

Overview & Scrutiny Committee

Wednesday, 28th March, 2018
6.00 - 8.30 pm

Attendees	
Councillors:	Tim Harman (Chair), Jon Walklett (Vice-Chair), Colin Hay, Alex Hegenbarth, Sandra Holliday, Helena McCloskey, Paul Baker and Max Wilkinson
Also in attendance:	Councillor David Willingham, Councillor Steve Jordan, Councillor Andrew McKinlay, Councillor Roger Whyborn, Tim Atkins, Louis Krog, Rosalind Reeves and Gary Spencer

Minutes

1. APOLOGIES

Apologies had been received from Cllr Payne.

2. DECLARATIONS OF INTEREST

None declared.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting were approved and signed as a correct record.

RESOLVED that the minutes of the meeting held on the 26 February 2018, be agreed and signed as an accurate record

4. PUBLIC AND MEMBER QUESTIONS

None received.

5. CALL-IN OF DECISION REGARDING THE REVIEW OF THE TAXI AND PRIVATE HIRE LICENSING POLICY

The Chair welcomed everyone to the meeting and explained the call-in process and the procedure to be followed at the meeting. He explained that having received a representation from the National Private Hire and Taxi Association requesting a call-in and following consultation with officers he had concluded that a call-in was appropriate and it had been accepted by the Proper Officer.

In response to a question from a member regarding the grounds for the call-in, he referred to the letter of representation he had received and to the grounds for the call-in as set out in the calling-in form in appendix 1. Under Article 13 of the Council's Constitution he considered there were possibly, the following deficiencies in:

c) consultation,

f) clarity of aims and desires

g) due consideration of all objections and

h) explaining and giving reasons for the decision

He confirmed that all those reasons applied and he had received support for the call-in from members of all the political groups. He had sought legal advice that it was acceptable to refer to the letter of representation in the call-in form and this was duly attached. In response to a question from a member he confirmed that he as an elected member had agreed that there were sufficient grounds for the call-in.

The Chair invited the Cabinet Member Development and Safety, Councillor Andrew McKinlay, to be the first witness and answer questions from the committee.

Cabinet Member Development and Safety, Councillor Andrew McKinlay

What are your thoughts on the policy?

The Cabinet Member explained the process followed leading up to the decision by Cabinet on 6 March 2018 to adopt the revised policy. The details of the working group as well as consultation and feedback was set out in the Cabinet report which had been circulated. The results of the consultation were set out in detail in Appendix 4 of the Cabinet report.

He went on to highlight the 6 main elements of the new policy and in particular he highlighted the reasons for changing the grandfather rights which were fully set out in the report.

In 1988 the council had passed a policy that required all taxis to support the disabled. However the taxi drivers with the grandfather rights had continued to use saloon cars which were not accessible by disabled people and therefore not fit for purpose.

Disability access was less well-defined so a requirement for wheelchair accessibility would ensure the vehicle could be accessed by everybody. Currently the proportion of wheelchair accessible vehicles (WAVs) in the fleet provided a one in five chance that a vehicle in the taxi rank would be suitable for a wheelchair user which he stated he considered discriminatory and therefore unacceptable.

He emphasised that it was the council's policy and not the taxi drivers that was discriminatory. It would be easier to implement the government's requirement for 100% disability access and guide dog accessibility if taxis were required to be 100% wheelchair accessible.

He referred to a report produced by the Department for Transport in August 2017 entitled Accessibility Action Plan Consultation saying it gave a clear indication of government thinking on this matter. In the forward by the Government Minister at the time the Minister said *"My ambition is to ensure that people with physical and hidden disabilities have the same access to transport and opportunities to travel as everyone else..... this government is committed to improving disabled people's access to transport. As we set out in our 2017 manifesto, we believe that where you live, shop, go out, travel or park your car should not be determined by your disability."*

The report provided statistics that 7% of children, 18% of people of working age and 44% of pensionable age had some sort of disability. The report went on to detail the significant progress that had been made with buses (94%) and as of 2015 over 58% of taxis were accessible and this included all London taxis.

