

27 September 2006	ITEM 5
Licensing Committee	
CONTROLS ON NUMBERS OF HACKNEY CARRIAGES	
Report of Environmental Health Team Leader	
<p>Purpose: To consider the Council's future policies on controlling the number of hackney carriages it licences to operate in the borough.</p>	
Wards affected: All	Key decision: Yes
<p>This report is to be considered in public.</p>	

1. RECOMMENDATIONS:

- 1.1 To consider ending the Council's policy of controlling the number of hackney carriage licences it issues ('Taxi Delimitation').**

2. INTRODUCTION:

- 2.1** At the last Committee meeting it was agreed that no 'unmet demand' currently exists that would merit an increase in the maximum number of hackney carriage licences granted by the Council under its existing 'quantity control' policy. This decision was based upon a study undertaken by Halcrow Group Limited as transport consultants who were commissioned to carry it out on the authority's behalf.
- 2.2** This procedure satisfies Section 16 of the Transport Act 1985 in allowing the Council to restrict the number of taxi licences. This type of policy is commonly referred to as 'Quantity Control'. The discontinuation of policies of this kind is known as Taxi Delimitation'.
- 2.3** The Government has instructed local authorities such as Thurrock, who have adopted Quantity Control policies, to review not only the number of licences it issues, but also to challenge whether a policy on limiting licence numbers is needed at all? The Government had indicated that it would scrutinise the approach taken by each licensing authority that has chosen to maintain a limitation on the issue of hackney carriage licences; those individual authorities will have to specify the particular circumstances why they believed the status quo should remain.

2.4 The Committee agreed to give further consideration to any comments forthcoming from the Thurrock Licensed Drivers' Association, and other interested parties who presented written representations during the study, on the proposal to abandon the present policy on 'quantity control'. These views could then be taken into account before any final decision was made and published in accordance with Government instructions. For this reason the decision was delayed until this meeting when this issue could be further debated.

2.5 Any change would constitutionally be considered a 'key decision' that would have to be made by Cabinet, nevertheless both the Portfolio Holder for Environment and Officers would appreciate the collective opinion of the Committee on this subject before taking the matter further.

3. BACKGROUND:

3.1 The Council is the licensing authority for hackney carriages (HCs) within the district. For many years it has chosen to exercise a statutory power to limit the number of hackney carriages it licences. The same discretion does not exist in respect of private hire vehicles (PHVs), which are also licensed by the Council to carry passengers. This means that in respect of PHVs, so long as a suitable vehicle is presented by a 'fit and proper person' for licensing, the Council would be bound to issue a PHV licence, regardless of the number of PHVs already operating in the district.

3.2 Thurrock Council currently licences 90 hackney carriages, which is the maximum number of licences set under the present quantity control policy. Whilst there are no outstanding applications for additional HCs, as matters presently stand, any such applications submitted at this time would have to be automatically refused, even if an applicant were in a position to satisfy all the Council's standard criteria for licensing a HC.

3.3 Quantity Control policies inevitably tend to create a 'private market' in taxi licences, whereby a HC-plated vehicle can be sold for a price in excess of the normal 'open market' value of an equivalent used-vehicle that did not have HC plates mounted on it.

3.4 The matter of limiting the numbers of HC licences was the subject of a lengthy Report by the Office of Fair Trading (OFT) in November 2003. Broadly speaking, the OFT found that quantity control policies were not in the best interests of consumers in the following ways:

- Shifting consumers onto less preferred and/or suitable modes of transport
- Increased waiting times
- Compromising public safety

3.5 Whilst the OFT did recognise some arguments in favour of quantity controls, they concluded that these were "*unsupported by the evidence and/or outweighed by the clear benefits of de-regulation.*" The OFT went on to recommend to government that the legal provisions that allows licensing

authorities to impose quantity control should be repealed and that, in the meantime, Councils should themselves dispense with such policies.

