

THE NATIONAL PRIVATE HIRE ASSOCIATION



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Licensing Department
Cambridge City Council
By email: licensing@cambridge.gov.uk

REF: **Consultation on taxi and private hire licensing matters**

Dear Sir/Madam

We write on behalf of our National Association members in your licensing area, in response to the latest consultation being undertaken by your council on two specific hackney carriage and private hire licensing matters: the vehicle age limit and emissions policy proposals, and the enforcement policy proposals.

We would preface any further comments made herein by stating that your council will no doubt be aware of the Law Commission's ongoing investigation and review into existing national and local taxi and private hire legislation. We are advised that the Law Commission will be issuing a sizeable consultation document within the next fortnight; this consultation will be made available to licence holders, licensing authorities and the general public, and will be carried out over the statutory 12-week period.

Following on from the consultation, it is the intention of the Law Commission to compile any and all proposals they have collated and formulated into new draft legislation, which hopefully they will be submitting to Parliament during 2013 for Royal assent and ratification as a new Act to govern our industry.

On the basis of the above timetable we are urging any local authorities that are considering amendments to their local licensing policies or conditions to await the outcome of the Law Commission's investigation, as we believe it will have far-reaching impact on the powers of local authorities in future. Consequently your council would save time, effort and resources if you were to wait until at least after the public consultation before moving forward with any existing proposals on policy/conditions.

Incidentally, the NPHA has worked very hard to secure the attendance of some of the Law Commission's project team at the next Taxi and Private Hire Exhibition, to be held this year on Wednesday and Thursday, 30 and 31 May, at the Ricoh Arena in Coventry. This would be the ideal opportunity for your officers to speak directly to the Law Commission and make your views known to them during this crucial consultation period.

Following are our comments for your consideration:-

Taxi and Private Hire Age Limit and Emissions Policy

Firstly, this Association has made its views known to Cambridge City Council on previous occasions with reference to vehicle age limits. Basically the NPHA is against the arbitrary setting of vehicle age limits, and has published a document (copy attached) setting out our rationale in this regard. We believe that we have submitted this document previously during an earlier consultation. Quite simply, our premise is that any vehicle of any age is a danger to the travelling public if its proprietor fails to maintain it properly, irrespective of the age of the vehicle. Whilst accrued mileage and emissions are serious considerations to such roadworthiness, a brand-new taxi or PHV carries no guarantees that it would not fail an MoT on the day after its last inspection if its owner is less than vigilant with his/her own vehicle maintenance.

Further, we agree totally with the Department for Transport's Best Practice guidance where, under "The Role of Licensing: Policy Justification", paragraphs 8-10 (no doubt we have quoted to you from this section before) state:-

8. "... Local licensing authorities will also be aware that the public should have reasonable access to taxi and PHV services... Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of operation or otherwise restricting entry into the trade. ...too restrictive an approach can work against the public interest – and can, indeed, have safety implications.

9. "...if the supply of taxis or PHVs has been unduly constrained by onerous licensing conditions, then that person's safety might be put at risk by having to wait on late-night streets for a taxi or PHV to arrive...[they] might even be tempted to enter an unlicensed vehicle with an unlicensed driver illegally plying for hire.

10. "Local licensing authorities will, therefore, want to be sure that each of their various licensing requirements is in proportion to the risk it aims to address... it is to urge local licensing authorities to look carefully at the costs – financial or otherwise – imposed by each of their licensing policies. It is suggested that they should ask themselves whether those costs are really commensurate with the benefits a policy is meant to achieve."

We are aware that Cambridge's existing vehicle age restrictions have been in place for some considerable time; however, we would request that, in conjunction with the proposed options on emissions, the council would seriously consider holding off instigating any changes until the Law Commission consultation is completed, by which time you will have been able to respond to such consultation yourselves, and also will have more of an indication as to the intentions of the Law Commission in the future.

Again, the DfT comment about vehicle age limits is found under "Vehicle Testing" at paragraph 32 of the Best Practice:-

"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 license vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be appropriate for older vehicles..."

