

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

Agenda Item 15

Brighton & Hove City Council

Subject:	Hackney Carriage Unmet Demand Survey		
Date of Meeting:	13 October 2022		
Report of:	Executive Director of Neighbourhoods, Communities & Housing		
Contact Officer:	Name:	<i>Martin Seymour / Jim Whitelegg</i>	Tel: 29-6659
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Wards Affected:	All		

1. SUMMARY AND POLICY CONTEXT:

To present the results of the Hackney Carriage Unmet Demand Survey and to give various options available to members to advise the executive. The Executive Summary and Recommendations section of the survey report is appended (Appendix A).

2. RECOMMENDATIONS:

- 2.1 That committee recommends keeping the current number of hackney carriage vehicle licences at 595 **or**;
- 2.2 Recommends to continue to increase the number of hackney carriage vehicle licences issued by the council by 5 annually, such licences to be issued in May each year commencing in May 2023 **or**;
- 2.3 Recommends removing the limit on the number of hackney carriage vehicles issued and allow a free entry policy to vehicles, which are constructed or adapted and configured to carry passengers seated in wheelchairs, or vehicles which are fully electric, the type and design of the vehicle to be agreed by the Executive Director of Neighbourhoods, Communities & Housing. If members were minded to make this policy change then further consultation is strongly advised.
- 2.4 Recommend any additional licences issued under 2.2, above should be issued in accordance with the conditions attached to the Brighton & Hove City Council Hackney Carriage Vehicle Licence Waiting List and to vehicles which are constructed or adapted and configured to carry passengers seated in wheelchairs **or**; vehicles which are fully electric **or**; plug-in hybrid (PHEV) vehicles

the type and design of the vehicle to be agreed by the Executive Director of Neighbourhoods, Communities & Housing.

3. Relevant Background Information/Chronology of Key Events:

- 3.1 The council licenses hackney carriage vehicles and private hire vehicles. The principal differences between the two licensing regimes are (i) hackney carriages can ply for hire in the streets and at taxi ranks whilst private hire vehicles can only accept bookings made through a private hire operator (ii) powers exist to limit the numbers of hackney carriages in prescribed circumstances but there is no power to limit the number of private hire vehicles (iii) the council prescribes fares for hackney carriages but has no power to determine fares for private hire bookings.
- 3.2 This council last reviewed its policy of quantity control of hackney carriages on 29 November 2018.
- 3.3 Section 16 of the Road Transport Act 1985 gives the council the power to refuse the grant of a licence for the purpose of limiting the number of hackney carriage vehicles within its area, but only if it is satisfied that there is no significant demand for the service of hackney carriages within its area which is unmet. At present council policy limits the number of hackney carriage vehicle licenses to 595 with 5 additional licenses issued annually in May.
- 3.4 The Department of Transport has issued Best Practice guidance regarding limiting numbers policies. (Appendix B) Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice.
- 3.5 Because of its policy of limiting numbers, from time to time the council must commission an independent study to establish whether there is any significant unmet demand for the service of hackney carriages in Brighton and Hove. The Council recently commissioned such a study from independent transport consultants, CTS Traffic & Transportation Ltd, who produced their study report in October 2022. (Appendix C). An executive Summary and Recommendations can be found in Appendix A.
- 3.6 In view of the study findings which found there to be no significant unmet demand Members have a discretion to recommend to the Council one of the following options: either (i) delimit, i.e., to remove the limitation on numbers; or (ii) continue with a restricted numbers policy but allow expansion of the fleet in a controlled manner; or (iii) keep the current number of hackney carriages vehicle licences at 595.
- 3.7 If Members decide to recommend keeping the current level of licences at 595 then the council would be required to commission a further survey to assess demand in around 3 years' time. If Members decide to continue with a restricted numbers policy but with a policy of managed growth in line with paragraph 2.2 then the council would be required to commission a further survey to assess demand in

around 3 years' time. If Members decide to delimit the council would not be required to commission a further survey but further consultation would be necessary to assess the full implications of such a policy change.

