
Licensing and Regulatory Committee

1st May 2009

Report of the Director of Neighbourhood Services

HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENCE CONDITIONS

Summary

1. This report advises members of a recent statutory appeal against the council's conditions for hackney carriage vehicles in respect of emissions and livery. Members' approval is sought to amend the conditions in the light of the appeal and the comments of the District Judge.

Background

2. On 8th June 2007 this committee considered a report entitled "Taxi Vehicle Standards". Members resolved to:
 - a) Make all taxis licensed by the City of York Council to be Euro 3 compliant (or better) by 1st June 2009. This being achieved by upgrading the existing petrol/diesel fleet or by the use of alternative fuels to give the same effect. Transitional arrangements were put in place to achieve this. It was further resolved that after 1st June 2009 no vehicle would be first licensed if it is over 4 years old and no vehicle would be re-licensed after it has reached 8 years old.
 - b) That by 1st June 2009 all licensed hackney carriages be identifiable with a single colour scheme of black and to bear the city crest with the words "City of York Hackney Carriage" on both front doors. A transitional arrangement was put in place to achieve this.
3. On 12th February 2009 an appeal by an independent taxi proprietor against both the above conditions was heard by the District Judge at York Magistrates' Court. The judge gave his decision on 6th March and concluded that the appeal should be dismissed in respect of the condition relating to emissions but it was upheld in respect of the standard black livery. He stated that a condition in relation to appearance was not justifiable in protecting the public.
4. In delivering his decision the judge placed reliance on the government's "Taxi and Private Hire Licensing Best Practice Guide". He stated it was produced following national consultation and was to assist local authorities in taxi licensing matters. He emphasised the following in respect to the Guide:

- Key purpose to assist LA's in decision making;
 - LA's may take local decisions into account;
 - LA licensing is to protect the public;
 - Each requirement must be proportionate i.e. costs v benefits;
 - That the guidance makes no reference to livery in the section relating to vehicle identification.
5. Both parties had 21 days in which to lodge an appeal to the Crown Court.

Livery Condition

6. The following advice was subsequently received from counsel representing the council with respect to the livery condition:
- i. The Court was not however satisfied that it was 'reasonably necessary' to require all hackney vehicles to be black in colour. This is a far more difficult condition to justify. Although many licensing authorities have imposed similar conditions, I am unaware of any who have successfully resisted an appeal on the condition. In any event, all cases must be taken on their own facts and merits.
 - ii. The learned District Judge was not satisfied that (a) there was a significant problem concerning members of the public being unable to distinguish hackney taxis from private hire vehicles, or York vehicles with those from out-of-town, and (b) there was insufficient evidence that a uniform colour would in fact remedy these perceived difficulties. Mr Lacy gave evidence that complaints concerning 'passing off' were being made once per month. This evidence did not appear to impress the District Judge as demonstrating a significant problem.
7. On receipt of this legal advice and discussions with the Chair of this committee it was concluded that an appeal should not be lodged against the decision but that further work be carried out with respect to the issue of livery and the matter revisited.
8. Members should note that, inherent with the black livery condition, was a ban on external vehicle advertising. As this condition no longer applies, advertising will be permitted. Although the courts ruled against the standard livery they did approve the display of the city coat of arms decal on the front doors. This will be satisfactory if the sides of the vehicle are of a standard colour but if they contain advertising then the visibility of the decal would likely be lost. It is intended therefore to consult with the York Taxi Association and come back to a subsequent meeting of this committee with proposals to address this.

Emissions Condition

9. With respect to the issue of emissions, although our counsel is confident that any appeal by the taxi proprietor can be resisted, he has submitted an appeal to the Crown Court.

10. There are several strands to the appeal which are intended to show that the emission conditions are not reasonably necessary. One of those is in relation to the intended future condition where vehicle age is referred to. Members will note at paragraph 2a of this report it has been previously resolved that after 1st June 2009 no vehicle would be first licensed if it is over 4 years old and no vehicle re-licensed after it has reached 8 years old. It was the intention that this condition would ensure that vehicles kept up with future improvements in emission control.
11. Throughout the appeal hearing in the Magistrates' Court the District Judge indicated that a vehicle age policy was, in itself, inappropriate. The best practice guidance states "it is perfectly possible for an older vehicle to be in good condition so the setting of an age limit beyond which a local authority will not licence vehicles maybe arbitrary and inappropriate".
12. In the light of this appeal judgement and the words of the District Judge during the proceedings, officers' view is that this condition should be rewritten and refer specifically to emission standards rather than using an age criteria to meet those standards. This opinion is endorsed by counsel. This will mean, however, updating the conditions over time when new national or European emission standards are applied. This approach will be much more transparent in demonstrating what the council is trying to achieve and will be more robust in law.

General

13. In view of the pending Crown Court appeal it is proposed that all hackney carriage vehicle licences issued on the 1st June 2009 will be issued for 6 months only with the conditions relating to emissions deleted to allow time for the Crown Court appeal to be dealt with.
14. Members are reminded that both these conditions (emissions and livery) also apply to private hire vehicles, albeit the application dates differ. Any changes which are made to one set of conditions should be reflected in the other.

Consultation

15. Members should note that hackney carriage licences are due to be renewed from 1st June 2009. In view of the timescales involved and the fact that no additional conditions are being proposed for this next round of licence renewals, there has been no consultation in respect of this report.