He referred to section 3.8 of the report which highlighted the need for all vehicles designated as wheelchair accessible by the licensing authority to comply with the specific requirements preventing passengers who use assistance dogs or wheelchairs from being refused carriage or charged extra for their journey. He stated this presented a loophole if the licensing authority did not designate any vehicles as wheelchair accessible as then the legislation would not apply. Furthermore under the Equality Act 2010, taxi drivers must make reasonable adjustments to enable disabled people to access those services. He stated that clearly 78% of taxis in Cheltenham were not conforming to this requirement.

His conclusion was that the government view was clear in that disability discrimination in public transport was unacceptable and local authorities must use their powers to rectify the situation.

How would you respond to some of the issues raised in the letter of representation from the National Association?

The Cabinet Member did not believe he had broken any law and he could prove this was the case. He pointed out that many local authorities had adopted similar policies and every challenge had failed particularly because much of the information referred to in the letter was out of date.

He disputed the allegation that there had been confusion in the consultation document and it had been absolutely clear on the options being put forward. It had been stated in the document that if drivers did not want to swap their vehicle before 2021 they could still operate as a private hire vehicle after that date should they wish.

The representation had made various references to the Equality Act 2010 part of which stated that the parts of this Act were not capable of being introduced. The Cabinet Member disputed this and stated that the government consultation in 2017 demonstrated that the government believed the act was enforceable.

Regarding the financial impact on taxi drivers, the Cabinet Member pointed out that the role of the council as the licensing authority was to ensure public safety and not to secure the income of local taxi drivers. He felt this argument had been overplayed in the representation as drivers could continue to operate with their own vehicles as private hire. Regarding the practice of selling licence plates on the grey market, this had no basis in law because the plates belonged to the licensing authority and not to the driver.

The Cabinet Member suggested that the two legal cases referred to in the representation related to cases which preceded the introduction of the Equality Act 2010 and were taken in lower courts. He referred to a more relevant case heard in January 2011 brought against Stratford-upon-Avon District Council on the grounds of insufficient consultation. The Court of Appeal had judged in this case that although Cabinet did not have all the information, the Licensing

Committee had had access to it before recommending the policy to Cabinet. The court also made a judgement on appropriate levels of consultation with disabled groups which the Cabinet Member considered knocked a lot of holes in the arguments made in the letter of representation relating to this call-in.

The representation referred to the cost of a new Wheelchair Accessible Vehicle (WAV) being in the region of £36K. The Cabinet Member outlined his own research which found that a wheelchair compliant vehicle such as a Peugeot Horizon could be purchased new for £16K and a 3 year-old vehicle for £10K and on Auto Trader he had found 26 suitable silver vehicles on sale earlier that day. He also referred to a response from a taxi driver in the consultation who had suggested that a WAV could be acquired for £2-3 K and therefore would be flooding the taxi market. The taxi drivers could not have it both ways and the Cabinet Member maintained that WAVs were no more expensive.

In conclusion he did not consider that the arguments in the letter of representation held much water and this was evidenced by the fact that at least 60 councils across the country had introduced similar policies to the one that this Cabinet had approved.

The Chair invited questions from Members to the Cabinet Member.

- The chair indicated that there appeared to be some discrepancy between what the Cabinet Member had said in the Cabinet meeting about further consultation and the final decision. What flexibility was there for further discussion with the taxi drivers?
- The Cabinet Member confirmed he was open to further discussions about the implementation of the policy but the timescale and timeframe were not open for further debate and he considered a three-year implementation was reasonable. These discussions could cover the types of WAVs which would be fit for purpose and safe, a review of the licensing charge, the scale of charges made to the public and the option of reviewing charges annually and any issues regarding the general running of the service.
- Although the consultation period of 12 weeks had been a sufficient length the number of respondents had been disappointing and would the Cabinet Member accept that the consultation could have been extended or been more proactive?
- The Cabinet Member had been disappointed in the level of response and he did not accept that the single response from the local Taxi Association was equivalent to 180 responses. The council had taken steps to promote the consultation via local media but it was a consultation and not a referendum and therefore people couldn't be forced to respond. In conclusion he was entirely comfortable with the consultation that had taken place.
- Although it seemed appalling that only 22% of the current taxi fleet could accommodate a wheelchair the move from 22% to 100% WAVs was quite dramatic and the impact on taxi drivers needed to be taken into account. Was such a jump reasonable and could adopting either one of the other two options given taxi drivers more flexibility?