- 3.8 The council maintains a waiting list for hackney carriage vehicle licences which currently has 259 applicants. It is recommended that all additional licences be offered to applicants in accordance with the conditions attached to the waiting list. This means that they would be offered to applicants according to their position on the list.
- 3.9 There are two potential avenues of legal challenge; an aggrieved party could seek judicial review of the committee's decision, and applicants could appeal against the refusal of a licence to the Courts. This is open to any applicant whether they are a licensed driver or not. The report shows that 595 hackney carriage vehicles are owned by 516 proprietors with 16 operators with a licence for 3 or more vehicles although it is not clear if all these operators are actually operating. Continuing to issue extra licences each year will counter criticism that the hackney carriage vehicle licence waiting list may be discriminatory if no extra licences are issued as it prevents applicants moving up the list giving the opportunity to own a hackney carriage vehicle.
- 3.10 The Council has adopted a number of measures to increase the percentage of wheelchair accessible vehicles available. These are; all new licences issued must be attached to a wheelchair accessible vehicle, or; vehicles which are fully electric or; plug-in hybrid (PHEV) vehicles, all vehicles capable of carrying 5 or more passengers must be wheelchair accessible. A higher fare was also set for vehicles when carrying 5 or more passengers to reflect the higher costs of running these vehicles and to encourage proprietors to change their vehicles to wheelchair accessible. Should members not wish to adopt 2.2 above or continue issuing plates to wheelchair accessible vehicles or; vehicles which are fully electric or; plug-in hybrid (PHEV) vehicles all these measures may need to be reviewed.

4. The type of vehicle to be licensed

- 4.1 Taxis provide an important means of transport for disabled people and are often the only viable option available. The council's hackney carriage fleet is mixed, consisting of saloon cars and specially constructed or adapted wheelchair accessible vehicles. Locally, representatives of disabled groups have asked for the continued provision of a mixed fleet but are keen to increase the percentage of rear loading wheelchair accessible vehicles to meet the needs of passengers with large, powered wheelchairs. This reflects the differing needs and preferences of the travelling public, including those who find it difficult to negotiate entry into wheelchair accessible vehicles and to sit down easily, and those confined to travelling in wheelchairs.

4.2 CTS Traffic & Transportation Ltd has considered the type of vehicle and suggests that the further value of adding more WAV to the hackney carriage fleet is now limited. The public view possibly suggests that the maximum level might be at most 65%, whereas the current tests seem to suggest the further increases since 2015 have not continued the improvement seen in the previous period. On balance, they consider that a level of 50% WAV hackney carriages would continue the present benefits and be a sensible target to keep to in the future.

On the contrary, compared to policies favouring growth in WAV levels, around the traffic world, much more emphasis is being given to attempting to reduce air quality concerns, with many locations seeking to encourage the licensed vehicle fleet to set a good example by moving towards lower or zero emission options. Many authorities have had mandatory level targets set and many are seeking to achieve this through changes to requirements for both hackney carriage and private hire.

It is also clear that the additional five plates per year managed growth have ensured that any tendency toward unmet demand that might be seen as significant have been kept clearly in control. It seems prudent that this policy should continue, at the same level, but that the focus on fleet change now move to these plates being allocated to low or zero emission vehicles. Given the small number, this might best be set as fully zero emission, wheelchair accessible vehicle styles.

4.4 Members are recommended to require that additional hackney carriage licences are restricted to wheelchair accessible vehicles, plug-in hybrid (PHEV) or fully electric vehicles. This will underline the council's commitment to those who suffer physical disability but also encouraging a move to zero emission options by giving proprietors on the waiting list choice when purchasing vehicles. However, in the interests of continuing to maintain a mixed fleet this policy, would need to be reviewed after a suitable interval, for example when the next unmet demand survey is undertaken.

4.5 If Members decide not to recommend to so restrict the number of vehicles, then there is a risk of legal challenge from hackney carriage licence holders who were previously issued licences for wheelchair accessible vehicles, on the ground that the restriction on their licences is unreasonable. If successful, this would lead to a reduction in the number of wheelchair accessible vehicles. In view of the survey findings, disability interest groups or individuals might also challenge such a decision.

5 Related Issues

5.1 The main purpose of the survey was to determine whether there exists a significant unmet demand for hackney carriages and to determine the number of licences required to meet any identified unmet demand. There are other related issues which the council needs to keep under review in the longer term, such as the response to telephone bookings for wheelchair accessible vehicles, initiatives to encourage hackney carriage and private hire drivers to work unsociable hours,

particularly at the weekends when there are peaks in night-time demand, the level of fares and measures to improve driver and passenger safety.

- 5.2 Crime reduction initiatives such as driver safety screens and in-car CCTV cameras have previously been supported by Committee. Other initiatives are still being developed including links with the community safety team and improved partnership between the taxi trade and the police. The level of fares are reviewed regularly including the question of whether there is justification to increase the differential between daytime and night-time fares to encourage drivers to work at times of peak demand.