It is the view of this Association, and of our affiliated members locally, that your council's proposals regarding the requirement of all Cambridge licensed vehicles to be restricted to Euro 5 emission level is far too onerous. This is particularly the case if you consider that London licensed hackney carriages are only set Euro 4 restriction, and London is probably the most polluted city in the whole of the United Kingdom. Whilst the majority of our Cambridge members run newer vehicles and therefore would not personally be affected, they are well aware that to remove Euro 3 and 4 vehicles from the Cambridge fleet may well result in the situation forewarned in the DfT Best Practice quoted above.

Referring back to the DfT Best Practice guidance, under "Vehicle Testing" at paragraph 32, Frequency of Tests, it states:-

"...Local licensing authorities may wish to note that a review carried out by the National Society for Cleaner Air in 2005 found that taxis were more likely than other vehicles to fail an emissions test. This finding perhaps suggests that emissions testing should be carried out on an ad hoc basis and more frequently than the full vehicle test."

Considering that licensed taxis and PHVs ordinarily cover more than five times the mileage of private motors annually, naturally emission levels would be a concern to the council's licensing department. However, we believe that the DfT suggestion of more frequent emissions testing, rather than a blanket restriction by way of arbitrary Euro emission bands, would be more reasonable.

Taxi and Private Hire Enforcement Policy

The NPHA submits that there is little or no need at this point in time to enter into a detailed analysis of either Option 1 or Option 2 of this consultation. We believe that, at least under the current national legislation until such time as it changes, there are sufficient powers in existence for a licensing authority to enforce its policies and conditions. Further, as a result of the Audit Commission findings in Guildford, it is upheld that a licensing authority cannot charge for enforcement against drivers; only vehicles and operators. This further 'muddies the waters', and hopefully some degree of clarity will be achieved via the Law Commission legislative review.

Certainly there is always scope for clearer understanding of enforcement boundaries on the part of licence holders and licensing officers alike; however, owing to the current Law Commission review, we once again believe that there is little benefit in revamping the council's existing licensing structure(s) until such time as fresh legislation is in place.

Concentrating briefly on Option 2, the imposition of a penalty point scheme, we believe that Cambridge City Council is aware of our position in this matter: we firmly believe that penalty point schemes are overly punitive, not reasonably necessary, and result in double jeopardy as a good many of the breaches 'on the list' for penalty points are already offences under the legislation. We enclose the 36-point questionnaire devised by our lawyers to weigh up the efficacy of such schemes; we have indeed submitted this document previously

To date we have not been able to establish any relevant piece of legislation which would permit a local authority to effectively invent an in-house judicial system when the clear intention of Parliament – even though the legislation is under review at this moment – was to impose a requirement that breaches in the regulations should be tested and tried at Magistrates' Court level and nowhere else.

You may be aware that this entire premise is to be tested at Administrative Court level in Cardiff on Tuesday and Wednesday, 22 and 23 May 2012, where the council is being challenged as to the lawfulness of their penalty point scheme – and indeed such council-originated schemes generically – by a prominent local transport firm. Once again we would strongly recommend that no decision is acted upon in Cambridge until such time as a judgement is published from the Cardiff case, as that outcome could well impact nationally on licensing authority decisions in this matter.

As you can see, the gist of our message as set out in this document is: we would strongly urge the council to wait until after the 23rd May for the Cardiff judgement on penalty point schemes; and wait generally until after the Law Commission consultation has opened, but preferably wait until fresh legislation is outlined, before proceeding with either the age limit/emissions policy or enforcement policy proposals.

We hope this documentation is of assistance.

Yours faithfully
For **THE NATIONAL PRIVATE HIRE ASSOCIATION**



(Mrs) DONNA D SHORT
Director/Company Secretary

AGE POLICIES

A VIEW - AND ALTERNATIVE SUGGESTIONS

from

THE NATIONAL PRIVATE HIRE ASSOCIATION

BACKGROUND

The National Private Hire Association has spent some considerable time over the last twenty years addressing and, on occasion, opposing the imposition of age policies by local authorities, both in the Council Chamber and in the courts.

