

REVIEW OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENCE CONDITION IN RESPECT OF TINTED WINDOWS.

Summary

1. This report follows a referral from the Environment Appeals Panel for this committee to reassess the hackney carriage and private hire vehicle licence condition in respect of tinted windows. The report sets out the history of the adoption of this condition, a summary of the appeal and the options available to members.

Background

2. The Council is the statutory authority responsible for the licensing and enforcement of hackney carriage and private hire legislation.
3. A licence is required for both the driver and the vehicle in respect of licensed operations. Vehicle licences are issued with a series of locally determined conditions with the aim of protecting the public. These conditions are reviewed from time to time in response to changes in legislation, technology and public expectations.
4. In November 2006 the Licensing and Regulatory Committee approved a new condition with respect to tinted glass. The condition reads:

The licensed vehicle shall be fitted with windscreen glass that has a light transmittance of 75% and all other window glass in the vehicle shall have a light transmittance not less than 70%. Any self-applied material shall be of the same standard and shall be approved by the taxi licensing office. This condition will not apply to tinted glazing fitted by the manufacturer to vehicles when new in respect of vehicles currently licensed by this Council.

5. Prior to the approval of this condition the York Taxi Association (YTA) and the York Private Hire Association (YPHA) were consulted and both were in agreement with these proposals. A copy of the report and approved minute is attached at Annex 1 & 2.

6. All hackney carriage proprietors were advised of this change of conditions by letter dated 31st January 2007. The changes were published in our newsletter of April 2007. The YTA and YPHA also published the information in their newsletters. All taxi licensing guidance notes and information on the website was updated.
7. Despite all the notification, proprietors were still bringing vehicles to test with over tinted glazing. It also became apparent that for various reasons, vehicles had been licensed which did not comply with this condition. This caused dispute and conflict both within the trade and with the council.
8. In order to resolve this situation the Head of Service produced a discussion document for licensing staff and the trade. The recommendation set out in the document, agreed internally and by both trade organisations, was that a pragmatic view be taken and those vehicles that had been licensed with non compliant glazing would be allowed to continue to operate but from that time the policy would be rigidly applied.
9. On 20th April 2009 the Environment Appeals Panel heard an appeal by a hackney carriage proprietor regarding officers decision to require the replacement of his rear window screen which was so tinted as to allow only 43% light transmittance as opposed to the 70% of the condition.

The Appeals Panel allowed the appeal and the decision letter is attached at Annex 3. Members will note that the reason given was the Panels acceptance that, taking into account the public safety considerations, the visibility through the vehicles rear window would be no better if glass were fitted that meets the Council's specifications due to the construction of the vehicle. The Panel also recommended that the matter of the tinted window condition be referred back to the Licensing and Regulatory Committee for reassessment in light of vehicles being sold, as standard, with tinted rear windows.

10. In order to manage the situation that has evolved following the appeal panels decision officers have applied the condition as already approved for all vehicles except estate cars as in the appeal. For estate cars, owners have been given until 31st July 09 to replace any rear screen glass that does not meet the approved condition. This period of grace allows members to re-examine the policy and provides any aggrieved vehicle owner the opportunity to appeal to the appeals panel.

Consultation

11. Consultation has been undertaken with the York Taxi Association, the York Private Hire Association, the Independent Taxi Association and also the Police.

Independent Taxi Association (ITA)

12. This is a newly formed organisation. It is the policy of the council to recognise, for the purposes of consultation, any formally constituted group which represents 10% or more of hackney carriage owners, owner drivers or drivers. The ITA has a membership that represents 50 of the 173 licensed hackney carriages.

It is the view of the ITA that the rules on tinted windows should be withdrawn or considerably relaxed so that all but opaque glass which is factory fitted should be licensed. Their full response is attached at Annex 4.

York Taxi Association (YTA)

“The YTA committee unanimously feels that any manufacturers' standard tinting should be allowed on the rear window, not, as suggested, just the Peugeot 407SW. We feel that the Hackney trade are not being dealt with on a 'level playing field' as we note that many buses have far less light transmission than you suggest for our trade, due to full advertising on the whole of the bus bodywork. We would also like you to note that a Private Hire vehicle also displays curtains on the rear window. We feel that the Hackney trade is being singled out in this respect.”

York Private Hire Association (YPHA)

The YTPA consider that unless evidence can be provided to substantiate a safety issue the policy on tinted windows should be withdrawn. Their full response is attached at Annex 5

North Yorkshire Police

Comments were not available at the time of writing this report and will be reported at the meeting.