- The Cabinet Member advised that when the 100% policy had been adopted 30 years ago, it had been assumed that the grandfather rights would gradually wither but in reality there had been no voluntary switches. The government viewed this as a failure and he could see no other way to achieve the 100% target. The authority now had 186 non-compliant vehicles which was too high for a town the size of Cheltenham.
- A Member asked how the sale of licence plates on the grey market was regulated.
- The Cabinet Member was not certain of the exact process but he understood that the car with the plate could be sold at a premium (in the order of £8-10K) and then the buyer could transfer the plate to another vehicle. It was custom and practice for the local authority to allow this to happen and many drivers prefer to buy a plate rather than buy a WAV but it had no weight in law or in the licensing policy. He emphasised that if the limit on the number of taxi drivers was removed then there would be no market for the plates and so the practice would soon discontinue.
- A member understood that the Department of Transport had not yet issued any guidance nor had the Secretary of State prescribed the percentage of WAVs which was acceptable. On this basis was the council's 100% target premature and why had the European regulations not been applied regarding definitions of WAVs and disabled access vehicles?
- The Cabinet Member advised that the government had not defined what constituted a disabled access vehicle and therefore this was not enforceable. The European regulations predated the Equality Act and therefore were not applicable. In his opinion the council's policy was only premature if the council had to wait for the government to issue further guidance but if you considered the current situation was morally wrong and put disabled people at a disadvantage, it was not premature and followed best practice in London, Bristol, Oxford and many other cities.
- In the absence of government guidelines a member asked whether the Cabinet Member had considered coming up with a specification for a disabled access vehicle?
- The Cabinet Member said this had been looked at in depth but officers were unable to find a single authority that had come up with a definition which stood up to challenge and therefore they had defaulted to a 100% policy. He added that saloon cars were low on the ground and did present difficulties for elderly people getting in and out of them whereas WAVs have been demonstrated up and down the country as being easier to get in and out of.
- A taxi driver was invited to speak by the chair and he gave examples of current taxis in the fleet such as a Hyundai SUV and a Ford Galaxy which catered for the needs of older people and it was all a matter of giving customers choice.

In conclusion the Cabinet member disputed the suggestion that the policy was introducing anything outrageous or unusual and he considered it was the right way forward.

Business Support and Licensing Team Leader, Louis Krog.

What professional advice did you give to the Cabinet Member in relation to the policy that was taken to Cabinet?

The officer explained that this was a complex issue which every licensing authority had been struggling with. The process had started in October with stakeholder meetings and the Cabinet had indicated at this point that they wanted to look at grandfather rights. A 12 week consultation had been launched, a standard period for this type of consultation which allowed the maximum time for responses given that historically the level of responses have been low.

The Cabinet had indicated that their preferred choice was to improve wheelchair access and asked officers to consider all the options including the option of 100% WAVs. Officers spoke to other councils and had discussions with vehicle manufacturers about the types of disability accessible vehicles that were available. They were advised that these types of vehicles did exist but were not mass produced and therefore were not suitable for inclusion in the policy. This avenue was still open and potentially further conversations could be had. Cabinet had taken the view that they were happy to go with a three-year implementation and that was broadly the officer advice at the time.

In response to questions the officer made the following responses:

- He confirmed that the current council policy was for 100% wheelchair access but this didn't apply to all taxis at the current time and the natural implication of removing grandfather rights would result in this 100% target being met.
- Officers had written to disability interest groups in Cheltenham that they were aware of to encourage them to respond to the consultation but they hadn't written to every relevant charity. The consultation had included Vincent and St Georges. The consultation had resulted in support from charities for the proposals.
- There was no national standard for licensing authorities regarding this matter and all have implemented their policies slightly differently however there was an increasing trend in urban areas for the type of policy the council was adopting.
- In response to a suggestion that the policy could have been implemented to only apply when a vehicle was replaced, he suggested that the implementation could run for several years and therefore progress would be much more gradual.

Donna Short, Director of the National Private Hire and Taxis Association

Would you like to clarify any points raised in your letter of representation and how would you respond to any of the points raised by the Cabinet member?