In preparing evidence to present to Councillors and the courts we have discovered that, very often, the perception of the licensing authority that the age of the vehicle alone should be the fundamental and controlling factor in imposing a vehicle licensing regime is flawed.

Close examination of the vehicle testing records of various councils has clearly shown that although a case can be made that vehicles are indeed affected by age and/or high mileage, there are disturbing statistics to be shown for younger and “acceptable” vehicles.

Evidence can be shown that licensed vehicles do indeed have a “shelf life”, and as maintenance problems increase the average driver will indeed replace his vehicle. Common sense indicates that diminishing returns in income are a far more telling cause for vehicle replacement than conditions of licence.

Many examples exist of vehicles, purchased as being acceptable to the licensing authority, having to be replaced within the first year of service because they proved, in service, to have serious defects. Conversely in those areas that do impose age policies, Council Committees and the courts spend many hours hearing appeals from drivers who believe that their vehicles, regardless of age, are fit to continue in service. Quite a lot of these appeals are upheld.

It follows that the questions arising from “vehicle fault statistics” (VFS), acquired both from enforcement exercises and annual routine vehicle test sheets, need careful analysis. We have found that VFS’s raise one fundamental question that often begs a considered reply and that is:- What is it exactly that the council trying to achieve? Very often the initial report to the Licensing Sub Committee fails to highlight the full nature of the problem, which in turn can lead to costly appeals to the courts and possible overturning of the initial decision.

The experience gained by the Association has led it to formulate a new philosophy in addressing those problems which councils perceive might be resolved by the adoption of such a policy.

What are those problems?

PROBLEMS

- That the local vehicle stock is of poor quality, and generally aged
- That there is evidence of lack of maintenance as evidenced by DVLA exercises
- Poor returns from the testing station and local enforcement exercises generally
- Public complaints

Faced with some or all of the evidence above, many local authorities take steps to rectify their particular perceived situation and many have reacted by introducing age policies and/or stricter or more numerous testing regimes.

Having said that, it has become apparent that many local authorities, having adopted a more rigorous regime, find that many of the problems persist and they are left with the inevitable questions: [1] Why is there little or no improvement? and, [2] Where do we go from here?

WHAT CAUSES THE PROBLEMS AND WHY THEY PERSIST

Of course, many drivers do not see that there is a problem in the first place, and they are the first to voice concerns about rules that are more draconian. That is because they are for the most part representative of the majority of the trade who look after their vehicles and ensure that, when they are presented for inspection, those vehicles are prepared for that inspection.

Amazing as it may seem, in all the many reports to Licensing Committees we have seen, there has never been a section which analysed the statistics of the better side of the trade to see if lessons could be learned from those who obviously comply with the law, and to act as a benchmark for Licensing Committees in setting new conditions. In short, only one side of the picture is given.

All the reports we have seen address that segment of the trade who never appear to worry about maintenance or vehicle condition generally. They are the ones who regularly fall foul of enforcement exercises. Furthermore, when their vehicle is due for inspection they, perversely, seem to seize upon that very inspection as merely an opportunity to find out what is wrong with the vehicle, so that they can then have those points attended to.

Of course, the introduction of an age policy or a stricter or more regular testing regime does not impact upon this section of the trade. They will always have faulty vehicles regardless of the vehicle's age.

We find that the good driver with high standards will always search for a really sound or brand new vehicle which is going to stand the test imposed upon it by our trade; and, having acquired that vehicle, he/she will maintain it properly and regularly, and will, year after year, turn up at the vehicle testing station with a fully prepared car.

The other side of the trade, of course, has a different philosophy. Instead of searching for a really sound vehicle which is going to stand the test imposed upon it by our trade, they

will go into the market to look for the cheapest possible vehicle that will do the job and pass the council's set criteria.

These drivers' maintenance schedules will not improve, and it is certain that their attitude to presenting vehicles for test will continue.