Options

16. Option 1 – Maintain the proposed conditions from 2nd June 2009, i.e.
 - a) all new licenses issued or, any change of vehicle on an existing licence, the vehicle must be under 4 years old, and

b) no vehicle will be re-licensed after it has reached 8 years old

Option 2 – Renew the hackney carriage vehicle licences for 6 months only deleting conditions relating to emissions and livery. Consult with the York Taxi Association and York Private Hire Association on the following conditions to replace the vehicle age restrictions in the future should the appeal be dismissed.

a) From 2nd June 2011 all new licences issued or, any change of vehicle on an existing licence, the vehicle must be Euro 4 (or better) emission standards

b) From 1st June 2013 all licensed vehicles must meet Euro 4 (or better) emission standards

Option 3 – Mirror the approved changes to hackney carriage vehicle licences to those relating to private hire vehicles.

Option 4 – Instruct officers to consult with the York Taxi Association on the subject of advertising on hackney carriages and report to a subsequent meeting of this committee.

Option 5 – Instruct officers to carry out further work on vehicle liveries and report back to a subsequent meeting of this committee.

Analysis

17. In order to meet the vision and requirements of the Local Transport Plan, which incorporates the Air Quality Strategy and Action Plan, the city needs to reduce the long-term annual average for nitrogen dioxide in certain areas of the city. The need to reduce emissions from taxis is well stated in those documents and was accepted by the Magistrates' Court.
18. In view of the pending Crown Court appeal option 2 proposes that all hackney carriage vehicle licences issued on the 1st June 2009 will be issued for 6 months only with the conditions relating to emissions and livery deleted to allow time for the appeal to be dealt with. Should the appeal be dismissed then the original proposal that all licensed vehicles should meet Euro III emission standards or better will be applied. This will make the decision for proprietors clearer when considering change of vehicle.
19. As detailed in paragraph 12 of this report it is also considered prudent to review the wording of the vehicle licence conditions on emission standards to make it very clear what the council is trying to achieve. By agreeing option 1 members may open up the council to further legal challenge.
20. The proposals for trade consultation set out in option 2 relate as closely as possible to those previously agreed by members that were expressed in vehicle age terms. Members need to note however that to accommodate those owners who have recently purchased a fairly new Euro 3 compliant vehicle in

the belief that they could run it until it was 8 years old, other older Euro 3 compliant vehicles could remain as a licensed vehicle much longer than envisaged with the previous policy.

21. Members should note that all vehicles registered after 1st January 2001 must meet Euro 3 standards, those registered after 1st January 2007 must meet Euro 4. It is proposed that Euro 5 will be introduced from September 2009 and Euro 6 from September 2014.
22. With respect to the subject of advertising members attention is drawn to paragraph 8 of this report.

Corporate Priorities

23. Cleaner emissions from our licensed hackney carriage and private hire vehicles will reduce the environmental impact on the city's air quality.

Implications

24. **Financial:** None

Human Resources (HR): None

Equalities: None

Legal – Any conditions imposed by the Council on a hackney carriage vehicle licence must be considered to be reasonably necessary and must be proportionate. Any person aggrieved by any conditions attached to such a licence may appeal to the Magistrates' Court.

Crime and Disorder: None

Information Technology (IT): None

Property: None

Other: None

Risk Management

25. Adopting the recommendations of this report will see the council at least risk from legal challenge in pursuing the policies set out in the Local Transport Plan.

Recommendations

26. Members are asked to approve:

Option 2 – Renew the hackney carriage vehicle licences for 6 months only deleting conditions relating to emissions and livery. Consult with the York Taxi Association and York Private Hire Association on the following conditions to replace the vehicle age restrictions in the future should the appeal be dismissed.

- a) From 2nd June 2011 all new licences issued or, any change of vehicle on an existing licence, the vehicle must be Euro 4 (or better) emission standards
- b) From 1st June 2013 all licensed vehicles must meet Euro 4 (or better) emission standards

Reason: To ensure the licence condition is transparent in representing the council's policy in respect of vehicle emissions contained in the Local Transport Plan, and

Option 3 – Mirror the approved changes to hackney carriage vehicle licences to those relating to private hire vehicles

Reason: To ensure consistency between both vehicle hire codes and reduce the threat of legal challenge, and

Option 4 – Instruct officers to consult with the York Taxi Association on the subject of advertising on hackney carriages and report to a subsequent meeting of this committee

Reason: To ensure the full benefit of vehicle identification is derived from the display of the side decal, and

Option 5 – Instruct officers to carry out further work on vehicle liveries and report back to a subsequent meeting of this committee.

Reason: To ensure that all aspects of the introduction of a standard livery have been examined to inform any future strategy.

Contact Details

Author:

Chief Officer Responsible for the report:

Richard Haswell
Head of Licensing and Safety

Andy Hudson
**Assistant Director of Neighbourhoods and
Community Safety**

**Neighbourhoods and
Community Safety**

Report Approved

Date 14/4/09

Tel No.01904 551515

Specialist Implications Officer
Legal - Martin Blythe
Tel No. 01904 551044

Wards Affected:

All

For further information please contact the author of the report.

Background Papers:

Report to Licensing and Regulatory Committee 8th June 2007

Annexes

None