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SUPPLEMENTARY PAPERS

Committee	PUBLIC PROTECTION COMMITTEE
Date and Time of Meeting	WEDNESDAY, 7 DECEMBER 2022, 10.00 AM
Venue	CR 4, COUNTY HALL - MULTI LOCATION MEETING
Membership	Councillor Michael (Chair) Councillors Kaaba, Bridgeman, Driscoll, Ferguson-Thorne, Gibson, Gunter, Jenkins, Lancaster, Palmer, Sattar and Shimmin

4 **Review of the Moratorium on Hackney Carriage Vehicle Licences** (Pages 3 - 8)

Davina Fiore

Director Governance & Legal Services

Date: Thursday, 1 December 2022

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**CARDIFF COUNCIL
CYNGOR CAERDYDD**

Agenda No.

PUBLIC PROTECTION COMMITTEE: 7 December 2022

Report of the Head of Shared Regulatory Services

Review of the Moratorium on Hackney Carriage Vehicle Licences

1. Background

- 1.1 The Town Police Clauses Act 1847 and the Transport Act 1985 give local authorities the power to grant and restrict hackney carriage licences. A Licensing Authority may impose a moratorium on issuing new hackney carriage vehicle licences (the moratorium). If they choose to do so they must show that there is no significant unmet demand for the services of hackney carriages.
- 1.2 Cardiff has had a moratorium on issuing new hackney carriage licences since 2010. This position was last reviewed in 2019, at their December meeting the Public Protection Committee resolved to continue the current moratorium.
- 1.3 At the time of writing this report there are 946 hackney carriage licences; however, 220 of these hackney carriage licences are on retention (commonly referred to as 'on hold'). Therefore, there are 726 hackney carriages that are actively licensed in Cardiff.
- 1.4 In its Best Practice Guidance the Department for Transport (DfT) recommends that if a council wishes to impose or retain a moratorium on the granting of hackney carriage vehicle licences, an independent survey should be undertaken at no more than three yearly intervals to assess the current levels of demand.
- 1.5 the Licensing Department have received a number of complaints from passengers unable to get hackney carriages and have found that the number of vehicle licences not being actively used has increased in recent years.
- 1.6 There are very few authorities in the UK that have a moratorium on the issuing of hackney carriage licences. Cardiff is the only authority in Wales that has such a moratorium in place.
- 1.7 In 2019 AECOM were commissioned by Cardiff Council to undertake an independent survey of Cardiff's taxi demand. The survey recommended that

there was no significant unmet demand and as a result the Public Protection Committee subsequently resolved to maintain the moratorium.

- 1.8 This report outlines the current issues around hackney carriage licensing and seeks approval to consult with the trade, public and other stakeholders on a proposal to remove the moratorium on new hackney carriage licences.

2. Current Issues

- 2.1 The Licensing Department have seen an increase in reports of hackney carriage drivers cherry picking and refusing short fares. It has also been reported nationally that there is a shortage of drivers in the trade since the Covid 19 pandemic.
- 2.2 The current moratorium on issuing new hackney carriage licences restricts new entrants into the hackney carriage trade unless they are able to purchase a hackney carriage vehicle already licenced in Cardiff and transfer it into their name. As a result, there is a secondary market in Cardiff for hackney carriage licences.
- 2.3 This secondary market may stifle those wishing to start their career as a self-employed owner/driver of a hackney carriage as they are required to pay a significant sum of money to purchase an older diesel vehicle before they can enter the trade. This takes money out of the trade that could be spent on improving the vehicle fleet.
- 2.4 A potential benefit of an open market for hackney carriage licences is that this would allow prospective licence holders to put a deposit down on a modern vehicle that they can licence themselves, rather than being required to purchase a hackney carriage vehicle above the market value for the vehicle due to it being licensed as a hackney carriage in a closed market.

3. Clear air agenda

- 3.1 The council has a commitment to improving air quality in Cardiff. To help support this commitment, the Welsh Government has funded an [Electric Taxi Scheme](#) which operates in 11 Welsh local authority areas and gives licensed taxi drivers the chance to trial a fully electric, wheelchair-accessible Nissan Dynamo taxi E-NV200 for 30 days and view the financial and environmental benefits of zero-emission vehicles.
- 3.2 Due to the moratorium in Cardiff, only those who already hold a hackney carriage licence, or rent a vehicle from a hackney carriage proprietor, are permitted to use the Electric Taxi Scheme. This position is unique to Cardiff in Wales and has led to very low take up of the Electric Taxi Scheme

compared to other areas. If the moratorium were removed, this would enable any licensed hackney carriage/private hire vehicle driver to take advantage of this scheme.

