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TRAFFORD COUNCIL

AGENDA PAPERS FOR PUBLIC PROTECTION SUB-COMMITTEE MEETING

Date: Thursday, 21 November 2013

Time: 6.30 pm

Place: Council Chamber, Trafford Town Hall, Talbot Road, Stretford,
Manchester, M32 0TH

AGENDA	PART I	Pages
1.	ATTENDANCES	
	To note attendances, including Officers and any apologies for absence.	
2.	MINUTES	1 - 10
	To receive and if so determined, to approve as a correct record the Minutes of the meetings held on 18 th April, 2013, 16 th May, 2013, 20 th June, 2013 and 18 th July, 2013.	
3.	REVIEW OF HACKNEY CARRIAGE VEHICLE POLICY - INTERIM MEASURES	11 - 26
	To consider a report of the Head of Public Protection.	
4.	URGENT BUSINESS (IF ANY)	
	Any other item or items (not likely to disclose "exempt information") which, by reason of special circumstances (to be specified), the Chairman of the meeting is of the opinion should be considered at this meeting as a matter of urgency.	

THERESA GRANT
Chief Executive

Membership of the Committee

Public Protection Sub-Committee - Thursday, 21 November 2013

Councillors C. Candish (Chairman), B. Sharp (Vice-Chairman), D. Bunting, M. Freeman, D. Jarman, P. Myers, J. Smith, N. Taylor and Mrs. J. Wilkinson

Further Information

For help, advice and information about this meeting please contact:

Natalie Owen, Democratic Services Officer

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This agenda was issued on **Tuesday, 12 November 2013** by the Legal and Democratic Services Section, Trafford Council, Trafford Town Hall, Talbot Road, Stretford M32 0TH.

PUBLIC PROTECTION SUB-COMMITTEE

18th APRIL 2013

PRESENT:

Councillor Sharp (Chairman),
Councillors Bunting, Freeman, Jarman, Myers, Smith, N. Taylor and Mrs. Wilkinson.

In attendance: Solicitor (D. Goldstein),
Licensing Manager (J. Boyle),
Democratic Services Officer (R.M. Worsley).

APOLOGIES:

An apology for absence was received from Councillor Candish.

50. MINUTES

RESOLVED: That the Minutes of the Public Protection Sub-Committee meetings held on 19th March 2013 be approved as a correct record and signed by the Chairman.

51. EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That the public be excluded from this meeting during consideration of the following items on the agenda because of the likelihood of disclosure of "exempt information" which falls within one or more descriptive category or categories of the Local Government Act 1972, Schedule 12A, as specified on the agenda item or report relating to each such item respectively.

52. PRIVATE HIRE DRIVER – REFERRAL IN ACCORDANCE WITH A PREVIOUS DECISION OF THE SUB-COMMITTEE

The Head of Public Protection submitted a report requesting Members to consider the referral and the submissions of the private hire driver. The driver, Mr. H.T., attended the meeting to enable Members to give the matter their full consideration.

RESOLVED: That no further action be taken against Mr.H.T.

53. HACKNEY CARRIAGE DRIVER CONVICTION THAT EXCEEDS THE SCHEME OF DELEGATION

Applicant Mr. A.I.O

RESOLVED: That this item be deferred to the next available meeting of the Public Protection Sub-Committee.

54. PRIVATE HIRE DRIVER – CAUTION

The Head of Public Protection submitted a report requesting Members to consider the caution and the submissions of the private hire driver. The driver, Mr. A.K.I., and employer Mr. J.G. attended the meeting to enable Members to give the matter their full consideration.

RESOLVED: That no further action be taken against Mr. A.K.I.

55. **REVOCATION OF PRIVATE HIRE DRIVER'S LICENCE FOLLOWING THE DISQUALIFICATION OF DVLA LICENCE**

The Head of Public Protection submitted a report requesting Members to revoke a private hire driver's licence following the driver's disqualification from holding a DVLA licence. The driver Mr. G.B. was not in attendance at the meeting.

RESOLVED: That Mr. G.B.'s Private Hire driver's licence be revoked.

The meeting commenced at 6.40 p.m. and finished at 8.00 p.m.

PUBLIC PROTECTION SUB-COMMITTEE

16th MAY 2013

PRESENT:

Councillor Sharp (Chairman),
Councillors Bunting, Freeman, Jarman, Myers, Smith, N. Taylor and Mrs. Wilkinson.

In attendance: Interim Head of Legal Services (M. Jones),
Licensing Manager (J. Boyle),
Democratic Services Officer (R.M. Worsley).

APOLOGIES:

An apology for absence was received from Councillor Candish.

56. APPLICATION FOR A ZOO LICENCE AT SEA LIFE MANCHESTER

The Head of Public Protection submitted a report requesting Members to consider the outcome of the veterinary inspector's report following the application for a Zoo licence at Sea Life Manchester. Mr. N. Smith, Public Protection Manager (Environmental Health) provided an overview of the application and Mr. R Wick, Regional Curator UK & Ireland and Ms L. Handel, on site Curator, attended from Merlin Entertainments Limited to answer questions from Committee Members.

RESOLVED –

- (1) That the report be noted
- (2) That the Inspector's report be noted
- (3) That the grant of the Zoo licence be approved with the licence conditions as set out in appendix 2 of the report.

57. EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That the public be excluded from this meeting during consideration of the following items on the agenda because of the likelihood of disclosure of "exempt information" which falls within one or more descriptive category or categories of the Local Government Act 1972, Schedule 12A, as specified on the agenda item or report relating to each such item respectively.

