

Our Ref: Durham LGR Taxis Revised Letter 001

Your Ref:

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Dear Clare

County Durham - Local Government Reorganisation Taxi Licensing

Thankyou for your letter dated 26th August. At this stage of the process you have asked for advice on the integration of taxi licensing across the new authority with specific reference to the zoning of Hackney carriages and limitation of Hackney carriage numbers, and that is what I have principally addressed, although I have commented on one or two related matters at the end of this letter.

Hackney Carriages

With effect from 1 April 2009 there will be seven zones for Hackney carriages within the new authority. These will be the areas of the previous seven districts and the new authority must consider what to do about these zones. It is open to the new authority to remove the zones and have one area for Hackney carriage licensing (the entire area of the new authority) or it can remain with the existing seven zones. It is not possible to merge some of the seven zones to create two or more zones.

In its *“Taxi and Private Hire Vehicle Licensing: Best Practice Guidance”* published in October 2006 the Department for Transport stated the following in relation to hackney carriage zones:

“Taxi Zones

60. The areas of some local licensing authorities are divided into two or more zones for taxi licensing purposes. Drivers may be licensed to ply for hire in one zone only. Zones may exist for historical reasons, perhaps because of local authority boundary changes.

61. The Department recommends the abolition of zones. That is chiefly for the benefit of the travelling public. Zoning tends to diminish the supply of taxis and the scope for customer choice – for example, if fifty taxis were licensed overall by a local authority, but with only twenty five of them entitled to ply for hire in each of two zones. It can be confusing and frustrating for people wishing to hire a taxi to find that a vehicle licensed by the relevant local authority is nonetheless unable to pick them up (unless pre-booked) because they are in the wrong part of the local authority area. Abolition of zones can also reduce costs for the local authority, for example through simpler administration and enforcement. It can also promote fuel efficiency, because taxis can pick up a passenger anywhere in the local authority area, rather than having to return empty to their licensed zone after dropping a passenger in another zone.

62. It should be noted that the Government intends to make a Regulatory Reform Order which will remove the need for the Secretary of State to approve amalgamation resolutions made by local licensing authorities. It is intended that the RRO should be introduced for Parliamentary scrutiny during 2006.”

It can be seen therefore that the Department for Transport regards de-zoning as best practice.

At present, de-zoning requires the approval of the Secretary of State, but there is a draft Regulatory Reform Order being considered by Ministers which will remove that requirement (referred to in the *Best Practice Guide*). Unfortunately, at present there is no indication when this might be approved, although it may be later this year.

In relation to Hackney carriages zones, my advice would be to leave the zones as they are on reorganisation, but make sure that there has been a public political commitment by the new authority to review it within one or two years from 1 April 2009.

The advantage in this is that it will provide a breathing space for all concerned with the new authority whilst alerting the existing Hackney carriage trade across the new authority that the status quo may well not remain.

Until de-zoning takes place, each zone will effectively run autonomously, and although all identifying materials (e.g. plates, fare tables, required signage etc) will need to reflect the identity of the new council, they will also need to identify the zone.

Each zone will set its own fares, licence fees, byelaws, policies and conditions, although there is nothing to prevent these being identical across the zones.

Whilst the zones remain, there will not need to be any consultation, as the status quo will remain within each zone.

Other questions arising from zoning issues

Currently, two of the seven zones limit the number of Hackney carriage proprietors licences that they will grant. This will be considered later in this advice.

I do not have any information about the types of vehicles that the different constituent authorities currently licence. For example, do any of the constituent authorities require all new vehicles to be wheelchair accessible? If this is the case, it will of course continue in the appropriate zone, but is a matter for consideration on de-zoning.

Similar considerations apply to colour schemes. At present, some of the districts insist on Hackney carriages being white in colour, but others do not. Again this can continue while zones exist, but harmonisation will be required for de-zoning.

In both these cases, extending across the new authority a requirement that adds to the costs of licensing of Hackney carriage is unlikely to gain the approval of those licensees in areas where the requirements are not currently in place, but those who are subject to these requirements will see their extension as being necessary to present a level playing field to the competition that they will fear from the other districts. It will be a matter for the new authority to decide what it regards as being necessary in relation to the new Hackney carriage fleet on de-zoning.

In relation to Hackney Carriage drivers licences, again these will be zone based, although a decision could be made to grant a multi-zone driver's licence. This will depend on harmonisation of drivers' requirements across the seven zones. Again this may not currently be the case, and will need to be considered before a de-zoning decision is taken.