Options

13. Option 1 – Maintain the existing condition and deal with any appeals that ensue
14. Option 2 – Amend the condition in respect to the rear screen and any glazing that only covers the luggage compartment in estate cars permitting any manufactures tint providing it is not opaque.
15. Option 3 – Amend the condition with respect to all glazing.
16. Option 4 – Delete the condition

Analysis

17. Members are reminded that when adopting this condition the following reasons were presented in the report as justification for the condition being adopted -
 - a. Enforcement officers need to see that the maximum number of passengers is not being exceeded
 - b. Police need to check if passengers are wearing a seat belt
 - c. Activities taking place in the vehicle cannot be viewed from outside posing a risk to both passengers and the driver
 - d. Vulnerable passengers will feel safer in a vehicle where they can be seen
 - e. In the event of an accident the emergency services can easily check if there are passengers inside
18. In addition visibility is required with respect to the enforcement of smoking restrictions and the misuse of handheld mobile phones.
19. This committee also reaffirmed the requirement on tinted glazing when considering conditions to be applied to the licensing of stretched limousines in March 2008 and also in January 2009 in respect of a request by a private hire operator to import hybrid environmentally friendly vehicles which could only be supplied with tinted glazing that did not meet our licence specification.
20. The fitting of tinted windows as standard to new vehicles is an increasing trend with some level of tint being above the existing levels set out in the existing licence condition. Having to replace glazing to an existing vehicle without compliant glazing is an additional cost to the vehicle owner if they wish to licence that vehicle. That said it is the owners choice whether to purchase the vehicle in the first place and incur the additional cost. Owners are however advising that the sourcing of vehicles with compliant glass is becoming increasing difficult.
21. Members are reminded that the use of vehicles as taxis or private hire vehicles (phv's) is completely different to that of a private car. Taxis and phv's provide a valuable public transport, servicing school and social services contracts, transporting visitors, residents - many elderly, business people and those requiring late night transport after experiencing York's night time economy.
22. Officers are of the opinion that, for the reasons set out above, clear visibility into the passenger compartment should be maintained. Officers are also aware of the appeal panels decision in relation to the rear screen of the appellants estate car in which they concluded that compliant glazing would not increase visibility into the passenger compartment due to the style of the window, the headrests and distance from the rear window. It is for this reason that a relaxation on the tinting of rear screen glazing and that which only overlooks the luggage compartment could be considered.

Corporate Strategy

23. Taxis provide an essential public transport service often carrying vulnerable people who rely on their services. It is an essential requirement that passengers are safe, and feel safe, in using taxis contributing to York being a Safer City.

Implications

24. **Financial** - None
25. **Human Resources (HR)** - None
26. **Equalities** - None
27. **Legal** –The Council is charged with a duty of ensuring that hackney carriage vehicles are suitable in terms of their public safety and appearance. Any condition imposed by a council on a hackney carriage licence must be considered reasonably necessary and must be proportionate. A person aggrieved by a condition attached to such a licence may appeal to the Magistrates Court
28. **Crime and Disorder** - None
29. **Information Technology (IT)** - None
30. **Property** - None
31. **Other** - None

Risk Management

32. In coming to any decision on this matter the council can minimise risk by ensuring it takes all factors into consideration in coming to its decision. The decision should be reasonable in the light of the information available.

Recommendations

33. Members are asked to approve option 2 and replace the existing vehicle licence condition on glazing for hackney carriages and private hire vehicles with the following:

The licensed vehicle shall be fitted with windscreen glass that has a light transmittance of 75% and all other window glass in the vehicle shall have a light transmittance not less than 70%. This is with the exception of that part of the rear window and any side window both or either adjacent to the luggage space in any estate type vehicle, which can be of any manufacturers tint providing it is not opaque. Any self-applied material shall be of the same standard and shall be approved by the taxi licensing office. This condition will not apply to tinted glazing fitted by

the manufacturer to vehicles when new in respect of vehicles currently licensed by this Council.

34. Reason – to provide for the safety of passengers and the driver and to enable effective enforcement of taxi licence conditions.

Contact Details

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Report Approved

Date 14/4/09

Specialist Implications Officer

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Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

Report to Environment Appeal Committee 20th April 2009

Annexes

- Annex 1 – Report to Licensing and Regulatory Committee November 2006
- Annex 2 – Approved Minute of Licensing and Regulatory Committee November 2006
- Annex 3 – Decision Letter of Environment Appeals Panel 20th April 09
- Annex 4 – Consultation Response Independent Taxi Association
- Annex 5 – Consultation response from the York Private Hire Association