58. HACKNEY CARRIAGE DRIVER CONVICTION THAT EXCEEDS THE SCHEME OF DELEGATION

The Licensing Manager explained to Members that the Solicitor on behalf of the driver Mr. A. I. O. was unable to attend the meeting and has requested that this item be deferred to the next available meeting of the Public Protection Sub-Committee.

RESOLVED: That Mr. A. I. O's driving licence, in the interim, be extended and this item be deferred to the next meeting of the Public Protection Sub-Committee on 20th June 2013.

59. **HACKNEY CARRIAGE DRIVER CONVICTION THAT EXCEEDS THE SCHEME OF DELEGATION**

The Licensing Manager requested that consideration of this application be deferred to the next available meeting to allow Licensing Officers to provide additional information.

RESOLVED: That this item be deferred to the next available meeting of the Public Protection Sub-Committee and in the interim an extension of Mr. P. M. P's current licence be granted.

60. **APPEAL AGAINST THE AWARD OF PENALTY POINTS FOR FAILURE TO COMPLY WITH THE PRIVATE HIRE DRIVER CONDITIONS**

The Head of Public Protection submitted a report requesting Members to consider an appeal against the awarding of penalty points. The driver was not in attendance at the meeting.

RESOLVED: That the penalty points remain on Mr. S. J.'s Private Hire driver's licence.

61. **SECTION 57 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

This item was withdrawn from the agenda as the driver had submitted a satisfactory medical certificate prior to the meeting.

The meeting commenced at 6.38 p.m. and finished at 7.57 p.m.

PUBLIC PROTECTION SUB-COMMITTEE

20 JUNE 2013

PRESENT

Councillor C. Candish (in the Chair).

Councillors B. Sharp (Vice-Chairman), D. Bunting, M. Freeman, D. Jarman, J. Smith, N. Taylor and Mrs. J. Wilkinson

In attendance

M. Jones	Interim Head of Legal Services
N. Owen	Democratic Services Officer

Also Present

Councillor P. Lally

Also in attendance for Minute No. 12

C. McGowan	Senior Planning Officer
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APOLOGIES

An apology for absence was received from Councillor P. Myers

10. MEMBERSHIP OF THE PUBLIC PROTECTION SUB-COMMITTEE

RESOLVED: That the Membership of the Public Protection Sub-Committee be noted.

11. TERMS OF REFERENCE

RESOLVED: That the Terms of Reference for the Public Protection Sub-Committee be noted.

12. APPLICATION FOR RENEWAL OF APPROVAL TO HOLD CIVIL MARRIAGES AND CIVIL PARTNERSHIPS - DAVENPORT GREEN HALL MARQUEE, SHAY LANE, HALE BARN

The Head of Public Protection submitted a report requesting Members to consider an application for renewal of approval to hold Civil Marriages and Civil Partnerships at Davenport Green Hall Marquee by Davenport Green Hall Limited which had received representations from Trafford's Superintendent Registrar and Trafford Council's Planning department.

Representations were made by Mr. Isaq, Davenport Green Hall Limited and Mr. McGowan, Trafford Council's Planning department at the meeting.

Public Protection Sub-Committee
20 June 2013

The Sub-Committee also had regard to the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 and the written representation from Trafford's Superintendent Registrar.

The Sub-Committee considered that the most important and basic facility which needed to be provided at the premises was the ability to hold the marriage ceremony in the marquee. Since an approval of the premises lasts for a minimum of three years, the Sub-Committee considered that this period was an appropriate factor to take into account when considering the suitability of the premises for approval. It acknowledged that availability for a shorter period could be acceptable in appropriate circumstances. People generally plan their wedding well in advance so the certainty of being able to conduct the marriage ceremony at the premises is an important factor in assessing its suitability for that purpose.

The marquee does not have planning permission to be on the site at Davenport Green Hall, in view of the lack of certainty about the marquee resulting from its lack of appropriate planning permission; the Sub-Committee concluded that it lacked a basic facility which would make it suitable for approval as premises to conduct marriage ceremonies.

RESOLVED: That the application to renew the approval for Premises as a venue for Marriages and Civil Partnerships be refused.

Although it did not form part of the reasons for the decision not to renew the approval the Sub-Committee noted that despite the officer's concluding that the premises complied with Schedule 1 of the regulations, the lack of planning control gave them cause to doubt that there were appropriate fire and health and safety precautions in the marquee.

13. EXCLUSION RESOLUTION (REMAINING ITEMS)

RESOLVED: That the public be excluded from this meeting during consideration of the following items on the agenda because of the likelihood of disclosure of "exempt information" which falls within one or more descriptive category or categories of the Local Government Act 1972, Schedule 12A, as specified on the agenda item or report relating to each such item respectively.

14. APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE

The Head of Public Protection submitted a report requesting Members to consider an application for a Private Hire driver's licence. The applicant attended the meeting to enable Members to give the matter their full consideration.

RESOLVED: That Mr. P. McK's application for a Private Hire driver's licence be granted.

The meeting commenced at 6.40 pm and finished at 9.10 pm

PUBLIC PROTECTION SUB-COMMITTEE

18th JULY 2013

PRESENT:

Councillor Candish (Chairman),
Councillors Bunting, Freeman, Jarman, Myers, Sharp, Smith, N. Taylor and
Mrs. Wilkinson.

Also Present: Councillor Lally

In attendance: Interim Head of Legal Services (M. Jones),
Public Protection Manager – Trading Standards (G. Levy),
Senior Licensing Officer (S. Bate),
Democratic Services Officer (R.M. Worsley).

EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That the public be excluded from this meeting during consideration of the following items on the agenda because of the likelihood of disclosure of “exempt information” which falls within one or more descriptive category or categories of the Local Government Act 1972, Schedule 12A, as specified on the agenda item or report relating to each such item respectively.

