

Report to Council/ Committee

Subject: Amendment of Hackney Carriage Vehicle Licence Conditions

Date: 22 March 2022

Author: Head of Environment

Purpose

To advise members of the outcome of the public consultation and the Council's position regarding a request to amend the Hackney Carriage Vehicle Licence Conditions namely the requirement under condition 6A (iv) that a roof sign shall be affixed to the roof of the vehicle in a proper manner and position at all times.

Recommendation(s)

THAT:

- 1) Members do not make any amendments to Hackney Carriage Vehicle Licence Conditions for the reasons set out in the report.**

1 Background

Application

- 1.1 In May 2021, a Gedling Borough Council licensed driver made an application regarding an amendment to the Hackney Carriage Vehicle Licence Conditions namely the removal of the requirement to have a roof sign affixed to the vehicle at all times. In summary, this was on the basis that the majority of his work was private hire and he felt that having the roof light encouraged members of the public to try to get into his vehicle when he was carrying pre booked fares. He argued that the existence of the condition for drivers undertaking private hire work posed a risk to the health and safety of drivers, passengers and members of the public.
- 1.2 Although the usual route for a driver aggrieved regarding a condition attached to their licence would be by way of an appeal to the Magistrates Court the Council agreed to put the matter before Members. The

application was heard at the meeting on the 13 July 2022. The driver was also invited to make representations to Members regarding the application, which he did along with submitting further information to support his application.

On this occasion members did not agree to remove the requirement but did agree to seek the views of the public and the trade on removing the requirement, resolving:

“To instruct officers to commence a public consultation on whether to remove the requirement for Hackney Carriages to display a roof sign when operating, the results of which would be brought back to a future meeting”

2 Statutory power to impose conditions on Hackney Carriage Vehicle Licences

- 2.2 The Local Government (Miscellaneous Provisions) Act 1976 (“the Act”) enables district councils to administer licences for Hackney Carriage and Private Hire vehicles and drivers. The Act provides that a district council may attach to the grant of a licence such conditions, as it may consider reasonably necessary.
- 2.3 Section 47 (2) of the Act goes further and specifically provides that a district council may require any Hackney Carriage licensed by them to be of such design, or appearance or bear such distinguishing marks as shall clearly identify it as a Hackney Carriage.
- 2.4 Currently, the authority does not prescribe any specific vehicle design, make or model to which a Hackney Carriage licence may be granted, which it is entitled to do under the Act. The only distinguishing marks to identify the vehicle as a Hackney Carriage are the vehicle licence plates, (only visible when viewing the vehicle from the front or rear if stationary and within an appropriate distance to view) and the roof sign, which is visible regardless from where the vehicle is viewed and a common feature of Hackney Carriages country wide.

The roof sign must bear the words “FOR HIRE” on the front and “GBC” or “GEDLING BOROUGH COUNCIL” on the back.

3 The Council’s current position

- 3.1 Condition 6 of our Hackney Carriage Vehicle Licence is as follows:

6. Roof Signs

- A The Proprietor of the Hackney Carriage provided with a taxi meter not fitted with a flag or other device bearing the words

"FOR HIRE" shall cause the carriage to be provided with a sign so constructed as to comply with the following requirements, that is to say;

- (i) the front of the sign shall bear the words "FOR HIRE" in plain letters at least one and a half inches in height and the back of the sign shall bear the initials "GBC" or the words "GEDLING BOROUGH COUNCIL" and the plate number
- (ii) the sign shall be capable of being so operated that it indicates clearly and conveniently to persons outside the carriage whether or not the carriage is for hire
- (iii) the sign shall be capable of being lit internally so that it is illuminated when the Hackney Carriage is "FOR HIRE" but not so illuminated otherwise
- (iv) the roof sign shall be affixed to the roof of the vehicle in a proper manner and position at all times.
- (v) the Proprietor of the Hackney Carriage shall maintain so far as is reasonably applicable such sign in efficient working order at all times.
- (vi) no other signs shall be displayed on the roof of the vehicle unless by prior written approval from the Councils Environment & Licensing Committee.