6. Consultation

- 6.1 CTS Traffic & Transportation Ltd consultations consulted with Hackney Carriage and Private Hire Trade Representatives; Taxis Operators; Disability representatives and Social Services; Police and Community Safety Partnership, Supermarkets, Hotels Restaurants, Entertainment Venues & Public Houses and Night Clubs.

7. Financial & other Implications:

7.1 Revenue:

- The cost of the current Unmet Demand Survey was met from within existing revenue budgets. The fees for Hackney Carriages are set at a level that it is reasonably believed will meet the costs of providing the service. Therefore, this will include the cost of future Unmet Demand Surveys.
- Total income in 2021-22 from fees was £307,055. If the number of hackney carriages is allowed to increase this will not necessarily result in an increase in income overall, as it may be offset by a reduction in private hire vehicles.
- If the decision is taken to continue with a limitation policy, then there is the possibility of a legal challenge to the decision in court. The costs of any such challenge would have to be met from within existing budgets, funded from the fee income.
- If the decision is taken to delimit the number of taxis, then subsequent monitoring of taxi ranks may reveal a need to expand their size or number, which the Council would be responsible for funding. Such costs could range from a few hundred pounds to a few thousand pounds, depending on the specific circumstances.

Finance Officer Consulted: Michael Bentley

Date: 22/09/2022

- 7.2 These are dealt with in the body of the report.

Lawyer Rebecca Sidell

Date:

Equalities Implications:

- 7.3 On 1st July 2022 The Department for Transport announced that the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 came into force on 28 June.

The 2022 Act amends the Equality Act 2010 to place duties on taxi drivers and Private Hire Vehicles (PHV) drivers and operators, so any disabled person has specific rights and protections to be transported and receive assistance when using a taxi or PHV without being charged extra.

As part of the amendments, taxi and PHV drivers could face fines of up to £1,000 if they fail to provide reasonable mobility assistance to disabled passengers taking a pre-booked vehicle. This will also ensure that visually impaired passengers will be assisted by drivers to help them identify or find the vehicle.

The dft reports that In England, 14% of all licensed vehicles were wheelchair accessible in 2022. 55% of all taxis were wheelchair accessible while 2% of PHVs were wheelchair accessible. This is similar to the proportions in 2021.

To issue extra licences each year will counter criticism that the hackney carriage vehicle licence waiting list may be discriminatory because it does not move as no extra licences are issued.

With only some 6% of persons with a disability nationally being wheelchair users. By concentrating on WAV's some 94% of the total may be being inconvenienced or inadvertently discriminated against.

Sustainability Implications:

- 7.4 The role of the taxi trade is included in the Local Transport Plan, which identifies it as a key element in providing sustainable transport choices. It creates important links in the transport network to other forms of sustainable transport providing a seamless connection. It will contribute to three of the government's four shared transport priorities – reducing congestion, improving air quality and accessibility. Use of taxis for school transport, licensed vehicles using bus lanes, locating ranks at railway stations and the city coach station, approved use of liquid petroleum gas all contribute to reducing congestion and moving passengers quickly.

Crime & Disorder Implications:

- 7.5 Sufficient late-night transport to reduce public place violent crime is recognised in the community safety, crime reduction and drugs strategy. The presence of CCTV can be an important means of deterring and detecting crime.

Risk and Opportunity Management Implications:

- 7.6 The transport industry should be safe, profitable and be a positive experience for residents and visitors.

Corporate / Citywide Implications:

- 7.7 Tourism needs to provide a warm welcome to visitors and the tourism

strategy depends upon effective partnership with transport operators particularly to achieve safe late-night dispersal for the night-time economy.

SUPPORTING DOCUMENTATION

Appendices: A

Executive Summary and Recommendations of Survey

Appendices: B

Taxi and Private Hire Vehicle Licensing: Best Practice Guidance 2005 (Department for Transport)

Appendices: C

Survey of demand for Hackney Carriages (CTS Traffic and Transportation Ltd)

Appendix A

Executive Summary from CTS Report

This Survey of demand for hackney carriage services has been undertaken on behalf of Brighton and Hove following the guidance of the April 2010 DfT Best Practice Guidance document, and all relevant case history in regard to unmet demand. This Executive Summary draws together key points from the main report that are needed to allow a committee to determine from the facts presented their current position in regard to the policy of limiting hackney carriage vehicle licences according to Section 16 of the 1985 Transport Act. It is a summary of the main report which follows and should not be relied upon solely to justify any decisions of a committee but must be read in conjunction with the full report below.