Donna Short highlighted her background and experience in this area. She explained that she had been one of 11 members of a task and finish group who had met with the Department of Transport and they were currently preparing a report for the new minister. She confirmed that the government was very interested in disability issues but as yet no national edict had been put in place.

She referred to the Equality Act 2010 and highlighted that the sections which would enforce wheelchair accessibility on both taxis and private hire vehicles had not yet been brought into force with the exception of the section dealing with the numbers of WAVs as a percentage. She referred to the legal cases detailed in her letter of representation.

Although European ministers supported the concept of the mixed taxi fleet, the government had not yet come up with a national policy. One of the reasons for this was that the government would have to demonstrate cost compliance and offer evidence that the policy was sustainable and affordable for all taxi companies.

Whilst accepting that the licence plate belonged to the local authority, she considered the value of the taxi businesses would be decimated if this policy was introduced. The customers would lose the ability to choose between a saloon vehicle and a WAV. She added that only three wheelchair users had used the taxi rank last year and of these three, two customers had preferred to get out of their wheelchair whilst travelling in the taxi. Many disabled people prefer to travel in this way as an able-bodied person and it was detrimental to remove this customer choice.

The Cabinet Member had referred to taxi drivers being able to revert to becoming private hire vehicles. She advised this would be additional cost as they would have to change the colour of their car to meet the council's policies.

Regarding the consultation, the criticism was not with the length of the consultation but its modus operandi and the way the responses had been dealt with. She raised the parallels with the *Sardar v Watford Borough Council* case referred to in her representation. The consultation had not been sent in the post to anyone and had been handed out on request with a degree of reluctance from the licensing department. A number of disability support groups had not been approached and they should have been consulted.

She indicated that she had done her own research on the second-hand market for WAVs and this had shown that of the 200 taxis being offered only 8 would have met the requirements of the Cheltenham policy. She acknowledged that the rear loading vehicles were less expensive but she was concerned about the longevity and the potential dangers to the public with such rear loading vehicles.

The chair invited questions to the witness.

- Asked how Cheltenham compared with other authorities with regard to percentages of WAVs, she advised that there had been no detailed review by the Department of Transport but her organisation had carried out a survey in 2014/2015. Of the 345 authorities who had responded,

54 had 100% wheelchair accessible taxi fleets and of those 27 were cities or Metro Boroughs.

The updated figures for Cheltenham from 2017 were 243 Hackney carriages and of those 57 were wheelchair accessible giving a percentage of 23.4%. By comparison the figures for other local authorities in the Forest, Cotswold, and Stroud were practically nil.

- Asked to justify the statement that business may fail if taxis were made 100% WAV, she advised that many ambulant disabled passengers did not like travelling in these types of vehicles which they likened to big boxes. From her experience from around the country the effect of this type of policy would be dramatic on business as many people prefer to travel in comfort in an executive type vehicle or felt more secure in a saloon car. Whilst accepting that the remit of the local authority was to ensure the safety of passengers their comfort was also an important consideration. As less than 1% of the Cheltenham population was in a wheelchair she saw no reason why everyone else should have to travel in a vehicle they might consider less comfortable.

The Chair allowed a taxi driver to speak at this point who wanted to emphasise that the business value depended on offering customer choice to a range of people with different needs. He gave airport runs as an example where passengers preferred an executive type vehicle. Recently during the snow 4x4 vehicles had been useful for transporting people to more rural areas.

- Asked why she thought comparisons with cities and metro boroughs were not relevant, she emphasised that unlike other types of public transport, taxis were private companies and they had to meet the costs of making their vehicles more accessible. If there was a minimal demand in the town the size of Cheltenham she questioned why this was necessary. The difference between Cheltenham and other towns was that there was no requirement for onward transport. Apart from the train station there was no onward transport to airports for example.
- Asked if she felt the 23.45% of WAVs in Cheltenham was inadequate how would she improve this situation, she suggested that this could be encouraged by discounting licence fees for WAVs to form incentive and looking at private hire vehicles where wheelchair users could pre-book.
- Challenged on her statement that business could be decimated without any evidence to support it, she advised that she had no figures from other authorities who had implemented such a policy. However the requirements in the policy were already quite restrictive i.e. Euro 6 compliant, silver and age and the WAV requirement would make it even more restrictive.