3.2 From Council records, it can be said that the Council has had a condition requiring a roof sign since before 2007.

The introduction of the Deregulation Act 2015 led to changes in the Taxi and Private Hire licensing regime. A review of all conditions including the condition requiring a roof sign was undertaken including a consultation with the trade. In February 2016, Committee again agreed to a condition requiring a roof sign on our Hackney Carriage Vehicle.

3.3 The Council's position was again re-affirmed in 2018. Following a challenge regarding displaying a roof sign by a licensed Hackney Carriage Driver, brought about by the ambiguity of the wording of the condition. On the 11 September 2018, Members of Environment & Licensing Committee were asked to consider an amendment to the wording of the Hackney Carriage Vehicle Licence Conditions, specifically relating to the displaying of roof signs. The proposed amendment to the condition was to avoid any future ambiguity in relation to the wording of the Condition.

A consultation was carried out for a 4-week period, on this matter and a number of other matters. The consultation letter was sent out to 1077 licensed drivers and is attached at **Appendix A**. The Council received a joint response from licensed drivers and this is attached at **Appendix B**. The response included concerns of being able to take the roof sign off when not working so as not to be approached by members of the public, being able to remove the roof sign when on the motorway, that having them on at all times increases the risk of them being stolen and that enforcement would be easier if the roof sign was not required when the vehicle was not working.

The Corporate Director in consultation with the Chair of the Committee considered the response and the response to the drivers is attached at **Appendix C**. The decision to amend the condition relating to roof signs not only removed ambiguity in relation to the wording of the Condition, but reinforced the provision afforded to district councils, allowing them to require any Hackney Carriage licensed by them to bear such marks as shall clearly identify the vehicle as a Hackney Carriage.

The Hackney Carriage Vehicle Licence Conditions were approved and continue to be attached to the grant of a Hackney Carriage vehicle licence. A copy of the current Conditions can be found at **Appendix D**.

- 3.4 The condition requiring a roof sign has therefore been a part of the Council's Hackney Carriage conditions for several years.

With the exception of the current application and some general comments in a previous consultation there has not been a specific report of an incident involving the health and safety of driver/passenger or member of the public, which has been caused by the existence of the roof sign.

4 Reasons for the necessity of the condition

- 4.1 As stated above the Council are legally entitled to impose any condition that they feel is reasonably necessary and specifically that allows a vehicle to be identifiable as a Hackney Carriage.

The fact that the Act specifically allows us to condition a Hackney Carriage so that it is clearly identifiable as a Hackney Carriage clearly supports the proposition that the condition requiring a roof sign is reasonably necessary.

- 4.2 The importance of the Hackney Carriage being identifiable as a Hackney Carriage, at all times, comes from years of case law. It is well established that once a vehicle is licensed as a Hackney Carriage it is always a

Hackney Carriage it cannot change form even when it is not working as a Hackney Carriage. This also led to the unique and unregulated position that a Hackney Carriage is entitled to work as private hire anywhere despite the driver and vehicle not being licensed by the Local Authority it is working in.

The 'golden triangle' of the Local Authority licensing the driver and vehicle in the area, which it works, is therefore missing. This brings with it greater issues over the Councils ability to regulate, enforce and protect public safety.