APPLICATION FOR GRANT OF A PRIVATE HIRE DRIVER’S LICENCE – CONVICTION THAT EXCEEDS THE SCHEME OF DELEGATION

The Head of Public Protection submitted a report requesting Members to consider a Private Hire driver’s convictions. The driver attended the meeting to enable Members to give the matter their full consideration.

The applicant provided Committee Members with a brief outline of what he said were the circumstances of the offence that took place in 2011 and explained that his non-attendance at the Committee hearing scheduled for 13th November 2012 was because he was out of the country on the date specified.

The Sub-Committee determined that the applicant’s previous convictions were relevant to the application and considered the nature of the 2011 conviction including the period of time that has elapsed since then. The Council’s policy is normally not to grant applications by persons with similar convictions to the applicant that are less than two years old. The Sub-Committee were not satisfied that there was any reason not to apply the policy and determined that the applicant was not a fit and proper person to hold a Private Hire drivers licence.

RESOLVED: That Mr. M.H.’s application for a Private Hire driver’s licence be refused.

APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER’S LICENCE

The Head of Public Protection submitted a report requesting Members to consider a Private Hire driver’s convictions. These involved traffic convictions that were less than 5 years old and a robbery conviction which was less than 10 years old. The driver attended the meeting to enable Members to give the matter their full consideration.

The applicant provided Committee Members with a brief outline of what he said were the circumstances of the offences that took place in 2003 and 2005 and explained that this was a long time ago and he was very young at the time. He also added that the further offences in 2008 were as a result of his failure to produce the requested necessary documents at a police station.

The Sub-Committee determined that the applicant's previous convictions were relevant to the application and considered both the nature of the convictions and the period of time that has elapsed since then. In summary the Sub-Committee found that the evidence concerning the convictions in 2008 provided by the applicant was unconvincing and evasive. They concluded that this called into question the honesty of his explanation about those convictions. They concluded that the applicant was currently not a fit and proper person to hold a Private Hire drivers licence.

RESOLVED: That Mr. A.H.S.'s application for a Private Hire driver's licence be refused.

DETERMINATION OF DRIVER'S FITNESS FOLLOWING 2012 TAXI TEST INVESTIGATION

The Head of Public Protection submitted a report requesting Members to consider a drivers fitness to hold a private hire driver's licence following re-takes of the taxi knowledge test. The driver and his wife attended the meeting to enable Members to give the matter their full consideration.

The Head of Public Protection (Trading Standards) highlighted the importance of the taxi knowledge test and explained it was used to ensure that drivers can demonstrate a working knowledge of the roads and major destinations within the area. This helps to prevent late arrivals when picking up and setting down passengers and also reduces the possibility of overcharging because of taking a wrong route.

The applicant's wife provided Committee Members with a brief overview of her husband's family circumstances. She confirmed that he had been working as a taxi driver for the last 18 months and had received no complaints regarding his driving or general competence. The applicant also provided background information concerning his situation when he sat the first test and then the subsequent further attempts at the test. He only had a part-time job at night when he first took the test so had plenty of time to study. However, for subsequent tests he was having to work very hard after the birth of his youngest child.

The Sub-Committee considered both the information contained within the report and evidence provided by the applicant. It was determined that there were serious anomalies identified with the circumstances of the original taxi knowledge test taken by the applicant and therefore this called into question the reliability of the test as an indicator of the level of knowledge of both the location of premises and routes within the borough of Trafford. The applicant's subsequent failure to pass the taxi knowledge test despite it being essentially the same as it was when first taken, despite working as a driver within the borough of Trafford for some time and despite several attempts to do so reinforced the Sub-Committee's concerns.

RESOLVED: That Mr. M.U.'s Private Hire driver's licence be not renewed as he was unable to show that he complied with all the requirements of Trafford's taxi licensing process.

DETERMINATION OF DRIVER'S FITNESS FOLLOWING 2012 TAXI TEST INVESTIGATION

The Head of Public Protection submitted a report requesting Members to consider a driver's fitness to hold a private hire driver's licence following re-takes of the taxi knowledge test. The driver attended the meeting to enable Members to give the matter their full consideration.

The Head of Public Protection (Trading Standards) highlighted the importance of the taxi knowledge test and explained it was used to ensure that drivers can demonstrate a working knowledge of the roads and major destinations within the area. This helps to prevent late arrivals when picking up and setting down passengers and also reduces the possibility of overcharging because of taking a wrong route.

The applicant provided Committee Members with a brief outline of his family circumstances and history concerning when he sat the first test and then the subsequent further attempts at the test which he said took place during the illness and subsequent death of a family member.

The Sub-Committee considered both the information contained within the report and evidence provided by the applicant. It was determined that there were serious anomalies identified with the circumstances of the original taxi knowledge test taken by the applicant and therefore this called into question the reliability of the test as an indicator of the level of knowledge of both the location of premises and routes within the borough of Trafford. The applicant's subsequent failure to pass the taxi knowledge test despite it being essentially the same as it was when first taken, despite working as a driver within the borough of Trafford for some time and despite several attempts to do so reinforced the Sub-Committee's concerns.

The Sub-Committee were also unconvinced by the applicant's explanations for failing the tests and were concerned at his apparent attempts to look at the paper of another candidate during one re-test and use his mobile phone during two of the re-tests.

RESOLVED: That Mr. A. A. K.'s Private Hire driver's licence be not renewed as he was unable to show that he complied with all the requirements of Trafford's taxi licensing process.

The meeting commenced at 6.30 p.m. and finished at 9.34 p.m.