Chairman of the Licensing Committee, Councillor David Willingham

Councillor Willingham explained that the Licensing Committee's responsibility for public safety and their duty to have due regard for equality issues.

When considering the proposals he had put to the Licensing Committee he considered it was discrimination if a wheelchair user approached the taxi rank and was unable to access the first taxi. There had been several meetings of the working group and they had met with Hackney carriage drivers and the details

were set out in the Cabinet report. Some of the issues raised by the trade were not issues that the council could deal with.

He indicated that the only contentious issue for the Licensing Committee had been grandfather rights. At the final vote seven members of the main committee had been present and the voting was split 3:4 (for the new policy) indicating a range of different views. He emphasised that although the Licensing Committee was an important consultee, their role was to inform Cabinet in their decision-making process and it was for Cabinet to make the final decision.

He had taken it upon himself to advise the National Star College and the Leonard Cheshire home of the consultation via email and telephone but they had declined to respond.

Referring to the letter of representation from the National Association he highlighted that the cases referred to were pre Equality Act. Some further consideration could be given to the positioning of taxi ranks and their signage. An officer from GCC had attended one of the one of the working group meetings and Councillor Willingham stated that he had also raised issues about taxi rank signage with officers at GCC.

Although there was quite a lot of discretion in how local authorities implemented their policies they did have to be rational, reasonable, necessary, proportional and enforceable. In his view the three-year implementation timetable was reasonable and should allow taxi drivers sufficient time to manage their finances accordingly. He also commented that that a number of taxi drivers had been able to afford personalised number plates. He argued that the policy was necessary and proportionate and had been supported by disabled groups.

In conclusion he confirmed that he would be very happy for the discussion forum to continue so that elected members and officers could meet with the trade to discuss mitigation measures.

Following conclusion of the witness sessions, the chair outlined the options that were available to the committee. In the discussion that followed members concluded that Cabinet had been reasonable in the decision they had made.

A Member commented that the only option to ensure the number of WAVs increases was to remove the grandfather rights. He referred to the comment that disabled people tended to use private hire vehicles rather than taxis and suggested that this could be because they may not be confident of finding a suitable vehicle in the taxi rank. He had not been convinced by the argument that Cheltenham was different to Metro cities in providing facilities for the disabled. All shops had to be legally accessible for the disabled so there was no reason why taxis should not be the same and no one with a disability should be disadvantaged. There was an argument for a mixed fleet but until there was a clear definition of a disability access vehicle this was not an option that could be considered. He proposed that the committee support the decision but that there should be further consultation with the trade about licensing fees and possible mitigation measures.

Other Members agreed that having heard all the evidence that there was no other option currently that would improve the facilities in Cheltenham. The solution was not perfect but they felt Cabinet had made the right decision.

Another Member still had reservations about the level of consultation that had been done and felt that there could have been proactive engagement with affected groups. Whilst agreeing with the decision they suggested the council could write to government pointing out the difficulties that the lack of legislation in this area was causing local licensing authorities.

In his summing up the Chair agreed with these conclusions but was concerned about the practicalities arising from the decision. He suggested that there should have been longer ongoing conversations with taxi drivers leading up to the decision being made and now urged the Cabinet Member to listen carefully to their views regarding any mitigation measures. If the government was to come up with a definition of a disabled access vehicle then perhaps the option of a mixed fleet could be revisited.

After due consideration of the evidence presented at the call-in in relation to the reasons for the call-in and given the powers available to the Committee the O&S Committee resolved unanimously to:

- 1. Support the decision made by Cabinet on 6 March 2018 regarding the review of taxi and private hire licensing policy without qualification**
- 2. Note that there will be further consultation with the taxi drivers on appropriate mitigation issues and request that these be in a spirit of constructive dialogue**
- 3. Request the Chair to send a letter to Alex Chalk MP and Laurence Robertson MP requesting them to raise the matter with government and ask when the minister would be clarifying government policy on this issue.**
- 4. Request a report is brought back to O&S in the Autumn 2018 on the results of the consultation in 2 above.**

6. DATE OF NEXT MEETING

Date of next meeting will be 23 April 2018

Tim Harman
Chairman