

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Licensing Committee
<b>DATE</b>	5 June 2018
<b>REPORT TITLE</b>	Wheelchair Accessible Vehicle Taxi Policy Update
<b>REPORT NUMBER</b>	GOV/18/020
<b>DIRECTOR</b>	Fraser Bell
<b>REPORT AUTHOR</b>	Sandy Munro
<b>TERMS OF REFERENCE</b>	7

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### 1. PURPOSE OF REPORT

To report back to committee the results of the consultation exercise and advise of the potential legal and financial implications of adopting a mixed fleet policy.

### 2. RECOMMENDATION(S)

That the Committee:-

- 2.1 note the results of the consultation exercise;
- 2.2 note the potential legal and financial implications of adopting a mixed fleet policy; and
- 2.3 agree to continue with the current policy whereby all taxis require to be wheelchair accessible vehicles by June 2019 in light of the legal and financial implications of changing policy at this time.

### 3. BACKGROUND

- 3.1 The Committee introduced a policy in 1994 whereby new applications for taxi licences were required to be for 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. The ratio of accessible vehicles has fallen in recent years and currently sits at approximately 46% of the taxi fleet.

- 3.2 In 2006 the Committee removed the overall limit on the number of taxi licences which existed then, 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 valid.
- 3.4 A limit on the overall number of taxi licences was re-imposed on 6 June 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, a copy of which is enclosed at Appendix 1 as part of the consultation paper.
- 3.5 The Committee considered the implications of setting aside the policy regarding accessible vehicles at its 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 which was to retain the 100% accessible vehicle taxi fleet, but they amended the backstop date for implementation 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.
- 3.7 At the meeting of 17 September 2017 the Committee instructed a consultation exercise on a mixed fleet policy and instructed officers to report back with the results of that exercise and details of the potential legal and financial implications on adopting a mixed fleet policy.

### Consultation

- 3.8 A consultation paper ("the paper") was prepared following consultation with the Convenor as per the Committee's instructions. It sought views on the desirability of a 100% accessible fleet, the potential ratio of split if adopting a mixed fleet and possible means of achieving and maintaining a split, all against the backdrop of the Committee's obligation to comply with the Public Sector Equality Duty ("the Duty"). A copy of the paper is attached to this report as Appendix 1.
- 3.9 The paper was distributed to all relevant consultees in line with the Committee's instructions and was publicised both online and in the press. An online version of the paper was also made available for ease of completion. A

total of 248 responses were received via the online version with a further 48 received by other means. The results of the online responses are detailed at Appendix 2 and the other responses have been collated to form Appendix 3.

3.10 The first question sought opinion on a 100% accessible fleet. In total 49 responses were received in favour, with 247 preferring some form of mixed fleet.

3.11 Those who expressed a preference for a mixed fleet were then asked for their opinion on the percentage of that fleet which should be comprised of accessible vehicles. A range of answers were received as follows:

No suggested figure	- 78 replies.
50%	- 62 replies.
30%	- 24 replies.
25%	- 19 replies.
20%	- 14 replies.
60%, 40%, 10%	- 12 replies each.
80%, 75%, 5%	- 3 replies each.
70%, 55%, 15%	- 1 reply each.

3.12 The final question asked for potential methods of firstly reaching, and thereafter maintaining the desired level of split in the event of a mixed fleet being adopted whilst paying heed to natural justice and fairness. A number of suggestions were received but it is unclear at present as to whether or not any of them would be achievable in practice.

3.13 It seems clear from the consultation responses that there is a preference in general for a mixed fleet. However it is important to note that a large number of respondents gave no evidence or reasoning for such a preference and very few addressed the Committee's responsibility to comply with the Duty. Indeed a common theme in the responses indicated a desire for a mixed fleet based purely on preference of a saloon type vehicle. It has been mentioned in previous reports but is worth highlighting again that regard to the Duty must take precedence over mere preference. A number of responses also mentioned requesting a certain type of vehicle when making a booking, and again it is worth reiterating that any form of pre-booking, be that online, by phone, mobile app or some other method takes that particular journey into the category of private hire. This policy relates only to taxis and so private hire journeys such as those would be unaffected. Currently there are 256 licensed private hire vehicles, none of which are wheelchair accessible vehicles.

3.14 There is also no real consensus on an appropriate level of split in a mixed policy, and again scant evidence to support any particular figure, with the most popular response only attracting approximately 25% of all respondents favouring a mixed fleet.

3.15 These matters will be considered further in the Legal Implications section below.

## **4. FINANCIAL IMPLICATIONS**

- 4.1 There will be no additional financial implications should the Committee decide to continue with the current policy.
- 4.2 If the Committee decide to adopt a mixed fleet policy then there would be a number of financial implications. A further detailed consultation would be required to ensure that any policy is based upon sufficiently robust evidence; it should be explained that the consultation attached to this report is not sufficient because whilst a large number of respondents provided an opinion, very few provided tangible evidence to support that opinion and it is unlikely that the suggestion of public opinion would be sufficient to override the Authority's legal obligations. Any proposed change to the status quo may necessitate the use of an independent consultancy firm. A mixed fleet policy would also create several procedural challenges and would likely result in significantly higher staff resource costs both initially and on an ongoing basis.
- 4.3 As the legislation requires the licensing of taxis and private hire cars to be self-financing, any such increased costs on an ongoing basis may require further examination and a possible increase of licensing fees. This of itself would involve a considerable amount of staff resource.

