

COMMITTEE	Licensing Committee
DATE	12 September 2017
REPORT TITLE	Accessible Vehicle Policy Update
REPORT NUMBER	CG/17/096
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1. PURPOSE OF REPORT:-

- 1.1 The purpose of the report is to update the Committee with details of the process and potential consequences of revisiting the Accessible Vehicle Policy including the legal and financial implications.

2. RECOMMENDATION(S)

- 2.1 It is recommended that the Committee:
- (i) notes the process and potential consequences of revisiting the policy; and
 - (ii) continues with the scheduled implementation of the current policy.

3. BACKGROUND/MAIN ISSUES

Background

- 3.1 The Committee introduced a policy in 1994 whereby new taxis were required to be accessible vehicles. An exemption was allowed for existing licence holders at that time which effectively meant that they could retain a non-accessible vehicle and even licence a further non-accessible vehicle on the renewal of the licence or replacement of the vehicle. At that time it was intended that there would be a gradual move to a 100% accessible vehicle taxi fleet but no backstop date was fixed for implementation.
- 3.2 In 2006 the Committee removed the limit on the number taxi licences, although all new applications still required to be for 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. A similar policy was upheld in *Sneddon v Renfrewshire Council* in 2009.

- 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 effective way of meeting the Public Sector Equality Duty imposed by the Equality Act 2010.
- 3.5 The Committee previously considered the implications of setting aside the policy at the meeting of 6 April 2016 and decided to retain the policy, 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.
- 3.6 The matter was placed before the Committee again on 13 June 2017 following updated information from the Scottish Government and Dundee City Council and the Committee requested a further report on the process and potential implications for revisiting the policy.

Process

- 3.7 A full consultation would require to be carried out prior to any decision being taken by the Committee on amending the policy; such consultees will include all taxi licence holders, the Taxi Consultation Group, the Older People’s Advisory Group, the Disability Advisory Group, Police Scotland, all Transport Consultants, Transportation Strategy & Programmes officers, Community Safety officers, Unite Aberdeen and any other relevant charities and organisations. This will have financial implications in respect of officers’ time, the production of consultation materials, potential meetings or dialogue with consultees and any external fees from partner agencies instructed within the process. A period of time would also have to be allowed for the consultation process to be completed, the results to be analysed and reported back to Committee, thereby prolonging the degree of uncertainty currently surrounding the issue.

Potential Implications

- 3.8 Public Sector Equality Duty

In terms of the Equality Act 2010 the Authority is under an obligation to abide by the Public Sector Equality Duty (“the Duty”), reproduced below for information:

- (1) *A public authority must, in the exercise of its functions, have due regard to the need to—*
 - (a) *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

- 3.9 In terms of this issue the most relevant parts are contained at 1(b), 3(a) and 4, namely the requirement to advance equality of opportunity, remove disadvantages and take account of the relevant disabilities. In simple terms this means when dealing with the issue of taxis that any person should, where possible, be able to attend a taxi rank and access any vehicle. It remains the position of officers that a 100% accessible vehicle fleet is the best and only means of achieving this result.
- 3.10 A common argument against the policy relating to the Duty is that some elderly or non-wheelchair bound disabled persons find some of the accessible vehicles difficult to enter and prefer a saloon car for that reason. Whilst it is accepted that this is the case, it is important to highlight that although it may be less convenient, the vehicles can still be accessed by those persons and any such inconveniences can be mitigated by means of driver assistance or

additional training. The converse is of course not true, a wheelchair bound person who wishes to remain in the wheelchair for the duration of the journey cannot be accommodated in a non-accessible vehicle.

3.11 A further problem when considering a mixed fleet is the lack of guidance as to what level of split would be deemed acceptable. Information was received from Dundee City Council who indicated that they had no discernible rationale for arriving at the current levels and information has since come to light that their policy is already being challenged in court at present. Although there is no definitive guidance on what an acceptable split would be, it is generally accepted that in order to comply with the Duty the percentage of accessible vehicles would require to be “sufficiently high”. Our own policy has been challenged and upheld by the Court of Session.

3.12 It has also been established by the courts that the issue is not simply a matter of statistics. The English case of R v Newcastle ex parte Blake made this clear and the judge highlighted the practical difficulties of such an approach:

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.

Fairness/Natural Justice

3.13 A further complication and potential source of risk is the idea of fairness and natural justice. The policy has been in force for new applicants since 1994 and all current licence holders have been aware of the need to obtain an accessible vehicle by the deadline since it was established in 2012 and later extended in 2016. There is no new significant information before the Committee, and any change would be made on the basis of essentially the same information and criteria that was considered when the policy was established, and indeed upheld following review. Accordingly there is the potential for legal challenge from those applicants who either purchased an accessible vehicle as a new applicant in terms of the policy or from existing licence holders who have changed their vehicle with a view to the approaching deadline. A taxi driver who purchased an accessible vehicle

could potentially take court action against the local authority on the basis that they have incurred unnecessary expenditure in purchasing an accessible vehicle which would be no longer necessary. This would have legal cost implications, both internally and potentially with further court expenses.