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TRAFFORD COUNCIL

Report to: Public Protection Sub-Committee
Date: 21st November 2013
Report for: Decision
Report of: Head of Public Protection

Report Title

REVIEW OF HACKNEY CARRIAGE VEHICLE POLICY – INTERIM MEASURES

Summary

The Sub-Committee has been asked to consider a request from Allied Vehicles Limited to agree interim arrangements which would allow the Council to consider individual applications to license the Peugeot E7 Taxi, pending a full review of the Council's Hackney Carriage Vehicle Policy.

Recommendation(s)

That the Sub-Committee consider the report and any written and verbal submissions made to it and agree the following interim arrangements:

Pending a full review of the Council's current Hackney Carriage Vehicle Policy, in addition to the vehicles currently authorised, the Licensing Team Leader be authorised to consider licensing as a hackney carriage any vehicle which meets all of the following criteria:

- Any vehicle which has European Community Whole Vehicle Type Approval; and has a Certificate of Conformity specific to that vehicle; and
- is black in colour and displays the word 'Taxi' on an illuminated roof sign and on either side of the vehicle; and
- has been constructed to facilitate the carriage of disabled persons comfortably and securely and is capable of accommodating a disabled person in a wheelchair in the passenger compartment (acknowledging that not all wheelchairs may be accommodated); and
- has suitable ramps for a wheelchair user; and
- is less than four years old or in exceptional condition.

Pending a full review of the Council's current Hackney Carriage Vehicle

Policy, the Licensing Team Leader also be authorised to consider licensing as a hackney carriage any vehicle even though it does not meet the Condition of Fitness turning circle requirement, provided it meets all the above criteria.

The Sub-Committee consider and agree the scope of the full review of the Council's current Hackney Carriage Vehicle Policy as detailed at paragraph 3 of this report and agree the timescale for the review.

Contact person for access to background papers and further information:

Name: Joanne Boyle
 Extension: 4129

Relationship to Policy Framework/Corporate Priorities	None
Financial	None
Legal Implications:	The Council's current policy effectively restricts those vehicles which may be licensed in Trafford as a hackney carriage to two types – the LTI vehicle and the Mercedes Vito Taxi. There is a concern that the current policy is open to legal challenge under the Equality Act 2010 and EU law.
Equality/Diversity Implications	See 'Legal Implications'
Sustainability Implications	None
Staffing/E-Government/Asset Management Implications	None
Risk Management Implications	None. See "Legal Implications" above. Adoption of interim measures as proposed will reduce the risk of legal challenge.
Public Health Implications	None
Health and Safety Implications	None

1. BACKGROUND

1.1 In May 1977 the Council adopted a policy, re-affirmed in June 1979, which specified the type of vehicle it would license for use as a hackney carriage in Trafford. The policy states:

‘that a hackney carriage shall only be a type approved for public hire use by the Commissioner of Police for the London Metropolitan area, and/or the Greater London Council’ (known as the Public Carriage Office).

1.2 In March 2006 the Council undertook a further review of the policy following an approach from Allied Vehicles which requested that the Sub-Committee consider licensing the Peugeot E7 as a hackney carriage. The Sub-Committee considered the matter in public and resolved –

‘that the existing policy of permitting only London Style Hackney Carriages, in accordance with the Public Carriage Office “Conditions of Fitness” to be licensed as Hackney Carriages within the borough of Trafford be confirmed for the following reasons:

- That the London Style Hackney Carriage is distinctive and recognised locally, nationally and internationally as a Hackney Carriage. Any vehicle that meets operational criteria can be licensed as a Private Hire Vehicle. Therefore, to allow other vehicles to be licensed as a Hackney Carriage could cause confusion to the public.
- The public recognition of the London Style Hackney Carriage is an important factor in ensuring public confidence and thereby public safety.
- The Borough has a number of national and international venues and is geographically closely linked with Manchester City Centre. Given the public recognition of the London Style hackney Carriage this contributes to public confidence which is an important factor in terms of tourism.
- The merits of the Peugeot E7 and other Eurocab vehicles were acknowledged. However, the Sub-Committee considered that the merits of alternative vehicles were outweighed by benefits in terms of public recognition and public safety arising as a result of restricting the type of vehicles licensed to the London Style Hackney Carriage’.

1.3 In 2008 the Sub-Committee reviewed its policy and resolved to include the Mercedes One80 Vito Taxi (with turning circle modification) in the Hackney Carriage Vehicle Specification following its approval by the Public Carriage Office.

1.4 The Sub-Committee also resolved that the policy be reviewed within two years, or earlier if there was a change in the law or Government policy.

1.5 A review of the policy was not undertaken in 2010, however it is proposed to carry out a full review to include vehicle type, age and emission standards by June 2014.

1.6 On the 1st August 2013 the Licensing Section received a letter from Bindmans LLP on behalf of Allied Vehicles Limited, the producers of the Peugeot E7 taxi, on the legality of the Council's current policy.

1.7 It is Bindmans view that:

- the effect of the current Policy is to unlawfully exclude the E7 as a vehicle that can be licensed as a hackney carriage in Trafford in breach of EU law;
- the Council is currently in breach of its duties under section 20 and 149 of the Equality Act 2010; and
- pending the completion of the review, it would be unlawful for the Council to refuse to consider individual applications to license E7 taxis as hackney carriages in Trafford on their merits.

A full copy of Bindmans' letter is attached at **Appendix A**.

1.8 Bindmans, on behalf of Allied Vehicles Limited, has requested that this matter be brought to the attention of the Sub-Committee; with a recommendation that interim arrangements be agreed and implemented which would allow consideration of individual applications to license the Peugeot E7.

1.9 Following discussions with the Council's Legal Services, officers would recommend that an interim position is agreed pending a full review of the Council's Hackney Carriage Vehicle Specification policy.