- 3.6** The Government's reaction to this debate was to issue a letter to all licensing authorities. The letter expressed the view that, "*restrictions should only be retained where there is shown to be a clear benefit to the consumer, and that Councils should publicly justify their reasons for the retention of restrictions and how decisions on numbers have been reached. The Government considers that, unless a specific case can be made, it is not in the interests of consumers for market entry to be refused to those who meet the application criteria.*" They went on to say, "*We ask you to review the case for restricting taxi licences for your area and make the review public.*"

4. ISSUES AND/OR OPTIONS:

- 4.1** It is not sufficient for the Council simply to adjudge that there is no 'unmet demand' and to continue with its policy without further consideration. It is abundantly clear from messages coming from the Department of Transport that they are keen for Councils to remove the limitations on the number of HCs as soon as possible.
- 4.2** The government generally accepted the OFT's view that 'quantity control' acts against the interests of the consumer and any Council departing from this opinion must be prepared to publish its reasons.
- 4.3** Delimitation would allow market forces to dictate how many HC licences are required to provide an adequate service, in exactly the same way as currently exists for PHVs. The Government believes that market conditions should regulate the number of taxis and that competition will be good for the consumer. Furthermore, quantity controls should be retained only where a clear benefit to the consumer can be demonstrated. Any resulting commercial loss to present HC licence holders, for example, due to increased competition or decrease in the value of their vehicles, should not be of concern to licensing authorities when making their decision.
- 4.4** As a part of their study, the consultant was asked to research whether in the long term delimitation would have deleterious effect on passenger transport by taxis in the borough? In other words, what changes to local conditions would result if it were concluded that there was no longer any clear benefit to the consumer for retaining quantity control?
- 4.5** There would inevitably be a readjustment in the HC & PHV market if quantity controls were to end. As the report showed, there would be a small increase in the number of HCs licensed. All new HC licensed vehicles would need to fully comply with the Council's Vehicle Specifications. This would include the requirement for any newly-licensed taxi to be 'wheelchair accessible'.
- 4.6** Members of the local trade and all other interested parties were consulted as part of the survey. Predictably, there was a mixed response from the taxi trade with the majority of existing taxi drivers and owners reluctant to accept a

move to an open-market situation. The main group to voice its opposition has been the Thurrock Licensed Drivers Association

- 4.7** The Association through their solicitors has taken up the opportunity of submitting further representations to this Committee. Their submission is attached to this report as Appendix A. It will be for Members to assess the validity of their arguments and to judge whether this provides a *local case* for maintaining the restrictions. (The government have assured that local authorities remain best placed to determine local transport needs and to make the decisions about them in the light of local circumstances.)
- 4.8** Briefly, the Association agrees that there is no justification for increasing the numbers of hackney carriage licences granted the basis of ‘unmet demand’. The crucial issue however is the ‘Benefit to the Consumer’ and it is this part of their letter that warrants most scrutiny. The Association argues that free market competition will not *“bring the same benefits to consumers of taxi services as it does in other walks of life.”*
- 4.9** The government’s position is summarised in an extract from the Department of Transport’s June 2004 Action Plan (Appendix B).
- 4.10** Unless the government proceeds to remove the power of local councils to restrict taxi numbers in their areas, it would always be open to the authority to review and, if felt necessary, later reintroduce quantity control. If, however, the decision is to keep the existing policy, the Council would have to carry out a further taxi unmet demand test in three year’s time.

RELEVANT POLICIES

- Thurrock Council’s ‘Quantity Control’ policy for HC Licences.
- Thurrock Council’s Vehicle Specifications for HCs & PHVs
- Thurrock Local Transport Plan

FINANCIAL IMPLICATIONS

The HC & PHV licensing service provided by the Regulation Department aims to be self-financing through the fees and charges paid by applicants and licence holders. The Department bears the cost of the 3-yearly taxi demand survey. The Council would have to pay the costs involved in any litigation arising from the consequences of any of its decisions being challenged in court. For example, applicants seeking the grant of further HC licences from Councils maintaining quantity control policies have in the past sought judicial reviews. Similarly, organisations seeking to prevent delimitation have applied for judicial reviews to keep restrictions in place.

LEGAL IMPLICATIONS

Section 16 of the Transport Act 1985 allows the Council to restrict the number of taxi licences ‘if and only if’ it is satisfied there is ‘no significant demand’ that is ‘unmet’ for taxis.

OTHER IMPLICATIONS

None.