## **5. LEGAL IMPLICATIONS**

- 5.1 There are several legal implications. These have been confirmed by Counsel.
- 5.2 A 100% accessible fleet would be far less likely to be open to challenge than a mixed fleet for a range of reasons.
- 5.3 Determination of the level of split between accessible vehicles and saloon cars would not be a simple exercise. Any outcome is likely to be a source of controversy if not litigation. The larger the dilution from 100% the more the policy would be open to challenge, even a 90% policy may not be free from challenge.
- 5.4 If a split is established the method for allocating applications for licences on a fair and equitable basis between the two types of vehicle is also very difficult to ascertain. This is again likely to be a source of litigation.
- 5.5 Criteria would have to be established to deal with the scenario of licensed operators wishing to change their accessible vehicle to a saloon vehicle. This is again a very difficult exercise and Dundee City Council are currently facing litigation on this very point.
- 5.6 There is the risk of "legitimate expectation" that a 100% WAV policy will happen, in that the current policy has been scheduled for implementation since 2012. This also brings potential legal implications if the policy is now changed.

## **Summary**

- 5.7 Whilst a mixed fleet policy may be capable in principle of complying with the Duty it would result in a significantly higher risk of legal challenge.
- 5.8 There would appear to be very little robust evidence to support a departure from the current policy. Such robust evidence would be required to defend any change to policy in the event of legal challenge. As has been said before, simple preference for a type of vehicle cannot outweigh the Authority's legal responsibilities in terms of the Equality legislation.
- 5.9 There are considerable legal and financial implications involved in adopting a mixed fleet, along with procedural issues that would involve considerable administrative oversight.
- 5.10 The current policy, as would be the case for any other policy, is not an absolute ban on other vehicles. It would always be open to any applicant to persuade the Committee that circumstances exist that would justify a departure from policy on an individual basis.
- 5.11 The policy would only apply to taxi licences, not private hire. Accordingly, any pre-booked journey would be unaffected and customers who regularly order a particular type of vehicle could continue to do so.
- 5.12 The underlying principle of the policy is in simple terms to attempt to ensure that any person could attend any taxi rank and hire any vehicle.
- 5.13 A 100% accessible policy which could be mitigated on a case by case basis is the most likely to deliver a degree of flexibility while minimising the scope for legal challenge.

## **6. MANAGEMENT OF RISK**

### **Maintaining the Current Policy**

	<b>Risk</b>	<b>Low (L), Medium (M), High (H)</b>	<b>Mitigation</b>
<b>Financial</b>	N/A		
<b>Legal</b>	Slight risk of challenge from those who find accessible vehicles challenging to enter.	L	Policy would be arrived at having taken due regard of legal responsibilities. Additional driver training being investigated to

			minimise any disadvantages.
<b>Employee</b>	N/A		
<b>Customer</b>	Some customers find accessible vehicles more problematic to enter or exit.	M	Additional driver training is being investigated that would minimise any disadvantage to passengers who find it more difficult to access some types of vehicle.
<b>Environment</b>	N/A		
<b>Technology</b>	N/A		
<b>Reputational</b>	Maintaining the current policy could be seen to be going against public opinion.	L	The current policy would be framed in accordance with the Council's legal obligations which would take precedence over public opinion.

### Changing Policy to Mixed Fleet

<b>Financial</b>	As Above in para 4	H	
<b>Legal</b>	As Above in para 5	H	
<b>Employee</b>	N/A		
<b>Customer</b>	Some customers could be disadvantaged by a change to a policy that would leave some vehicles inaccessible.	M	The ratio of accessible vehicles would require to be sufficiently high to mitigate such risk.
<b>Environment</b>	N/A		
<b>Technology</b>	N/A		
<b>Reputational</b>	Amending a policy without robust evidence to support such a change could leave the Council open to reputational damage.	M	Ensure full and exhaustive consultation is carried out and that proper tangible evidence exists to support any change.

## 7. OUTCOMES

### Maintaining the Current Policy

Local Outcome Improvement Plan Themes	
	Impact of Report
<b>Prosperous People</b>	A fully accessible taxi fleet should ensure that all people can access all taxis at all taxi ranks.

Design Principles of Target Operating Model	
	Impact of Report
<b>Customer Service Design</b>	A fully accessible taxi fleet, in operation with a substantial private hire fleet should provide enhanced transport options for all customers.
<b>Partnerships and Alliances</b>	A fully accessible fleet will provide clarity to the trade and ensure all licence holders are held to the same standards.

## 8. IMPACT ASSESSMENTS

Assessment	Outcome
<b>Equality &amp; Human Rights Impact Assessment</b>	In the event of a change of policy a full EHRIA would be required. An EHRIA was completed on 9 April 2012 when the current policy was formulated and established that the policy would minimise disadvantages to those disabled persons who cannot access saloon vehicles.
<b>Privacy Impact Assessment</b>	Not required
<b>Duty of Due Regard / Fairer Scotland Duty</b>	N/A

## 9. BACKGROUND PAPERS

9.1	Committee Report CG12045	Licensing Committee 6 June 2012
9.2	Committee Report CG16053	Licensing Committee 6 April 2016
9.3	Committee Report CG17071	Licensing Committee 13 June 2017
9.4	Committee Report CG17096	Licensing Committee 12 September 2017

## **10. APPENDICES (if applicable)**

### **10.1 Consultation Paper**

### **10.2 Online responses**

### **10.3 Other responses**

## **11. REPORT AUTHOR CONTACT DETAILS**

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