2. INTERIM RECOMMENDATIONS

2.1 As referenced in the letter from Bindmans, the Department of Transport's Best Practice Guidance on Taxis and Private Hire Vehicle Licensing 2010 states:

"27. Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.

28. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle."

2.2 It is recommended that pending a full review of the Councils current policy, officers should be authorised to consider hackney carriage vehicle applications for any vehicle which meets the following criteria:

European Whole Vehicle Type Approval

- 2.3 In October 2007, the European type approval scheme for cars known as European Community Whole Vehicle Type Approval was amended by the implementation of Directive 2007/46/EC. The Directive provides the base European legislation for the approval of vehicles that are mass produced, built in small numbers or as individual vehicles. It requires them to meet specified safety, security and environmental standards before they can be used on the road.
- 2.4 Vehicles built, for example, as a chassis and fitted with a body by a different company are considered to be 'multi-stage' vehicles.
- 2.5 Other than passenger cars and light goods vehicles (M1 & N1) all other vehicles are sub-divided into three categories of completeness: Complete, Incomplete, or Completed.
- 2.6 A 'complete' vehicle is one which does not require any multi-stage approval that can be registered and used on the road. It is likely to be a vehicle built completely by an individual manufacturer. An 'incomplete' vehicle is a multi-stage vehicle that may involve more than one manufacturer e.g. the chassis/cab manufacturer and the body manufacturer. A chassis/cab may or may not be type approved but will require full approval as a completed vehicle before it can be used on the road. A 'completed' vehicle is one which has received multi-stage approval, meeting the requirements of the directive and can be registered and used on the road.
- 2.7 It is recommended that, pending a full review of its policy, the Council consider licensing as a hackney carriage, in addition to the vehicles currently authorised, any vehicle presented to it which has European Community Whole Vehicle Type Approval; and has a Certificate of Conformity specific to that vehicle. This is to ensure that the vehicle meets European safety, security and environmental standards before it is used on the road.

Appearance/Recognition/Identification of vehicles

- 2.8 Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 states the following:
- 'A district council may attach to the grant of a licence of a hackney carriage under the Town Police Clauses Act 1847 such conditions as the district council may consider reasonably necessary.
- Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such a design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.'
- 2.9 The above section is modified by section 48 of the Act which provides that where a Council grants a licence for a private hire vehicle it must be satisfied

that the vehicle is not of a design and appearance as to lead any person to believe that the vehicle is a hackney carriage.

- 2.10 Therefore, the Council has the power to stipulate the appearance of a hackney carriage so as to distinguish it from a private hire vehicle.
- 2.11 It is recommended that, pending a full review of its policy, the Council consider licensing as a hackney carriage any vehicle presented to it which is black in colour and displays the word 'Taxi' on an illuminated roof sign and on either side of the vehicle. Additional signage on the side of the vehicle is recommended for such vehicles (excluding LTI vehicles) to distinguish them from Trafford Private Hire Vehicles which also carry roof signs.

Disabled Access

- 2.12 It is recommended that, pending a full review of its policy, the Council consider licensing as a hackney carriage any vehicle presented to it which has been constructed to facilitate the carriage of disabled persons comfortably and securely and be capable of accommodating a disabled person in a wheelchair in the passenger compartment (acknowledging that not all wheelchairs may be accommodated). The vehicle must also have suitable ramps for a wheelchair user.
- 2.13 The vehicle must be designed and constructed to help elderly and ambulant disabled in and out of the vehicle.

Turning Circle

- 2.14 Pending a full review of the Council's current Hackney Carriage Vehicle Policy, the Council consider licensing as a hackney carriage any vehicle even though it does not meet the Condition of Fitness turning circle requirement, provided it meets all the other recommended criteria. This is because (1) the turning circle requirement is extremely restrictive as only 2 types of vehicle can currently comply with it, and (2) the justification for the requirement needs to be rigorously examined in the forthcoming review in the context of the situation in Trafford.

Age Limits

- 2.15 In 2008 the Council approved the Mercedes Vito Taxi to be licensed as a hackney carriage in Trafford subject to the age policy for non-purpose built vehicles i.e a licence would not be issued unless the vehicle was less than four years old on first grant. The age policy for purpose built vehicles is less than 10 years old. All maximum age limits are subject to the proviso that if an older vehicle is deemed by the Council's Transport Depot to be in exceptional condition it can be eligible to be licensed.
- 2.16 It is recommended that pending the review of its policy, the Council retain its current approach to the age limit for non-purpose built hackney carriage vehicles.

3. SCOPE OF THE REVIEW

3.1 The following is a list of factors which it is proposed are taken into consideration when reviewing the Council's Hackney Carriage Vehicle Policy; the list is not exhaustive and the Sub-Committee may wish to consider other issues:

- General vehicle specification
- Disabled access
- Turning circle requirement
- Vehicle age restrictions
- Emission standards

3.2 It is proposed that a report be presented to the Sub-Committee in June 2014, following a 12 week consultation with relevant stakeholders, recommending appropriate amendments to the policy.

4. KEY ISSUES

4.1 The Council's current policy effectively restricts those vehicles which may be licensed in Trafford as a hackney carriage to two types – the LTI vehicle and the Mercedes Vito Taxi. In the Liverpool City Council case referred to in Bindmans' Letter, a similar policy was found to be unlawful for a number of reasons, including non-compliance with parts of the Disability Discrimination Act 1995 (now the Equality Act 2010); and incompatibility with EU law.

4.2 Bindmans, on behalf of Allied Vehicles Limited, has requested that this matter be brought to the attention of the Sub-Committee; with a recommendation that interim arrangements be agreed and implemented which would allow consideration of individual applications to license alternative vehicles.