<p>BACKGROUND PAPERS</p> <ul style="list-style-type: none"> • Halcrow Hackney Carriage Unmet Demand Study (Full Report) June 2006 • TBC Consultants Brief for Taxi Unmet Demand Study • Dept of Transport Circular 3/85 • Regulatory Reform: The Government's Action Plan. Cabinet Office, Feb 2002 • OFT Report on the Regulation of Licensed Taxi and PHV Services in the UK, Nov 2003 • House of Commons Transport Select Committee Reports • Government Response to OFT Report, March 2004 • Government's Response to the Transport Committee's Report on the Regulation of Taxis and PHV services in the UK, May 2004 • Letter from Dept of Transport to all Chief Executives of Councils that restrict taxi licences, 2004 • Correspondence between Dept of Transport and Thurrock Council on Quantity Controls • Correspondence between Thurrock Licensed Drivers Assn and TBC Regulation Dept • Legislation relating to the HC & PHV licensing regime • Taxis – Licensing Law & Practice, James Button 	<p>Contact: Phil Eastal Telephone: 01375 652955 E-Mail: peasteal@thurrock.gov.uk</p>
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APPENDIX A

Submission on behalf of The Thurrock Licensed Drivers Association to the Licensing Committee Re: Provision of Hackney Carriages.
 (Enclosed in a letter from Palmers Solicitors dated 15th August 2006)

APPENDIX B

Extract from The Government's Action Plan for Taxis and Private Hire Vehicles in England and Wales: Restrictions on the numbers of taxis. (Department of Transport June 2004)

APPENDIX A

**SUBMISSION FROM PALMERS SOLICITORS ON BEHALF OF THE
THURROCK LICENSED DRIVER'S ASSOCIATION TO THE LICENSING
COMMITTEE****RE: PROVISION OF HACKNEY CARRIAGES**

This submission has been prepared having had the benefit of reading the Licensing Committee's agenda of 12th July 2006 and accompanying minutes, together with the report before the Licensing Committee dated 12th July 2006 and the report produced by Halcrow Group Limited dated June 2006.

Firstly, it is noted that at the present time the local authority operates a quantity control system whereby ninety vehicles are licensed as hackney carriages to work within the Thurrock Borough Council area and that it has been the policy of the Council to commission a report at regular intervals (three years) in order to maintain a clear understanding of the demand and dynamics of the market in order to ensure that any decision in relation to the licensing of hackney carriages is in line with best possible information and the most up-to-date position. The Halcrow report of June 2006 is the most recent and gives an extremely detailed and accurate indication of the current position.

We propose to divide these submissions into two parts that comment upon the findings in the Halcrow report and direct submissions concerning the result of those findings and the policy that should be adopted as a result of them.

Report by Halcrow Group Limited

As is noted on page 24 of the agenda bundle put before the Licensing Committee on 12th July last

"There is no evidence of significant unmet demand for hackney carriage services in Thurrock and therefore, on the basis of Thurrock's present quantity control policy, there would be no justification in recommending an increase in licences required to eliminate any significant unmet demand"

Although the finding is clear, some time spent looking at the detail will be rewarded with a greater understanding of exactly why there is no unmet demand and in this regard we refer the committee to page 17 of the Halcrow report headed **Evidence of patent unmet demand – rank observation results**. These results show that excess demand (queues of passengers) was experienced in only 7% of hours and a look at the table printed on page 18 of the report shows that this excess demand itself represents a reduction in the position at 2003 and a significant reduction from the position in 2000. Most importantly the report states *"During the crucial Monday to Friday daytime period, excess demand was observed in 0 hours"*. Table 4.2 on page 19 of Halcrow's report details delay in minutes and it can be seen there has been an average passenger delay reduction from 0.63 minutes in 2000 to only 0.22 minutes in 2006, a very significant reduction, indicating that, not only is

there no shortage of taxi cabs but that the position has moved towards the position of the customer and very favourably so. One page 23 of Halcrow's report there is some comparison with previous studies and the penultimate point made is *"The proportion of weekday daytime hours in which excess demand conditions are observed is 0% which is well under the average"*. It then goes on to say *"The demand in Thurrock is not considered to exhibit a high degree of peaking late at night compared to the rest of the day"*. The Committee will note that the population per hackney carriage is lower than the average overall value, i.e. that provision is higher and that all of the above facts indicate clearly that, not only is there no significant unmet demand for hackney carriages in Thurrock at the present time, but that the position has moved materially in favour of the customer from the position in 2000 and that there are now fewer delays, delays themselves are shorter in time and, most crucially, there is effectively no excess demand noted in the crucial weekday daytime hours.