At this point we have to insert a parameter which we have never observed in any report to Licensing Committees, and that is the financial ability of the drivers to purchase sound vehicles in the first place, let alone any of the proposed new/newer vehicles.

Again this is a statistic which is available to the licensing department and testing stations but never appears for Councillors' consideration. That statistic is that the many suppliers of new vehicles to the trade, and who commonly advertise in the trade press, report that a high proportion (as high as 61% - Nissan Finance) are refused finance to purchase vehicles in the first place. These drivers are then forced to shop around for less attractive terms to enter or continue in the trade, and can pay very high APR rates (29% to 32% is not uncommon).

Many of those better drivers will then, having learned lessons from experience, ensure that their credit history is improved by meeting all repayment dates and will ensure that the vehicle is well maintained in order to protect their income, but obviously at a very high price.

So, of those who run less acceptable vehicles, a percentage will do so out of circumstance rather than choice. Statistics from the testing station can easily separate the conscientious driver of the older car from the "couldn't care less" driver. The first will maintain the vehicle, which will often pass the vehicle test first time; the latter will not maintain and consequently provides the worst VFS's, which in turn will attract the attention of licensing and enforcement officers and Councillors.

A more telling statistic will show that a percentage of those who can purchase new/newer vehicles also appear on the VFS sheets, will fall foul of enforcement exercises and be found wanting on a daily check basis.

Unfortunately, it is true to say that the "couldn't care less" attitude is not only hard to correct but, if the wrong level of enforcement is employed, it can be catching. It is hard to combat the "If he can get away with it, so can I" frame of mind.

We do not need to ask any particular licensing or enforcement officer whether he knows drivers of both categories. We are certain that all officers could probably list many of them without reference to his or her files.

Councils who have VFS problems which affect public safety must react, and age policies often appear to be an attractive solution. This seems to be the case regardless of the fact that most councils have been licensing these vehicles for over 25 years and that despite their best efforts, including age policies and more regular testing, these vehicle defect problems still remain and are still caused by the very same drivers whose lack of respect for the law led to the imposition of the policy in the first place.

It often follows that the imposition of an age policy very often places the greatest burden on those who are used to buying new/newer vehicles and cossetting those vehicles to get

maximum usage from them. What stands out to this Association is the fact that most licensing authorities would wish to support these better drivers as examples of what they would like to see as the norm in their area. It is our contention that the imposition of a blanket age restriction, rather than offering the better licence holders that support, often penalises them unjustly rather than targeting only those proprietors who should be penalised.

In the normal course of events a standard vehicle may last three, four, five years or longer; prestige vehicles will normally last much longer. As we have said, it is important to note that very often these better vehicles have to be purchased on finance, which again may be over three or four years. Age policies with narrow parameters (ie. no older than three years at first licence and off at six or seven years old) can often mean that the better driver is locked in to the "hire purchase /APR trap" and paying that APR to work for the rest of their time in the trade.

We always ask councils to remember that it is only the periods between borrowing on finance agreements which give drivers APR-free incomes. If someone is used to maintaining a vehicle for six, seven, eight years or more, the APR-free period may well be essential to secure his deposit or payment for his next vehicle.

Conversely, and in the meantime, the couldn't-care-less driver may go through two or even three bangers purchased at rock bottom price to give maximum return in the short run; and besides, who cares about conditions of licence?

TIME FOR CHANGE?

In conversation with licensing officers, we readily discover that there are always numbers of operators, proprietors and drivers who cause the council and the travelling public no problem whatsoever. The licensing officer's problem is how to deal with the cowboy element without imposing such a bevy of rules that it affects the good guys. Simple: the answer is to chase the bad guys.

But surely that is what the enforcement role of the council is supposed to encompass?

Conditions of licence are set to ensure that rules are followed in order that the public is protected. All councils set conditions, so why do so many have to revisit those conditions so often to fine tune or correct perceived problems?

We believe strongly that for those who follow and observe the rules, it is only the lawbreakers who spoil what otherwise would be a relatively simple occupation. As stated above, the fact that councils chase the lawbreakers with added conditions always impacts on the good faction of the trade, not the cowboys. Consequently we find considerable support amongst the conscientious drivers for a fine tuned and targeted enforcement role, ie. "Don't come after us - go after the cowboys."