4.3 Pending a thorough review process it is important that any change to the council's current policy does not prejudice its position going forward. Therefore the proposals being made now are considered to be the minimum requirements necessary to meet the concerns about the legality of the existing policy.

5. RECOMMENDATIONS

5.1 The Sub-Committee is asked to consider the report and any written and verbal submissions made to it and agree the following interim arrangements:

5.1.1 Pending a full review of the Council's current Hackney Carriage Vehicle Policy in addition to the vehicles currently authorised, the Licensing Team Leader be authorised to consider licensing as a hackney carriage any vehicle which meets all of the following criteria:

- Any vehicle which has European Community Whole Vehicle Type Approval; and has a Certificate of Conformity specific to that vehicle; and
- is black in colour and displays the word 'Taxi' on an illuminated roof sign and on either side of the vehicle; and
- has been constructed to facilitate the carriage of disabled persons comfortably and securely and is capable of accommodating a disabled person in a wheelchair in the passenger compartment (acknowledging that not all wheelchairs may be accommodated); and
- has suitable ramps for a wheelchair user; and
- is less than four years old or in exceptional condition.

5.1.2 Pending a full review of the Council's current Hackney Carriage Vehicle Policy, the Licensing Team Leader also be authorised to consider licensing as a hackney carriage any vehicle even though it does not meet the Condition of Fitness turning circle requirement, provided it meets all the above criteria.

5.2 The Sub-Committee is asked to consider and agree the scope of the full review of the Council's current Hackney Carriage Vehicle Policy as detailed at paragraph 3 above and agree the timescale for the review.

BINDMANS LLP

Our ref: JHL/44451.13
Date: 31 July 2013

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PA: c.langley@bindmans.com



Joanne Boyle
Licensing Team Leader
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Dear Ms Boyle

Review of Hackney Carriage Vehicle Policy

We act for Allied Vehicles Ltd ('Allied')

Allied is the UK's largest supplier both of taxis for public use and of wheelchair accessible vehicles for private and community use. Allied is a progressive company, constantly seeking to evolve new products to meet the needs of vehicle operators and end users. Its E7 taxi is manufactured in stages: the base vehicle is produced by Peugeot in France; Peugeot uses that base to produce various commercially available vehicles and also sells it to Allied for adaptation for use as a hackney carriage. The E7 taxi carries EC Whole Vehicle Type Approval and is the most popular hackney cab in the UK outside London, including the TX4 and Mercedes One80 Vito. Allied has recently added further accessibility innovations to the E7 such as a rear swivel seat.

Given this, Allied has a direct interest in the outcome of the ongoing review of Trafford Council ('the Council')'s Hackney Carriage Vehicle Policy ('the Policy').

The background to the Policy review is as follows.

As you will know, every few years undertakes a survey to identify if there is any further demand for hackney carriages in the area. The most recent took place in April-May 2013. The results have been published on the Council's website in an answer to a Freedom of Information Act 2000 request made by Mary Carr. On 19 March 2013 they were also reported to the Public Protection Sub Committee ('the Sub Committee') in an

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officer's report. It recommended that numbers of licenses be maintained pending a review of the Council's current Policy.

It appears that the Policy was last reviewed on 16 October 2008 by the Sub Committee. A decision was made to maintain it in its current form with one variation allowing One80 Vito taxis to be licensed locally. There was also a commitment made:

“that the Council's policy be reviewed in two years time, or earlier if there is a change in the law or Government policy.”

That promised review did not occur, however.

More positively, the Council's licensing team met with representatives of Allied at a recent taxi exhibition in Manchester and indicated that the belated Policy review was now underway. That was welcome news. We would be grateful for confirmation of the timetable for the review and the planned steps.

As you will know, the review is very timely for seven reasons:

1. The E7 is now licensed as a Hackney carriage by every UK authority, save for Trafford and five others which have policies based on the London Conditions of Fitness which the E7 does not fully meet. As there are 374 licensing authorities in the UK, it follows that 98% of authorities have conditions that allow the E7 to be licensed.
2. Manchester City Council began licensing E7s as Hackney carriages some months ago on an interim basis, pending completion of its review. These licensed E7s regularly travel in and out of Trafford, as might be expected given the geography of the area. Licensed E7s from all other authorities that border Trafford do so too. Yesterday Manchester decided to change its own policy conditions so that E7s could be licensed on an ongoing basis.
3. There have been no safety concerns associated with the E7 taxi being used as a Hackney carriage in Trafford as a result of it being licensed in neighbouring authorities. Nor have there been any such issues related to its use within Manchester or in any other UK licensing authority. There is also no current licensing condition in Trafford's Policy necessary to protect the health and safety of passengers, drivers or pedestrians which the E7 does not meet.
4. Licensing policies identical to Trafford's have been subject to legal challenge in a number of cases since 2008. We have represented Allied on each occasion. In most, the licensing authorities involved have changed their policies on receipt of legal advice. In one, involving Norwich City Council, the policy was changed after permission for judicial review was granted in favour of Allied. In another, the authority, Liverpool City Council, fought the case to trial where it lost on all three issues:

EU law obligations; Disability Discrimination Act 1995 reasonable adjustment duty; and public sector equality duty. That case, *R (Lunt and Allied Vehicles Ltd) v Liverpool City Council* [2009] EWHC 2356 (Admin) ('Lunt'), is discussed further below.