It is clear beyond doubt therefore that there can be no argument for delimiting the provision of hackney carriage licenses so as to allow greater numbers of hackney carriages licenses to fulfil the unmet demand.

Benefit to the Consumer

The Committee will be familiar with the report of the Environmental Health Team Leader report headed "Controls and numbers of Hackney Carriages" put before the Committee on 12th July last and which commences at page 21 of the agenda bundle of the 12th July last. This report details the approach taken by the Government as a result of a report by the OFT suggesting there was clear benefits to deregulation and goes on to say that the Government considers that unless a specific case can be made, it is not in the interests of consumers for market entry to be refused for those who meet the application criteria. The Thurrock Licensed Drivers' Association submit that it is clear that here a specific case **can** be made to retain restrictions:

The argument advanced by Government is based on the belief that competition will bring the same benefits to consumers of taxi services as it does in other walks of life. We believe there are three generic areas of benefit which flow from competition, and they are as follows:

1. Cheaper prices.
2. Greater provision of services.
3. Better choice and/or superior quality of service.

We propose to analyse each of those as follows.

1. Cheaper prices

This is the principal and most often quoted advantage of competition but which is utterly irrelevant in the provision of hackney carriage services in

Thurrock as the price of the service is the cost of the fare which is set by the local authority on an annual basis, and to this page 6 of the Halcrow report refers. Increased competition therefore will not result in a reduction in prices for the consumer. No matter how many cabs there are on the road the price of the fare will remain the same as it is fixed by the local authority.

2. Superior provision of services for unmet demand

In this regard the committee is referred to all of the above and Halcrow's own report which concludes quite categorically that there is no significant unmet demand in the Thurrock area and in the crucial daytime weekday slot there is absolutely no unmet demand whatsoever.

3. Superior quality of service provision

If removing the limitation on hackney carriages cannot provide for an unmet demand or reduce prices, can they at least ensure an improvement in the quality of the services themselves, whether they be in the driver's, the operation of the service or indeed in the quality of the cab? It is quite clear the answer is No and in this regard the committee is referred specifically to the findings by Halcrow as detailed on pages 27 and 28 of Halcrow's report. At the bottom of page 27 Halcrow indicates *"The responses indicate that travellers obtaining a vehicle by telephone in 2006 were generally less satisfied with the delay encountered and the promptness of arrival (49.7%), a higher level of satisfaction (73.8%) amongst people obtaining a taxi by flag-down was recorded. Those obtaining a taxi at a taxi rank provides the highest level of satisfaction with 80.9% in 2006"*. The fact that satisfaction is higher for using the quantity-constrained service (rank and flag-down) suggests that the dissatisfaction recorded by the survey is not the result of entry control. The position as recorded by Halcrow is that **satisfaction with the uncontrolled quantity service is significantly less** than the satisfaction with the controlled quantity service.

In short, removing the constraints on quantity control cannot bring the Thurrock customer any benefits. It is clear there will not be any reduction in prices, it is also clear there will be no significant unmet demand met that is not already met. There will not be an increase in quality and indeed we would suggest quite the opposite is likely to happen as a greater number of cabs chasing the same amount of work will inevitably lead to lower profits. Those operators that operate at higher levels of quality may well conclude it is not longer commercially viable for them to continue to operate with their position being replaced by those of lower quality and simply less scrupulous in operating their service, whether it be by the quality of drivers employed or the quality of maintenance of their vehicles or in any other way. We would submit that this argument is especially strong given the clearest evidence provided by Halcrow in its report on pages 27 and 28.

In conclusion then it is quite clear that there is overwhelming evidence to show that not only will removing the quantity constraints on the provision of hackney carriage services in Thurrock not bring benefits to the customer but that it will almost inevitably bring a deterioration in service to the customer with no return of any

benefit of any kind whatsoever and it is therefore in the customers' direct interest that some form of quantity restraint is retained.