- 4.3 The unregulated ability of a Hackney Carriage being able to work private hire was established in the High Court judgment of *Stockton-On-Tees Borough Council v Fidler, Hussain and Zarmanian* [2010] EWHC 2430 (Admin). It had a significant impact on not only the Hackney Carriage and Private Hire trade, but also the licensing authorities up and down the country. It was judged that drivers of Hackney Carriages are considered not to be operating without a licence, while undertaking fares awarded to them via any Private Hire Operator outside of its licensing authority's area. As a result, a number of authorities across the country, including this authority, received an increased number of both driver and Hackney Carriage vehicle licence applications.
- 4.4 Facilitated by the High Court judgment referred to above, a considerable number of Gedling Borough Council licensed Hackney Carriages were and continue to operate, undertaking private hire work in both neighbouring and remote local authority areas. Meaning clear identification as to the licensed vehicle type is all the more important, to both the public and enforcement agencies.
- 4.5 The entire licensing regime is underpinned by the licensing authorities need to promote public safety. This is paramount and should not be compromised. In balancing the rights of drivers against public safety, the safety of the public should come out on top. Part of that safety comes with being able to enforce against drivers.

This has always been the case and has been further highlighted in the recent statutory standards issued by the Department for Transport reinforcing the need for public safety to be promoted across the Taxi and Private Hire licensing regime.

- 4.6 Having the roof sign condition ensures that by having the roof sign in situ at all times, it acts as a distinguishing feature, which clearly identifies the vehicle as a Licensed Hackney Carriage, whilst operating both inside and outside of the licensing authority area. Such a feature is considered an important asset for public and passenger safety. It allows members of the

public to know at a glance that the vehicle is registered to a standard as to award it a Hackney Carriage licence and it allows any licensing authority to see which council licences the vehicle should they have cause to report it. It also, importantly, protects the driver from unnecessary enforcement when operating outside of their licensing authority's area. Other Licensing Authorities upon seeing the roof sign will not have cause to stop the driver as they will now they are a Hackney Carriage and therefore able to operate in its area. Such a view has been expressed by the Compliance Manager at Nottingham City Council at **Appendix H**.

- 4.7 Roof signs not only act as a clear and distinguishable feature, assisting the public with the identification as to the type of vehicle licence under which the driver and vehicle are operating. It also acts as an indicator to enforcement agencies and personnel, of the type of licence under which both driver and vehicle should be operating. The requirement to display a roof sign in accordance with the licence conditions is an important condition. A condition, which the Licensing Section regularly enforces.
- 4.8 Regardless of design and specification, it is a common sight up and down the country that vehicles licensed as a Hackney Carriage are furnished with a roof sign. Research has shown that all of the licensing authorities across Nottingham and Nottinghamshire require vehicles licensed as a Hackney Carriage to display a roof sign. Either as a condition of licence, or as a requirement within the vehicle specification.

5 Applicants grounds for removal

As referred to above at the meeting held on the 13 July 2021 members had sight of written representations prepared by the driver and from the driver himself.

In Officers opinion, the main point put forward by the driver is that the existence of the roof sign is putting himself, his passengers and other members of the public, health and safety, at risk. This is due to members of the public trying to get into his car when the vehicle is pre-booked as private hire because of the existence of the roof sign.

The driver describes two incidents in detail regarding members of the public trying to enter the vehicle thinking he was available for hire when in fact he was pre-booked. He states there have been numerous other occasions that this has happened. With the exception of the current application and general comment from a previous consultation, the Council have not received any reports of any health and safety incident that can be attributable to the existence of a roof sign.

Officers accept that during the pandemic, the demand for taxis has outweighed the supply and as such, Officers submit that the issues the

driver reports are likely to have occurred regardless of the existence of the roof sign.

The driver submits that the roof sign should be removed when the vehicle is carrying out private hire bookings.

Officer's view is that it is vitally important that roof signs be consistently used by all hackney carriages to identify the vehicle as a hackney carriage particularly in line with the case law. If a hackney carriage was allowed to remove the top light when carrying out private hire work the vehicle would appear to be a private hire vehicle which would lead to more inconvenience for the driver being pulled over to explain why they are working in another licensing authorities area along with issues over enforcement and public safety as highlighted above.

The driver further submitted that the plates alone are sufficient to identify the vehicle as a Hackney Carriage. Officers' view is that the plates on their own do not clearly distinguish the vehicle as a hackney carriage particularly in traffic, from the side view of the vehicle, at night and from a distance – please see video clips at **Appendix E**.