This latest in the regular series of reviews of the level of unmet demand in the Brighton and Hove licensing area was undertaken between February and October 2018. This review has included a test of demand in Spring as well as the main test undertaken at the same time as in the previous survey and has specifically considered the policies of increasing WAV levels and managed plate growth in addition to the more usual standard brief.

The authority continues to support development of the licensed vehicle fleet as an important part of the transport offer of the area. The managed growth of vehicle plates on the hackney carriage side appears to have mirrored private hire growth which is in theory purely provided by the market. The overall industry structure allows a lot of freedom in operating models but as a result is very complex. Recent changes to see drivers having licences allowing them to drive either private hire or hackney carriage has reduced some of this complexity.

The early period rank observations suggested lower demand levels at the two key council ranks and no evidence that demand might have increased to provide any option for unmet demand in the area to have become significant. A wider review of rank activity in May found some 27% less demand observed at ranks now compared to the similar period in 2015. Even this picture, however, was complex since some ranks had seen growth whilst the main decline was at the station rank. There had also been national reduction in usage figures for passengers at Brighton station although not to the level the main rank itself had shown decline.

The area continues to see rank activity at some location in nearly every hour of the week. The hackney carriage fleet continues to be active in plying for hire, often covering several quiet locations by passing by regularly. Unmet demand measured in various different ways was always low, with just 2% of observed hours seeing average passenger delays a minute or more, with just 20 passengers during the survey period waiting 11 minutes or more for a vehicle to arrive.

Observed levels of service were found to be provided by around 43% of the fleet on the busiest, Saturday. Within these observations, 17% were other

than Brighton and Hove hackney carriages, although in effect just 4% were out of town vehicles. However, it is hard to capture all out of town activity since many find other locations to be active. This would have required much more extensive surveys.

Public interviews found a reduced level of usage of licensed vehicles, but a more marked decline for hackney carriages despite people finding them very obvious. The level of people not remembering using hackney carriages had significantly increased. Whilst app-based options had become the third highest way of 'booking' a vehicle, the top two booking companies still retain high levels of hackney carriages operating on their circuits. People's knowledge of ranks appeared to have reduced. Latent demand had increased although so had levels of satisfaction with the service provided. It may be that increased latent demand is a result of higher levels of expectation.

The trade remains very responsive to assisting the study, both from the individual and from the trade body / company levels. Of those responding, few were entirely dependent on ranks. Levels of accepting pre-bookings, and of hailing were both high.

53% of all trade respondents in the driver survey supported the present managed growth policy. Private hire supported the policy most strongly, followed by owner-drivers and then those that rented, although the latter support was not much less than the overall levels. A key concern was trade being taken by non-Brighton vehicles.

The level of unmet demand and the index of significance of unmet demand itself were both the lowest seen in recent surveys.

Levels of WAV activity were higher at ranks than the actual proportion in the fleet. However, the level of observed wheel chair-based passengers remained similar to the levels in the last two surveys.

Overall, this survey suggests the rank-based market has reduced, although hailing has remained strong and the introduction of apps has also seen demand switch from various sources to their use. Recent introduction of a hackney carriage app has been positive although this remains in its early days. At this time, the level of confidence that unmet demand is unlikely to become significant is higher than ever. It also appears that continually improved levels of service have also increased user expectations.

The hackney carriage fleet at this time is less dependent on rank-based hires than it ever has been. While a case could be made that the extra five plates per year could be switched off, wider views suggest this level of plate issue continues to keep a reasonable balance between the hackney carriage and private hire sides of the trade. There is also scope for work levels to be

increased with further reduction in the levels of inappropriately met demand that is tolerated.

Further, there is need to consider the upcoming issues of vehicle emissions within the mix of policies being used. It appears that the 'best' level of WAV for this area might be 50%, a level the fleet is now currently at, so that the focus of fleet change could now switch to encouraging improved vehicle emissions whilst ensuring the level of achievement on the WAV side remains.

Recommendations from CTS Report

On the basis of the evidence gathered in this Survey of demand for hackney carriages services for Brighton and Hove, our key conclusion is that there is no evidence of any unmet demand for the services of hackney carriages either patent or latent which is significant at this point in time in the Brighton and Hove licensing area. The committee is therefore able to consider retaining its present limit on hackney carriage vehicle numbers and to be able to support this against any challenge if required.