- 3.14 Conversely, it is considered that existing licence holders have been given a reasonable notice period of the deadline, and indeed the deadline itself has been extended once already.
- 3.15 The difficulties of establishing an appropriate level of the split has already been mentioned but even if that is resolved it creates further difficulties which were also recognised in the case of R v Newcastle ex parte Blake:

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.

- 3.16 In order to maintain an agreed percentage in circumstances where the levels of different vehicles are close to the limits may require the Committee to treat applications differently which are on the face of it identical. This could be seen as unfair or contrary to natural justice and could also lead to legal challenge. It is difficult to see what, if any, criteria could be put in place to differentiate between such applications and it could therefore be difficult to firstly achieve a suitably high percentage of accessible vehicles, and thereafter to maintain such a percentage.
- 3.17 As has been mentioned, there is no new information before the Committee at present which changes the legislative landscape in relation to this matter. All of the factors which have been discussed have been considered either during the preparation of the policy or at the subsequent review held last year. In addition the policy has not yet been fully implemented and so it cannot be said that the operation of the policy has produced evidence of a need for revision.

Conclusion

- 3.18 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.
- 3.19 The policy as it stands unquestionably allows the Authority to meet the Duty. This has been confirmed by legal challenge. The same cannot be said for the alternative.

- 3.20 Any alteration of the policy at this stage would open the Authority up to legal challenge on a number of fronts.
- 3.21 The policy only applies to taxi licences. The private hire fleet would continue to operate as a mixed fleet. This is because customers pre-book private hire vehicles and have the opportunity at the point of booking to request a particular type of vehicle. Saloon vehicles would accordingly remain available for those who wished to book them, with a fall-back position that every person could access every vehicle on a taxi rank where pre-booking was not possible.
- 3.22 A mixed fleet would create operational difficulties in terms of establishing an acceptable level of split, allocating licences accordingly and maintaining that level whilst also maintaining natural justice and fairness.
- 3.23 As financial reasons are often raised in opposition to the policy it is also worth noting that the cost of an accessible vehicle is broadly comparable to the cost of the most popular saloon vehicle types currently licensed. Considerable notice period has also been given to those licence holders who will require to change vehicle allowing them to plan for any additional expenditure.
- 3.24 Whilst Dundee has been cited as an example of a mixed fleet it is also worth noting that both Glasgow and Edinburgh operate a 100% accessible fleet, as do West Lothian who also provided licence holders with a period of 5 years within which to change vehicles in order to comply with the policy.
- 3.25 Lastly, even if the policy is upheld it is not an absolute ban on non-accessible vehicles regardless of circumstances. It will always be open for any applicant to seek to persuade the Committee that the policy should not apply to a particular application. It will then be a matter for the Committee to determine whether the reasons given are sufficient to warrant such a departure.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the recommendations of this report. If, however, a decision to review the policy was taken, against recommendation, this would have significant financial implications on the basis of the consultation process outlined in 3.7 above, and may also have financial implications in respect of any potential litigation.

5. LEGAL IMPLICATIONS

- 5.1 There are no direct legal implications arising from the recommendations of this report. Any amendments to the policy however, would likely result in legal challenge from disability groups on the grounds that the authority is not meeting its obligations under the Equality Act 2010, or from current licence holders who feel disadvantaged by the change to policy without any substantial new information. 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.

6. MANAGEMENT OF RISK

FINANCIAL

- 6.1 There is no direct financial risk from the recommendations. 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.

EMPLOYEE

- 6.2 There is no direct risk from the recommendations. If the Committee chooses to amend the policy then employee workload may be increased as a result of additional consultation and related process.

CUSTOMER/CITIZEN

- 6.3 There is no direct risk from the recommendations. If the Committee chooses to amend the policy there may be a risk that not all customers/citizens have equal access to taxis.

ENVIRONMENTAL

- 6.4 There is no direct risk from the recommendations.

TECHNOLOGICAL

- 6.5 There is no direct risk from the recommendations.

LEGAL

- 6.6 As above at 5.1.

REPUTATIONAL

- 6.7 There is no direct risk from the recommendations. If the Committee was minded to depart from the policy prior to full implementation there is a risk of reputational harm, in particular from those who have taken steps to comply with the policy on the grounds of legitimate expectation.

7. IMPACT SECTION

Economy

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

People

- 7.2 Implementation of the policy as it stands will ensure that any person can access any taxi on any rank, thereby reducing inequality and meeting the Authority's Public Sector Equality Duty. An Equality and Impacts Human Right Assessment was carried out on 9 April 2012

Place

- 7.3 Maintaining the implementation of the policy will have a positive impact on the place as it will ensure that any person can access any taxi on any rank.

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
Report No. CG/17/071 – Accessible Vehicle Policy Update
Wilson v Aberdeen City Council
Sneddon v Renfrewshire Council
R v. Newcastle ex parte Blake

9. APPENDICES (if applicable)

N/A

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