6 Results of the Consultation

- 6.1 The consultation requested at the meeting of the 13 July 2021 was carried out alongside the wider consultation regarding the Department of Transport's statutory standards for a period of 8 ending on the 9 December 2021. The question asked and the results of the consultation are attached at **Appendix F**.

The Council licenses nearly 800 drivers. Overall, only 40 respondents answered the question 51 %(20) of the responders voted that yes the condition should be removed and 49 %(19) of the responders voted no the condition should not be removed.

14 of the responders left comments when answering the question. The comments and Officers views can be found at **Appendix G**.

In summary, 3 responders commented that the condition should remain, with one of them suggesting if it were to be removed, there should be something else in place so that it is still recognisable as a Hackney Carriage. 4 responders commented that the sign should be removed when on holiday or using the vehicle for personal reasons. 2 responders commented that it should be removed due to vehicles being broken into, 2 responders commented that it should be removed as they only do private hire work and 1 responder commented that it should be removed, as the plates are sufficient to identify it as a hackney carriage.

7 Freedom of Information Request

- 7.1 A freedom of information request has been sent to all local authorities within the UK excluding the London Authorities. Of the 292 relevant responses:

263 Authorities had top light/roof sign condition, requirement or Byelaw.

6 Authorities specify a London Cab vehicle type, which has the top light built in.

23 Authorities do not have a top light condition.

Of the 292 responses, 5 Authorities had received complaints about or requests to remove the top light condition. Only one of these complaints was on public safety grounds:

Caerphilly County Borough Council – 1 complaint not related to public safety (no further details provided).

Canterbury City Council – 2 complaints relating to the size of the top light. No public safety complaints.

Cannock Chase Council – “Yes, we have received several requests to remove the Top Lights on occasion. These are generally for convenience around personal use of the vehicle rather than public safety.”

Gravesham Borough Council – 1 complaint linked to public safety (no further details provided).

Rossendale Borough Council - One request to remove sign from top of minibus to allow passenger onto car park at Manchester Airport.

Broxtowe Borough Council have not received any complaints and provided the following comments in response to this question:

“None. Our view is that it is a matter of public safety for a Top Box to be displayed to ensure that members of the public can quickly and easily differentiate, even in dimly lit circumstances, between licensed hackney carriages and private hire vehicles or other saloon vehicles (which may not be licensed).”

- 7.2 As can be seen the overwhelming majority of licensing authorities have a condition requiring the use of a roof sign and none bar one reported any complaint regarding the condition on the grounds of public safety.

8 Conclusion

The law allows licensing authorities to condition hackney carriage vehicles with any condition they feel is necessary and further allows them to condition hackney carriages so that they are recognisable as a hackney carriage. It is clear that the condition regarding the roof sign is necessary.

It is nationally common practice for hackney carriages to be identified over other vehicles by the displaying of a roof sign.

Although it is accepted that during and post pandemic there may be issues as described by the driver, Officers cannot see any evidence that these relate specifically to the use of a roof sign. It is likely that all hackney and private hire vehicles may face the same issue until the supply and demand has levelled out.

Even if there was evidence that pointed to the use of the roof sign specifically causing the issue, there has to be a balancing act of the issues that the existence of the roof sign may bring with the public safety and enforcement issues that having it, address.

Officers are firmly of the view that the necessity of the requirement outweigh any issues that may be attributed to the use of the roof sign and that the condition should remain as it is. Members must be sure that the condition poses such a risk as to outweigh the clear public safety and enforcement issues that it addresses before making a decision to amend the condition.

9 Proposal

That the Hackney Carriage Vehicle Licence Conditions are not amended to incorporate the request by the licensed driver.