The Thurrock Licensed Drivers' Association is aware that there may be some increase in demand over the forthcoming years because of development in the area and respectfully suggest to the Council that **if** the Council expect or note an increase in actual demand for hackney carriages then that increase is best met by a controlled increase of hackney carriages, say by the addition of two hackney carriages per annum, until such time as optimum conditions for the customer is reached. At the present time, on the basis of Halcrow's most recent research, it would appear that those optimum conditions are already in place but it is acknowledged that positions change with time and that the local authority will need to commission a further report, probably in another three years, to examine the current position at that time.

Signed JRL Sirrell on behalf of the TLDA

APPENDIX B**The Government's Action Plan for Taxis and Private Hire Vehicles in England and Wales****Restrictions on the numbers of taxis**

1. In England and Wales outside London, local authorities (district/borough councils or unitary authorities) have been able to restrict the number of taxi licences that they issue since at least 1847. In practice, some 45% of authorities do so at present, but the legislation allows them to control numbers only if they are satisfied that there is no significant unmet demand.
2. Local authorities with quantity restrictions must be able to justify their policy in the event of an appeal by a taxi licence applicant who has had his application refused on the grounds of quantity controls. The usual method of ascertaining the level of demand is by means of a survey. The legislation does not stipulate any specific frequency for the surveys, but any licensing authority which controlled taxi numbers would want to ensure that its policy was based on up to date and sound information.
3. The OFT recommended that local authorities should not retain this power because they considered that such restrictions can:
 - a) reduce the availability of taxis
 - b) increase waiting times for consumers
 - c) reduce choice and safety for consumers
 - d) restrict those wanting to set up a taxi business.
4. The Government agrees that consumers should enjoy the benefits of competition in the taxi market and considers that it is detrimental to those seeking entry to a market if it is restricted. The Government is therefore strongly encouraging all those local authorities who still maintain quantity restrictions to remove restrictions as soon as possible. Restrictions should only be retained if there is a strong justification that removal of the restrictions would lead to significant consumer detriment as a result of local conditions.
5. However, the Government received a significant number of representations expressing the view that ultimately local authorities remain best placed to determine local transport needs and to make the decisions about them in the light of local circumstances. The Government believes that local authorities should be given the opportunity to assess their own needs, in the light of the OFT findings, rather than moving to a legislative solution.
6. Nevertheless the Government believes that local authorities should publish and justify their reasons for restricting the number of taxi licences issued. The Government will therefore write shortly to each district/borough council or unitary authority maintaining quantity restrictions and ask them to review by

31st March 2005 the local case for such restrictions and at least every three years thereafter, and make their conclusions available to the public.

7. The Government intends that the letter will include guidelines on quantity restrictions, including a review of the level of service available to consumers and consumer choice. The guidelines will cover:
 - a) **effective surveys** to measure demand, including latent demand, for taxi services;
 - b) **consultation** with:
 - i) all those working in the market;
 - ii) consumer and passenger (including disabled) groups;
 - iii) groups which represent those passengers with special needs;
 - iv) the police;
 - v) a wide range of transport stakeholders e.g. rail/bus/coach providers and traffic managers,
 - c) **publication** of conclusions. This will include an explanation of the particular local circumstances which justify restrictions, what benefits they deliver to consumers and how decisions on numbers have been reached. Authorities will be encouraged to make all the evidence gathered to support the decision-making process available for public scrutiny.

- 8 This is to ensure that decisions to impose restrictions are based upon strong up-to-date evidence of benefits to consumers locally for their retention, and that the decision-making process is transparent and consultative. The Government considers that this would help local authorities with quantity restrictions to justify their policy if they were challenged about refusing to issue a taxi licence in the courts. If restrictions are not shown to be delivering clear benefits to consumers, it is the view of Government that local authorities should remove them.

- 9 The Government itself will review in association with the OFT the extent of quantity controls in three years' time to monitor progress towards the lifting of controls. If necessary, the Government will then explore further options through the RRO or legislative process if insufficient progress has been made.

- 10 The Local Transport Plan process requires local transport authorities to look holistically at how the transport provision for their area contributes to wider objectives such as economic growth, accessibility and the environment. Taxis and private hire vehicles are an integral part of local transport provision and should be properly taken into account in this process. The Government intends that the next 5-year Local Transport Plans, due to be submitted by authorities in 2005, will include justification of any quantity restrictions in the wider local transport context.

- 11 The Government will also include guidelines on quantity restrictions in its best practice guidance on taxi licensing.