It is likely that at present, all seven constituent authorities have different tests for both vehicles and drivers, and different fee and fare structures. As noted above these can continue within the zones, but consideration must be given towards moving towards a consistent approach across the new authority.

There is no right or wrong answer (either legally or practically) as to whether to retain zones or not. Most authorities that have had zones imposed upon them since 1974 (including the interim local government reorganisations of the 1990s in both England and Wales) have decided to remove zones, but there are one or two notable exceptions.

From the administrative point of view of the authority, zones make matters more complicated, and therefore more time-consuming and costly.

From the perspective of the trade, opinion is usually divided. Those who have Hackney carriage licences in the more popular zones are keen to retain zones and thereby reduce the potential for competition from outside the zone, whilst those licensed in the less popular areas are keen to have a zones removed so they can access the more lucrative parts of the new district.

The public are often concerned that the removal of zones will simply lead to all the Hackney carriages waiting in the most lucrative areas and leaving rural communities devoid of Hackney carriage services, but the reality is that Hackney carriages will work where there is trade for them, and many rural areas are poorly served even if zones remain.

Ultimately, the answer is probably a mixture of political will and administrative expediency.

Hackney carriage numbers

At present, two of the constituent authorities limit the number of Hackney carriage proprietors licences that they will grant. The remaining five do not have a numerical limit which means that in practice any suitable applicant who provides a vehicle that meets the specification and criteria laid down by that authority can be granted a Hackney carriage proprietors licence.

In its *“Taxi and Private Hire Vehicle Licensing: Best Practice Guidance”* published in October 2006 the Department for Transport stated the following in relation to limitation of hackney carriage numbers:

“Quantity Restrictions of Taxi Licences outside London

29. 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'.

30. 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.

31. 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 a deterioration in the amount or quality of taxi service provision?

32. 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.

33. 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.

34. 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.

35. 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. A recommended list of questions for local authorities to address when considering quantity controls was attached to the Department's letter. (The questions are listed in Annex A to this Guidance.)”

It can be seen that the view of the Department for Transport is that delimitation of numbers is the best practice.

However limitation of Hackney carriage numbers is a contentious and emotive issue. In areas where numbers are limited, the licences themselves have a value. This will undoubtedly be the case in both Durham and Chester-le-Street, but I do not have any information as to how much the plates are worth in each district.

Assuming that the zones will exist for the new authority from 1 April 2009 (see above), the limitation will continue in the Durham and Chester-le-Street zones.

The new authority will therefore have four possible courses of action in relation to limitation:

1. It can de-limit in each zone following the required process of consultation etc; or
2. It could introduce limits for the zones that currently do not have limits, whilst maintaining the limits in the two existing zones that are limited; or
3. It can de-zone with no limit over the new authority area. This would also require consultation on the removal of the limit as well as the removal of zones; or
4. It can maintain the status quo with seven zones, two of which limit.

As I mentioned earlier, most authorities that have gone through reorganisation, either in 1974 or subsequently have removed zones, but there are some exceptions. In at least one case, not only have zones been retained, but one of the zones has limitation of numbers, whilst the others do not (Calderdale in West Yorkshire which has eight zones, one of which has a limit on numbers, and in the remaining seven zones all vehicles must be white and new vehicles must be wheelchair accessible).

In relation to 1. above: A decision to delimit in the existing limited zones will be possible, but the process must be undertaken correctly. Any proposal must be just that, a proposal, until such time as full consultation has taken place and the results are available for the Council before the final decision is made. Any such decision will be susceptible to judicial review and the value of Hackney carriage plates may make those affected feel that such an expensive and risky course of action is worth while. Legally therefore it is not a risk-free option, but if conducted correctly it is relatively safe from the perspective of the local authority.

In relation to 2. above: Legally it is possible to maintain a limit in any district or zone, provided that there is a recent survey which will support the assertion that there is no significant unmet demand for Hackney carriage services within the district or zone in which the licence would apply.

Appeals against refusal to grant Hackney carriage licences in such circumstances are to the Crown Court which makes them more expensive than an appeal to the magistrates Court, and following the decision in *Kelly and Smith v Wirral Metropolitan Borough Council* (1996) 160 JP Rep 1047, CA, even a successful appeal does not guarantee the appellant a Hackney carriage licence, especially if there is an existing waiting list. The combination of both cost and uncertainty even if successful does tend to dissuade people from that course of action. That is not to say that a limitation policy is watertight, flying as it does in the face of the DfT

Guidance. It also requires regular surveys (at least every three years) for each of the zones in which limitation is maintained. Limitation is also costly in terms of member and officer time.