5. Since *Lunt*, the Equality Act 2010 has come into force, strengthening the duty to make reasonable adjustments and extending the circumstances in which it will be triggered.
6. The manufacturer of TX model taxis, LTC, has had severe commercial difficulties and went into administration last October. The company has since been acquired by Geely Automotive of China, where TX4s are now mostly to be manufactured. The company also faces further problems as there is an ongoing multi party claim, *Sneddon and others v Bank of Scotland and others* HQ11X00962, regarding a serious TX4 engine defect. The manufacturer and supplier of parts for the vehicles that make up the bulk of Trafford's current Hackney fleet therefore has a future that is less than certain.
7. Were manufacture of LTC vehicles or parts supply permanently halted, the manufacturer of the only other vehicle that is currently licensed, the One80 Vito, would enjoy a complete monopoly in Trafford. That risk should trouble the Council as monopolies do not tend to serve consumer interests well. Further, it is a fact that the Vito is the most expensive vehicle currently licensed as a Hackney cab by authorities around the UK: a new Vito costs £42,000; TX4s cost upwards of £32,000; the E7 costs from £25,500.

Individually and cumulatively these are plainly good reasons for changing the Policy for the benefit of residents of and visitor to Trafford. They have all have arisen since it was last reviewed in 2008. Point 5 involves a "change in the law", one of the specific triggers for a review of the Policy identified in 2008.

We have been instructed to advise Allied on the legality of the Policy as it stands and what should happen to individual applications to license Allied's E7 taxis as Hackney carriages for use in Trafford pending the Review's outcome. Allied would very much like to be able to respond positively now to the enquiries it is receiving from Hackney taxi drivers and operators in Trafford who would like to replace their existing vehicles with licensed E7s.

The gist of our advice to Allied is that:

1. the effect of the current Policy is to unlawfully exclude the E7 as a vehicle that can be licensed as a Hackney Carriage in Trafford in breach of EU law;
2. the Council is currently in breach of its duties under sections 20 and 149 of Equality Act 2010; and

3. pending the completion of the review, it would be unlawful for the Council to refuse to consider individual applications to license E7 taxis as hackney carriages in Trafford on their merits.

We shall elaborate below. Allied has some further suggestions to make on the right approach to the review, in particular what is, and what is not, relevant.

Allied has asked us to write now so that you can share our advice with the Council's own solicitors, your colleagues with specific responsibility for equality and diversity matters and, most importantly, members of the Sub Committee. Please confirm when acknowledging receipt of this letter that it will be forwarded to all of these groups of people imminently.

We should stress at the outset that Allied does not want to confront the Council in an adversarial way, less still take legal action against it. That is not the purpose of this letter. Allied simply wants to ensure that the promised (and necessary review) of the Policy will now proceed to a lawful conclusion as quickly as practicable, that it is focussed and that the Council exercises its discretion appropriately and lawfully in the meantime.

The legal framework

Discretion

The officers' report for the 2008 decision summarises the legal framework for hackney carriage licensing decisions in this way:

"6. Appearance/Recognition/Identification of vehicles

6.1 Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 states the following:

'A district council may attach to the grant of a licence of a hackney carriage under the Town Police Clauses Act 1847 such conditions as the district council may consider reasonably necessary.

Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such a design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.'

The above section is modified by section 48 of the Act which provides that where it grants a licence for a private hire vehicle it must be satisfied that the vehicle is not of a design and appearance as to lead any person to believe that the vehicle is a hackney cab."

The "Act of 1847" is the Town and Police Clauses Act of that year, which defines "hackney carriage" at section 38:

“Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; and in all proceedings at law or otherwise the term “hackney carriage” shall be sufficient to describe any such carriage: Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act.”

to which section 37 of the 1847 Act adds:

“The commissioners may from time to time licence to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the General Post Office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit.”

Licensing authorities therefore enjoy two forms of discretion in this field.

The first is the section 47 discretion to set conditions relating to vehicles licensed as hackney carriages locally by means of a policy or on a case by case basis.

The second is the other side of that coin. It is the discretion to make exceptions to any policy containing such conditions: as the authority “may attach to the grant of a licence of a hackney carriage... such conditions” (emphasis added), so it can equally decide not to do so in an individual case. It would not be legally permissible for the Council to fetter that discretion by refusing to consider exceptions on a case by case basis.

The primary difficulty with the 2008 report is that it suggests the Council may exercise its discretion however it might wish. That is not the case: the discretion is constrained by EU and equality law.

EU law constraints on discretion

The first of the three issues in *Lunt* was the extent to which EU law constrains licensing authorities’ discretion.

In his judgement (which we append) Blake J held first that, as the base vehicle for the E7 is manufactured outside the UK, a Hackney carriage licensing policy which means it could not be licensed in a particular part of the UK (e.g. Liverpool or, for that matter, Trafford) would unlawfully

breach Article 28 of the EU Treaty (now Article 34 of the Treaty on the Functioning of the European Union ('the Treaty')) unless justified as a means of protecting the "health and life of humans" on the basis of clear evidence. That was because such a licensing policy operates as a quantitative restriction on imports or a measure of like effect.

Obstacles to the free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, including rules that lay down requirements to be met by such goods (such as those relating to designation, form, size, weight, composition, presentation, labelling, packaging) are prohibited by Article 34. The only relevant exception is where they can be justified as a proportionate means of meeting a legitimate public interest aim (see Case 120/78 *Rewe-Zentral (Cassis de Dijon)* [1979] ECR 649) such as protection of the health and safety of people under Article 35. These points are made by Lord Bingham in *R (Countryside Alliance) v Attorney General* [2008] 1 AC 719 at [27]-[28] and are emphasised in more recent judgments of the ECJ referred to in the *Lunt* case, in particular Case C-142/05 *Åklagaron v Mickelsson and Roos* [2009] ECR I-4273 and Case C-110/05 *Commission v Italy* [2009] ECR I-519.

In *Liverpool*, Blake J went on to hold, there was no such justification.