3 Alternative Options

- 3.1 That the Hackney Carriage Vehicle Licence Conditions are amended to incorporate the request to remove the requirement to display a roof sign which would result in Hackney Carriages licensed with the Council to be more difficult to identify both in and out of the Borough having negative repercussions regarding enforcement and the hindering the public when trying to identify a hackney carriage particularly at in the hours of darkness.

As set out in this report, the Council's position is that if a vehicle is licensed as a hackney carriage it must be identifiable as such and that the plates alone are not sufficient for this. If Members did wish to amend the condition by removing the requirement of the roof sign there would need to be a further condition to ensure that a hackney carriage is distinguishable.

- 3.2 An alternative to displaying a roof sign would be the wrapping of the vehicle with a vinyl wrap, in colours specified by the authority. Having enquired with a number of businesses local to Nottingham, the cost to have a medium to large sized vehicle wrapped in vinyl would be in the region of £1250 + vat. The exact cost is based on vehicle make, model and age.

Officers do not feel that this would be appropriate, as the cost is disproportionate to the aim, to make the vehicle distinguishable as a Hackney Carriage. This can be done simply and cost effectively with the condition already in place.

For context the current cost to purchase, a roof sign, which meets Gedling's current specification, is £25 + vat for the smaller sign. Alternatively, £37 + vat for the larger sign. If fitting is required, this costs £10 + vat.

- 3.3 A further alternative would be to only licence a bespoke Hackney Carriage vehicle, as employed by Nottingham City Council. The vehicle type and colour could be specified by the authority, to enable the identification of the vehicle as being licensed with this Council.

The current cost of such vehicles, which are also more environmentally friendly are:

LEVC £55 – £65,000
Nissan Dynamo £45,000
Mercedes Vito £40,000

Again, officers would not recommend this alternative due to the cost implications for the drivers. Officers are clear however, that should Committee wish to remove the condition there would need to be something else in place to identify the vehicle as a Hackney Carriage at all times.

4 Financial Implications

- 4.1 There are no financial implications.

5 Legal Implications

- 5.1 The legal position regarding the imposition of conditions is set out in the body of this report.

Although challenge to a pre-existing condition should normally be made to, the Court Members heard the application and although they did not agree to remove the condition, they did agree to seek the views of the public and

the trade in relation to the removal of the condition.

Members must have regard to the consultation responses in reaching its decision.

The consultation regarded a condition that was pre-existing and has been part of the Council's hackney carriage vehicle licence conditions for several years. It is not the case that the Council were consulting on bringing in a new condition that may bring some detriment to its licensed proprietors.

The consultation process was fair in the context of this case. The consultation question stated what the council's position is regarding the condition and gave the opportunity for responders to comment on whether or not the condition ought to be removed. The consultation ran for a period of 8 weeks and was well advertised.

6 Equalities Implications

- 6.1 There are no equalities implications arising from this report.

7 Carbon Reduction/Environmental Sustainability Implications

- 7.1 There are no carbon reduction/sustainability implications arising from this report.

8 Appendices

- 8.1 Appendix A – Consultation 2018 – letter sent to licensed drivers

Appendix B – responses to the 2018 consultation

Appendix C – letter sent to the consultees to the 2018 consultation with the Council's decision

Appendix D – current Hackney Carriage Vehicle conditions

Appendix E – Video clips of a top light and plates on a licensed vehicle – to be played during Committee

Appendix F – Consultation 2021 – question and results report

Appendix G – Consultee comments and officer responses

Appendix H – response from the Compliance Manager at Nottingham City Council.

Appendix I – Written representations from applicant – to follow

9 Background Papers

- 9.1 Report to the Environment and Licensing Committee – “Amendment of Hackney Carriage Vehicle Licence Conditions.” Dated 13 July 2021. Plus supplemental written representations submitted by the driver prior to meeting.

Statutory Officer approval

Approved by:

Date:

On behalf of the Chief Financial Officer

Approved by:

Date:

On behalf of the Monitoring Officer