In relation to 3. above: Delimiting in the two limited zones combined with de-zoning will lead to the easiest and cheapest administration of Hackney carriage licensing for the new authority, as there will be unanimity of conditions etc and enforcement will be the same for the whole of the new area. Again, legally consultation will be required on both aspects of the proposal, with the potential for challenge but again if handled correctly the potential for successful challenge should be reasonably low.

In relation to 4. above: Maintaining the status quo with seven zones, two of which limit could be seen as an attractive option because it requires the least effort on the part of the authority in the short-term. However long term it will be costly (because of the requirement for seven different systems) in terms of both member and officer involvement.

Ultimately the decision must primarily be a political one, but the legal and practical aspects must not be overlooked.

As with the question of zones, my advice would be to maintain the limits on reorganisation within the two districts but make it clear that, along with zoning, this matter will be reviewed within the first one or two years of the existence of the new authority. Again this allows a breathing space whilst putting proprietors in the limited zones on notice that the status quo is unlikely to last for ever.

Conclusions

Clearly these matters need to be considered, and cannot be ignored. It is important that the new authority publicly acknowledge that Hackney carriage and private hire policies are important and will be considered reasonably quickly. Any lack of consistency across the new authority resulting from what will be viewed by many as artificial divisions is unlikely to find either public or political favour for long.

I trust that this has addressed the matters raised in your letter, but if you require any further information or wish to discuss any point further, please do not hesitate to contact me.

Other Hackney carriage and private hire areas

Although not part of this specific brief, I feel that is important to highlight some of the other matters that need to be addressed by the new authority in relation to Hackney carriage and private hire licensing. If required, further advice can be provided on these specific areas in due course.

Adoption of Legislation

It is assumed that all seven district councils have adopted the Local Government (Miscellaneous Provisions) Act 1976 in respect of private hire and Hackney carriage activity. It may be that the relevant transitional order will carry these adoptions forward, but at the moment it would be sensible to plan for the alternative scenario that the new authority will need to adopt the 1976 Act, to take effect from 1 April 2009. This must be done in accordance with section 45 of the 1976 Act which must be followed precisely.

The Town Police Clauses Act 1847 will apply to the new authority by virtue of section 15 of the Transport Act 1985.

Private Hire

As there is no such thing as a private hire zone, private hire licensing will need to be standardised across the new authority with effect from 1 April 2009.

Again, it is possible that the transitional orders will give some recognition to existing conditions and policies, but at the moment it will be safest to plan on the basis that this will not be the case.

Accordingly, policies and conditions relating to operators vehicles and drivers will need to be agreed for the new authority. These can clearly be based on the existing policies and conditions, but will need to be merged.

Once the draft policies have been drawn up, it will then be necessary to consult the existing trade on the proposals.

It will also be necessary to decide upon standardised fees for the seven private hire licences, together with a standard approved test for private hire vehicles.

Previous Convictions Policy

Although this probably falls within the general approach of merging policies across the seven authorities, it is important to consider the question of previous convictions policies. I do not have any information on the approach taken by each of the seven authorities, but I would not be surprised to learn that some (or all) of them rely on Annex D of Department of Transport Circular 2/92 (also known as Home Office Circular 13/92) as the basis of their consideration of any previous criminal convictions in relation to an applicant for any type of Hackney Carriage or Private Hire Licence. If this is the case, the reorganisation is the perfect opportunity to update this, and the new authority should have a policy which considers the impact of previous criminal convictions, cautions, ASBOs and fixed penalty notices in relation to all types of licence i.e. Hackney Carriage and Private Hire Drivers Licences, Hackney Carriage and Private Hire Proprietors/Vehicle Licences and Private Hire Operators Licences. Each of these categories will need individual treatment, as the impact of a

particular conviction has a markedly different effect depending upon the type of licence that is being applied for.

I trust that these further points are useful, although I am conscious they are simply pointers rather than specific advice. As always, please do not hesitate to contact me if further advice is required, including drafting policies or commenting on draft policies created by yourselves and colleagues.

Yours sincerely

James T. H. Button