The options open to the committee therefore include the following:

- Retain limit at current level, removing the managed growth
- Continue managed growth for WAV
- Revise managed growth to switch to focus on environmental matters rather than WAV
- Remove the limit altogether (with various possible options from with no further restriction to quality controls such as in favour of environmentally friendly vehicle options).

At the same time the related policy regarding all replacement vehicles having to become WAV also needs reconsideration.

Further thoughts are provided in the previous chapter giving reasons why particular options might be preferable at this time. Further discussion can occur at the presentation of this report if necessary.

Appendix: B

Taxi and Private Hire Vehicle Licensing: Best Practice Guidance 2005 (Department for Transport)

The present legal provision on quantity restrictions for taxis outside London is set out in section 16 of the Transport Act 1985. This provides that the grant of a taxi licence may be refused, for the purpose of limiting the number of licensed taxis 'if, but only if, the [local licensing authority] is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet'.

Local licensing authorities will be aware that, in the event of a challenge to a decision to refuse a licence, the local authority concerned would have to establish that it had, reasonably, been satisfied that there was no significant unmet demand.

Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice.

Where restrictions are imposed, the Department would urge that the matter should be regularly reconsidered. The Department further urges that the issue to be addressed first in each reconsideration is whether the restrictions should continue at all. It is suggested that the matter should be approached in terms of the interests of the travelling public - that is to say, the people who use taxi services. What benefits or disadvantages arise for them as a result of the continuation of controls; and what benefits or disadvantages would result for the public if the controls were removed? Is there evidence that removal of the controls would result in deterioration in the amount or quality of taxi service provision?

In most cases where quantity restrictions are imposed, vehicle licence plates command a premium, often of tens of thousands of pounds. This indicates that there are people who want to enter the taxi market and provide a service to the public, but who are being prevented from doing so by the quantity restrictions. This seems very hard to justify.

If a local authority does nonetheless take the view that a quantity restriction can be justified in principle, there remains the question of the level at which it should be set, bearing in mind the need to demonstrate that there is no significant unmet demand. This issue is usually addressed by means of a survey; it will be necessary for the local licensing authority to carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court. An interval of three years is commonly regarded as the maximum reasonable period between surveys.

As to the conduct of the survey, the Department's letter of 16 June 2004 set out a range of considerations. But key points are:

- **the length of time that would-be customers have to wait at ranks.** However, this alone is an inadequate indicator of demand; also taken into account should be...
- **waiting times for street hailings and for telephone bookings.** But waiting times at ranks or elsewhere do not in themselves satisfactorily resolve the question of unmet demand. It is also desirable to address...
- **latent demand**, for example people who have responded to long waiting times by not even trying to travel by taxi. This can be assessed by surveys of

people who do not use taxis, perhaps using stated preference survey techniques.

- **peaked demand.** It is sometimes argued that delays associated only with peaks in demand (such as morning and evening rush hours, or pub closing times) are not 'significant' for the purpose of the Transport Act 1985. The Department does not share that view. Since the peaks in demand are by definition the most popular times for consumers to use taxis, it can be strongly argued that unmet demand at these times should not be ignored. Local authorities might wish to consider when the peaks occur and who is being disadvantaged through restrictions on provision of taxi services.
- **consultation.** As well as statistical surveys, assessment of quantity restrictions should include consultation with all those concerned, including user groups (which should include groups representing people with disabilities, and people such as students or women), the police, hoteliers, operators of pubs and clubs and visitor attractions, and providers of other transport modes (such as train operators, who want taxis available to take passengers to and from stations);
- **publication.** All the evidence gathered in a survey should be published, together with an explanation of what conclusions have been drawn from it and why. If quantity restrictions are to be continued, their benefits to consumers and the reason for the particular level at which the number is set should be set out.
- **financing of surveys.** It is not good practice for surveys to be paid for by the local taxi trade (except through general revenues from licence fees). To do so can call in question the impartiality and objectivity of the survey process.

Quite apart from the requirement of the 1985 Act, the Department's letter of 16 June 2004 asked all local licensing authorities that operate quantity restrictions to review their policy and justify it publicly by 31 March 2005 and at least every three years thereafter. The Department also expects the justification for any policy of quantity restrictions to be included in the five-yearly Local Transport Plan process.