As an alternative to continuing to implement the council's existing age policy or testing period, we suggest the introduction of what will become a self-disciplinary regime: in simple terms, the age policy guidelines should be set aside, but the council should impose three tests per year after clearly defined age limits are reached.

AGE LIMITS (TESTING PARAMETERS)

Whilst we believe that it is not sound policy to set a vehicle age limit in the hope that this will “cure” VFS problems, we do accept that there is clear evidence that older vehicles need a higher level of maintenance to keep them safe for the road.

We suggest that councils should set testing parameters based on the vehicle’s age, and not just set age limits on what they will consider for licence. For example:

- Vehicle up to three years old – test once a year
- Vehicle between three and six years old -- test twice a year
- Vehicle over six years old -- test three times a year

Many councils may retort, “We have tried that before but it did not work”; to which we reply “Ah, but then you brought in an age policy and that policy is also under constant attack either by those who are financially burdened or by those who still fail to maintain their vehicles.”

We believe that any testing regimes or age policies are not, in themselves, enough to identify and eradicate that problem element within the trade which needs correction. It is the attitude of the bad driver which must be changed; therefore we suggest that the council should introduce a “three-strikes-and-out” rule.

A search through council files will show that the worst examples of failure certificates involve major Construction and Use problems: brakes, steering, tyres etc. These are the vehicle defects which will cause a vehicle’s immediate suspension, either on routine test or on enforcement exercises.

These defects are the one easily identifiable constant in all vehicle testing procedures and disciplines and therefore should, we suggest, form the basis of new conditions.

CHANGE THE CONSEQUENCES – THREE STRIKES AND OUT

If any vehicle fails the test on, say, two to three Construction and Use items – and here we must make sure we are not being frivolous by clarifying that three cigarette burns and a scratch on the paintwork do not amount to Construction and Use problems – then the council should on the first occasion issue a warning in writing to the effect that:

“We note that your vehicle was presented for licensing in such a condition that gives us concern that the vehicle may not be being properly maintained. You are warned that on a second such failure, you will be required to go before Committee to explain yourself. A copy of this letter will be attached to your file.”

On the second such failure, the driver should be brought before Committee and should be given a formal warning and perhaps a penalty suspension, and should be issued with a letter which in effect says, “The next such failure will lead to the revocation of the vehicle licence.”

The council may also wish to consider adding to that warning, "consideration will also be given to the revocation of your proprietor's/driver's licence as being not fit and proper to hold such a licence, in that maintenance of your vehicle should have been paramount to you, especially after having had two clear written warnings."

On the third occasion the vehicle should not be allowed back for re-inspection, and a vehicle and/or driver licence refusal/revocation should be issued.

Certainly the driver has a right of appeal, but the council has more than enough evidence to show that on the three-warnings-and-out basis there are significant doubts about, on the one hand the vehicle's roadworthiness (it has a high, demonstrably non-maintained, mileage); and also demonstrably, the driver's attitude to authority is patently lacking (a point that magistrates often pick up on).

CONSULTATION AND TRADE APPROVAL

We have found that, on consultation, the majority of the trade in any area will readily vote for such a testing regime as an alternative to age policies. That majority is also identifiable as those who do indeed maintain their vehicles and consequently will not be affected by such a new regime.

They will readily grasp the fact that a licensable five year old Mercedes would be a much sounder investment - and that passengers might well prefer to travel in such a vehicle - than a three or four year old standard saloon.

It is also true to say that both the trade and the licensing officers may well look forward to the removal of those who year in and year out, regardless of vehicle age, bring the trade into disrepute.

FOCUS ON STANDARD OF SAFETY EQUIPMENT

In a large number of recent appeals both at Committee level and through the Courts, a major concern on the part of local authority licensing departments and Councillors is that the safety of the travelling public is seriously jeopardised in older hackney carriages or private hire vehicles. This rationale is often used as the sole justification for that authority to impose a restrictive age condition on either or both sides of the trade.

