

5.3.5 Conclusions

The Committee's current policy remains the best option to assist attempts to improve access to taxis for wheelchair passengers and passengers with restricted mobility. Such passengers are persons with the protected characteristic of disability in terms of the Equality Act 2010.

Prior to agreeing the policy, the Committee was aware that some passengers prefer saloon cars. It is therefore important to note that the policy will only apply to taxi vehicles. Private hire cars are still permitted to be saloons. These are available for pre-booking and will remain so after 6 June 2017. The goal of the Licensing Committee's policy is to ensure that there is proper provision of taxis and private hire cars to

enable persons with a range of disabilities to access these services, whether on the street, at a taxi rank or by pre-booking.

There are currently 1022 taxis in Aberdeen and 54% of the fleet is accessible. There is an open ended list of accessible vehicles, with various configurations, layouts and adaptations, which should be of assistance to passengers with different disabilities and to taxi licence holders looking for a suitable vehicle to comply with the accessible vehicle specification.

In addition there are presently 260 private hire cars. There is no accessible vehicle specification for the private hire fleet. The taxi trade has advised that a great number of taxi licence holders will wish to continue using a saloon vehicle after 6 June 2017; therefore they will change to private hire. Accordingly, it is anticipated that there will be an increase in the number of private hire cars, which shall remain as saloons. The Committee was aware of this fact when it took its decision. It was aware that persons who prefer a saloon vehicle will still be able to pre-book the same choice after 6 June 2017.

The current policy is compliant with the equalities legislation, promoting equality of access to taxi and private hire car services for persons with and without protected characteristics. The Committee requires to strike a fine balance in dealing with such matters. The policy is based on the premise that disabled persons should have equal access to taxi services compared with other passenger groups. It aims to minimise disadvantage in accessing taxi services for wheelchair and ambulatory passengers, who themselves have varied needs and preferences in terms of vehicles, by moving to an accessible taxi fleet within a defined timescale, whilst minimising disruption to the existing taxi and private hire fleet.

Officers therefore recommend that the Committee continues with the implantation of its policy and retains the date of 6 June 2017 by which time all taxi vehicles must be accessible whilst noting that saloon vehicles will still be available for pre-booking as private hire cars. If the Committee agrees the recommendation, officers will write to all taxi licence holders advising them of same.

6. IMPACT

Corporate - The Council's Equality Outcomes would be negatively impacted by any decision to remove the accessible vehicle policy. The Council has committed to improved customer service provision which advances equality and making Aberdeen an accessible city. The equality outcomes are supported by the current policy.

Public – This report will be of interest to members of the public who use taxis and taxi licence holders.

7. MANAGEMENT OF RISK

The Committee first indicated its intention to move to a 100% accessible vehicle fleet in 1994. From that date onwards, any applicant for a taxi licence must present an accessible vehicle.

If the Committee amends its policy of 6 June 2012 it may face challenge from licence holders who have taken steps in anticipation of the implementation date of 6 June 2017 to purchase or lease an accessible vehicle which could include claims for compensation. It may also face challenge from disability groups for failing to comply with its duties under the equalities legislation if the decision is taken to move to a mixed fleet of saloon and accessible vehicles. Having considered the view from the courts in similar cases, the prospects of the Council successfully resisting any challenge from disability groups could be said to be low.

The Committee was criticised in the case of *Wilson v ACC* for the length of time it was taking to fully implement the 1994 policy and move to a fully accessible fleet. If the Committee decides to now deviate from the deadline of 6 June 2017, it may face further criticism from the court in the event of a challenge.

8. BACKGROUND PAPERS

Report No. CG/12/045 – Review of Policy on Taxi Licences
Wilson v Aberdeen City Council
R (007 Stratford Taxis Ltd) v Stratford–On–Avon District Council
R v. Newcastle ex parte Blake

9. REPORT AUTHOR DETAILS

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