4. Legislation and DfT Best Practice.

- 4.1 Under section 16 of the Transport Act 1985 a local authority has a discretion, but no obligation, to refuse the grant of a hackney carriage vehicle licence if, it is satisfied there is no significant unmet demand for the service of hackney carriages, within the area to which the licence would apply. This discretion only applies to hackney carriage vehicles and cannot be used to restrict the number of hackney carriage driver's licences or private hire vehicle / driver's licences issued.
- 4.2 If the authority chooses to impose a moratorium on the issuing of hackney carriage licences, the Department for Transport (DfT) recommends an independent survey is conducted to assess the level of unmet demand.
- 4.3 It must be noted that a survey is only necessary to establish demand in an area if the Local Authority wish to limit the number of hackney carriage vehicle licences issued in their area. If an authority does not wish to limit the number of vehicle licences issued a demand survey is not necessary.
- 4.4 Any survey undertaken should also be kept up to date and be repeated every 3 years. Recent research indicates that a survey would cost in the region of £65,000.
- 4.5 In order to satisfy the prescriptive provisions of the Transport Act, before exercising this discretion, the Council must be satisfied that there is no significant unmet demand for the services of hackney carriages.
- 4.6 This does not mean that the Council must limit the number of hackney carriage vehicle licences issued, even if it is satisfied that demand is met. The effect of the 1985 Act is simply to prevent the Council from restricting the numbers for any other reason.
- 4.7 Any decision that Council makes about whether to place a limit on the number of Hackney Carriage vehicles or not could potentially be open to challenge by way of Judicial Review. Therefore the Council will need to ensure that it takes all factors into consideration. The decision that it is being asked to make is a discretionary one. The Court will be unlikely to intervene in the exercise of a discretion unless the decision making process is flawed. Any decision would have to avoid being "Wednesbury" unreasonable. This means that the Council will have to take account of relevant considerations,

not take into account irrelevant considerations, and come to a decision that a reasonable Council would reach based on the circumstances before it.

4.8 The Department for Transport Guidance referred to in this Report does not have statutory effect. This means that it is not something prescriptive that binds the Council. However, it would be highly unusual for a public body to depart from guidance from national government unless there were good reasons for doing so. In this case Government guidance suggests that a licensing authority's decision of whether or not to limit hackney carriage vehicles should be approached in terms of the interests of the travelling public. Clearly this factor must be taken into account. If Council were to depart from this non statutory guidance, it would have to carefully set out and record its reasons for doing so. If this were not done then, if the Council did limit, any interested party could apply for a Judicial Review of the decision alleging that the Council had failed to take into account a relevant consideration.

4.9 The Competition and Markets Authority (CMA) states that "quantity restrictions may cause harm to passengers through reduced availability, increased waiting times, reduced scope for downward competitive pressure on fares and reduced choice. They also may increase the risk to passenger safety if they encourage the use of illegal, unlicensed drivers and vehicles." "Quantity restrictions are not necessary to ensure the safety of passengers, or to ensure that fares are reasonable. However, they can harm passengers by reducing availability, increasing waiting times, and reducing the scope for downward competitive pressure on fares. "

"The CMA takes the view that concerns around congestion, air pollution and enforcement costs can generally be addressed through measures less harmful to passengers' interests than quantity restrictions."

5. Consultation

5.1 If members are minded to approve the recommendation, an external consultation will take place in line with the Department for Transport's Best Practice Guidance which recommends that local authorities consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers.

Therefore, it is proposed that the following groups will be consulted:

- Trade representatives from the Hackney Carriage Alliance/Unite the Union
- Groups representing equalities groups
- Members of the public via a post on Cardiff Council's social media feed directing people to an online survey

The consultation will be open for 6 weeks.

6. Achievability

- 6.1 This report contains no equality personnel or property implications.

7. Legal Implications

- 7.1 A moratorium on the issuance of new Hackney Carriage Vehicle Licences currently exists in the Cardiff County. As part of this moratorium continuing, the Council is obliged to undertake an unmet demand survey every three years if they decide to maintain the cap. If Members are minded to approve the recommendation in this report, a subsequent report will be presented to the Public Protection Committee in order present the results of the consultation and a decision may then be considered with respect to the moratorium.
- 7.2 Within this report the general legal implications that have been raised are covered in the following legal advice that includes general legal considerations, the Well Being of Future Generations (Wales) Act 2015, the Equalities Act 2010, Human Rights and the Council's Public Sector Equality Duty & Socio-economic Duty.
- 7.3 All decisions taken by or on behalf of the Council must :
- a) be within the legal powers of the Council;
 - b) comply with any procedural requirement imposed by law;
 - c) be within the powers of the body or person exercising powers on behalf of the Council;
 - d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations;
 - e) be fully and properly informed;
 - f) be properly motivated;
 - g) be taken having regard to the Council's fiduciary duty to its taxpayers; and
 - h) be reasonable and proper in all the circumstances.

8. Financial Implications.

- 8.1 The costs associated with the proposed consultation are anticipated to be minimal and will form part of the overall cost of licensing activity in the financial year.

9. Recommendation

- 9.1 It is recommended that members approve a consultation exercise seeking views on the removal of the moratorium. If approved, a subsequent report will be presented to this committee to present the outcome of the consultation.

Helen Picton

08 November 2022

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers:

- [Department for Transport - Taxi and private hire vehicle: best practice guidance to assist licensing authorities \(2022\)](#)
- [Competition and Markets Authority - Regulation of taxis and private hire vehicles: understanding the impact on competition \(2017\)](#)