The general assumption is that, because of the vehicles' age, they lack modern safety equipment within their specification, whereas newer vehicles automatically are supplied with this equipment. This can include items such as driver, passenger and side air bags, side impact bars, ABS braking systems, security locking systems and alarms.

In reality, the majority of vehicles produced within the last decade that are suitable for licensing as hackney carriages or private hire vehicles are manufactured with most of this equipment as standard. Conversely, there is still a range of brand-new vehicles which still do not have this type of equipment.

Again, we would suggest that, rather than imposing a blanket age restriction, licensing authorities can set vehicle conditions which specify that vehicles being considered for first licensing – or renewal, from a reasonable date after the condition is brought in - must have such safety elements in their specification. We believe that this type of vehicle licensing

condition would stand up to any legal challenge as being “reasonably necessary”. Further, we believe that the majority of licence holders in the trade would wish to provide their customers with just such safety features.

BEST PRACTICE

We are sure that most readers of this document will by now be familiar with the Department for Transport’s Best Practice guidance document, which was published first in November 2006 and updated in March 2010. In addition to their general suggestion that licensing authorities examine carefully any licensing condition they impose on licence holders as being commensurate, in both practical and financial terms, to the benefits they wish to achieve, a more specific reference is made to age limits on vehicles:-

*“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 license vehicles may be arbitrary and inappropriate.** But a greater frequency of testing may be appropriate for older vehicles – for example, twice-yearly tests for vehicles more than five years old.”*

The Association is both heartened and encouraged to see that our suggestions within this document echo the recommendations of the Department for Transport, as our document reflects our beliefs from the very inception of the NPHA. More importantly, we believe that the potential solutions suggested within these pages can be considered a more feasible formula to achieving and maintaining a high standard of taxi fleet in any licensing area.

CONCLUSION

We ask all who read this document to carefully consider: “What is it that any policy or condition set by a local authority is trying to achieve?” We suggest that public protection is and must be the only answer. If the present policy ensures that the imposed financial burden does not in fact eradicate faulty vehicles, then we advocate that the above suggestions may be a more exacting and corrective regime.

In addition, the council is reminded that to impose an absolute age policy fetters their discretion, and this will be easily overturned in court. Neither unfortunately can they introduce a mileage policy, as this has already been tested in the case of **Sharpe -v- Nottingham City Council**.

Finally, due consideration should be given to the fare structure in any area, thereby determining whether the trade can in fact afford to maintain their vehicles in the first place, irrespective of their age. This applies to both hackney carriage drivers, whose fares are set by the council, and private hire drivers, whose fares whilst not regulated by local authorities, are more often than not pitched similarly or just below the hackney tariff.

Once again we have found that, when examined as an issue in the witness box, lack of affordability very frequently overturns a vehicle age policy if the local authority has not approved a taxi fare increase for any length of time.

It is also a provable fact that if drivers are working greatly extended hours – 60 to 80 hours being not uncommon – in order to make a living, then paying for vehicle maintenance

decreases in importance not only financially, but in time and periodicity. If a driver is working 80 hours a week, the rest of the time he will probably be asleep. Taking a day off to get a vehicle serviced may result in the driver having to put in another ten hours on the other shifts he works that week.

To illustrate, a 20-pence increase on the flagfall or initial charge in areas where drivers average 25 jobs per day over the year, will give them an increase of £1,800 per year. Due consideration should be given under Best Value to comparing existing levels of fares with local and national averages. The cost of a vehicle, and its maintenance, will not differ dramatically anywhere in the UK. Clearly income, and the ability to allow for the time off, are crucial factors in the maintenance of vehicles.

A simple example: We asked a number of drivers why they had been caught with bald tyres; the answer was always financial. Although some maintain that they had forgotten, when pressed, they affirmed that if they had had the cash available they would not have delayed.

Just such delay, and subsequent lapse in public safety, can be prevented by a re-examination of council policy as outlined in this document.