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| COMMITTEE | Licensing Committee |
| DATE | 13 June 2017 |
| REPORT TITLE | Accessible Vehicle Policy Update |
| REPORT NUMBER | CG/17/071 |
| DIRECTOR/HEAD OF SERVICE | Fraser Bell |
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1. PURPOSE OF REPORT:-

- 1.1 The purpose of the report is to update the Committee with details of the responses received from the UK Government and Dundee City Council in connection with the Accessible Vehicle Policy.

2. RECOMMENDATION(S)

- 2.1 It is recommended that the Committee notes the terms of the responses received from the UK Government and Dundee City Council.

3. BACKGROUND/MAIN ISSUES

Background

- 3.1 The Committee introduced a policy in 1994 whereby new taxis were required to be accessible vehicles. At that time it was intended that there would be a gradual move to a 100% accessible vehicle taxi fleet and accordingly no backstop date was fixed for implementation. Licences issued prior to 1994 were entitled to be renewed on non-accessible vehicles for the time being.
- 3.2 In 2006 the Committee removed the limit on taxi licences, although all new applications still required to be accessible vehicles.
- 3.3 The Committee's Policy was challenged in the case of Wilson v Aberdeen City Council in 2007 and the Court of Session ruled that both the Committee's policy and also the "two tier" system of licences that resulted (pre and post 1994) were perfectly valid.
- 3.4 A limit on the number of taxi licences was reimposed in 2012 and the Committee instructed a consultation exercise to review the accessible vehicle policy. The majority of consultees were in favour of an accessible vehicle taxi fleet and at the meeting on 6 June 2012 the Committee fixed a date of 6 June 2017 by which time all taxis would require to be accessible vehicles. The

Committee recognised this as the most efficient way of meeting the Public Sector Equality Duty imposed by the Equality Act 2010.

- 3.5 The Committee further considered the policy at the meeting of 6 April 2016 and upheld the previous decision, although the matter was referred to Full Council for consideration. At the meeting of 11 May 2016 Full Council upheld the decision of the Committee but amended the backstop date to 6 June 2018 and instructed officers to seek clarity on any proposed implementation date for the remaining provisions of part 12 of the Equality Act 2010 and also to write to the Chief Executive of Dundee City Council seeking clarity in and around their mixed fleet policy and report back to the Licensing Committee with their response.

UK Government Response

- 3.6 The response from the UK Government indicated that s165 and 167 of the Equality Act 2010 would be commenced imminently. These sections relate to drivers' duties to assist disabled persons and the option to local authorities to maintain a list of accessible vehicles and are now in force.
- 3.7 The response also indicated that the government did not intend to commence the remaining sections regarding the setting of quotas for accessible vehicles, highlighting that local authorities already had wide ranging powers to require vehicles to be used as taxis or private hire cars to meet certain requirements and that those powers could be used to ensure that taxi and private hire fleets meet the local requirements.
- 3.8 In summary therefore the government are not implementing any form of mandatory rules on the number of accessible vehicles within a fleet. It would therefore be up to an individual authority to defend the makeup of the local fleet in the event of any legal challenge.

Dundee City Council

- 3.9 Dundee City Council indicated that they had performed a similar consultation exercise to that carried out on the instructions of the Committee as detailed above. The results in Dundee indicated a preference for a mixed taxi fleet and the Licensing Committee in Dundee ultimately approved a breakdown of 60% accessible vehicles and 40% saloon cars. The figures given in the response indicated that the current split in the fleet was 56% accessible vehicles and 44% saloon cars. The view taken by Dundee City Council was that it would not be fair or practicable to suddenly require saloon car operators to convert to accessible vehicles in order to bring the figures in line with policy. This is obviously different to our own position as pre-1994 licence holders have been given considerable notice of the date of full implementation of the policy and this was done on the grounds of fairness.
- 3.10 During the consultation exercise the opinion of Senior Counsel had been sought. Counsel advised that there was no magic solution in order to ensure compliance with the Public Sector Equality Duty. This meant that fleets did not necessarily have to be 100% accessible but equally there was no reliable formula for establishing a "correct" split between accessible vehicles and saloon cars.

- 3.11 Dundee City Council also indicated that since September 2016 all new applications for taxi licences would only be granted to electric vehicles from an approved list.
- 3.12 Whilst the response from Dundee City Council provides us with some background in how they arrived at their figures it does not provide much assistance by way of comparison with our situation. It is worth noting that the response to our consultation was largely in favour of an accessible vehicle fleet whereas the opposite was true in Dundee. It is also pertinent that Counsel has confirmed there is no reliable method for calculating an acceptable split of resources in such circumstances.

Conclusion

- 3.13 Taking all factors into consideration it is therefore recommended that the Committee continue with the proposed implementation date of 6 June 2018 in respect of a 100% accessible vehicle fleet.
- 3.14 Whilst the government have confirmed there will be no mandatory quotas for accessible vehicles there is equally no suggestion that the policy is unlawful. Indeed it has been the subject of legal challenge and 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”.
- 3.15 Dundee have obviously pursued a course of action felt appropriate for the local circumstances but it should again be reiterated that there is no recognised formula for determining an appropriate split between accessible vehicles and saloon cars. It is as yet unclear as to how any decision on such a split would be viewed by the courts, although the following paragraph from the English case of R v Newcastle ex parte Blake suggests that it is possible that it could be open to criticism:
- 3.16 *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.*

- 3.17 In addition, one of the principal arguments against a 100% accessible fleet is that some types of accessible vehicle can be difficult or inconvenient for some elderly or disabled non-wheelchair bound patrons to enter. The distinction to be made here however is that such difficulties can be mitigated through driver assistance or other measures whereas a wheelchair bound passenger cannot access a saloon vehicle whilst remaining in the wheelchair regardless of any mitigation. The matter of improvements to driver training is currently being investigated as a separate issue.
- 3.18 It is also worth noting that the policy relates only to the taxi fleet and not to the private hire fleet. Passengers looking to pre-book a vehicle for a particular journey will therefore still have a choice as to the type of vehicle that can be requested.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the recommendations of this report.

5. LEGAL IMPLICATIONS

- 5.1 There are no direct legal implications arising from the recommendations of this report. Any amendments to the policy may result in legal challenge on the grounds that the authority is not meeting its obligations under the Equality Act 2010.

6. MANAGEMENT OF RISK

- 6.1 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.
- 6.2 If the Committee amends its policy it may face challenge from licence holders who have taken steps in anticipation of the implementation date of 6 June 2018 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.
- 6.3 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 2018, it may face further criticism from the court in the event of a challenge.

7. IMPACT SECTION

Economy

- 7.1 There is no direct economic impact arising from the recommendations.

People

- 7.2 There is no direct impact on any of the protected characteristics arising from the recommendations.

Place

- 7.3 There is no direct impact arising from the recommendations.

Technology

- 7.4 There is no direct impact arising from the recommendations.

8. BACKGROUND PAPERS

- 8.1 Report No. CG/12/045 – Review of Policy on Taxi Licences
Report No. CG/16/053 – Review of Accessible Vehicle Policy
Wilson v Aberdeen City Council
R v. Newcastle ex parte Blake

9. APPENDICES (if applicable)

N/A

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