It did not matter that the *Liverpool* market for the E7 was only a part of the UK-wide market. The position is clearly stated in the EU Commission's Guide to the application of Treaty provisions governing the free movement of goods, which was referred to by the High Court in the *Lunt* judgment. In particular, that document states (at §3.1.6) that:

"There is no *de minimis* principle in relation to the articles concerning the free movement of goods. According to long-established case-law, a national measure does not fall outside the scope of the prohibition in Articles 34-35 TFEU merely because the hindrance which it creates is slight and because it is possible for products to be marketed in other ways (See Joined Cases 177/82 and 178/82 *Van de Haar* [1984] ECR 1797; Case 269/83 *Commission v France* [1985] ECR 837; Case 103/84 *Commission v Italy* [1986] ECR 1759.).

Therefore a state measure can constitute a prohibited measure having equivalent effect even if:

- it is of relatively minor economic significance;
- it is only applicable on a very limited geographical part of the national territory (Case C-67/97 *Bluhme* [1998] ECR I-8033);
- it only affects a limited number of imports/exports or a limited number of economic operators."

The reasonable adjustment duty

Turning to the equality law issues in *Lunt*, Blake J found that, properly understood in this context, the duty under section 21E Disability Discrimination Act 1995 (see now section 20 of the 2010 Act):

“seeks broadly to put the disabled person as far as reasonably practicable in a similar position to the ambulant user of a taxi”

and, however useful a narrow turning circle might be, it was no justification for not discharging that duty so as to bring about real equality by means of reasonable adjustments to licensing policy.

In setting out the legal principles to be applied to determining whether a Hackney Carriage licensing policy could be justified under 21E, Mr Justice Blake adopted a ‘six step approach’ as follows:

- “1. Did the [authority] have a practice policy or procedure?
2. Did that practice, policy or procedure make it impossible or unreasonably difficult for disabled persons to receive any benefit that is, or may be, conferred by the [authority]?
3. If so, is it under a duty to take such steps as is reasonable in all the circumstances of the case for it to change that practice policy and procedure so it no longer has that effect?
4. Has the [authority] failed to comply with its duty to take such steps?
5. If so, is the effect of that failure such as to make it unreasonably difficult for [a disabled person] to access such benefit?
6. If so, can the [authority] show that its failure to comply is justified in that either-
 - a. it reasonably holds an opinion that the non-compliance is necessary in order not to endanger the health or safety of any other person; or
 - b. its failure is justified as a proportionate means of achieving another legitimate aim?”

Identical principles now apply under section 20 of the 2010 Act, save that step 5 is now concerned about the practice, policy or procedure placing the disabled person at “a substantial disadvantage” rather than making it “unreasonably difficult” and step 6 is gone. The position now is that reasonable steps to “avoid” the disadvantage must be taken when the duty is engaged unless an exception applies. Liverpool attempted to argue that various exceptions applied in *Lunt* but all but abandoned these arguments at the hearing.

Understanding the correct factual position and its impact

Thirdly, Blake J held that Liverpool City Council’s assumption that a fleet consisting of vehicles that complied with the London conditions of fitness was “accessible” to wheelchair users was a “fundamental error of fact”, for in reality the evidence:

“showed serious difficulties for a class of wheelchair users that was wider in extent than Mrs Lunt personally, and that of that class there

are some, like Mrs Lunt, who could not access the safe and secure position at all.”

These difficulties came about because there was insufficient space within the taxis that comprised Liverpool’s fleet to turn and secure larger wheelchairs, such as that used by Mrs Lunt, that are becoming increasingly common.

Liverpool’s incorrect assumption that it’s fleet was nevertheless “accessible” meant it could not discharge its duty have “due regard” to the needs to eliminate discrimination and to promote disabled people’s equality and participation in public life as required by section 49A of the Disability Discrimination Act 1995 (see now section 149 of the Equality Act 2010).

It is important that you and your colleagues appreciate that this evidence was not limited to that provided by Mrs Lunt as to her own experience (otherwise Blake J could not have made findings about the effects of the policy on “a class” of wheelchair users). It included material such as the Lowland Report (also appended to this letter). It has since been reinforced by the data from the CEDS Study of Occupied Wheelchairs for the DfT (also appended). We return to this point below.

The legal position summarized

Drawing these strands together, following *Lunt* licensing authorities:

1. may adopt, maintain and apply rational licensing conditions for Hackney Carriages under the 1976 Act having regard to local conditions and user interests, but disregarding irrelevant considerations;

but:

2. they have no discretion to adopt, maintain or apply conditions which exclude the E7, such as the current London Conditions or Fitness, unless there is an evidence-based justification for doing so for the purposes of protecting the health and life of humans which meets the strict EU law standards now contained in Article 36 of the Treaty;
3. nor can they lawfully adopt, maintain or apply conditions which put a class of disabled people (such as the users of larger wheelchairs like Mrs Lunt) at a substantial disadvantage, when using Hackney Carriages from their fleet unless they take reasonable steps to avoid the disadvantage;

and:

4. authorities that fail to properly appreciate the effects of adopting or, on an ongoing basis, maintaining or applying a policy that would, or even potentially could, have the unlawful effects

described at point 3 above, or otherwise have implications for the promotion of disabled person's equality, will be in breach section 149 of the 2010 Act.

These consequences were explained to Liverpool by its own Counsel in legal advice that was appended to its officers' report for the Licensing Committee meeting held to discuss what should be done in the wake of the *Lunt* judgment. They also were at the heart of published legal advice given by Manchester City Council's officers to its own Members when they recently reviewed that authority's policy.

Liverpool proceeded to amend its policy to allow the E7 to be licensed, as it was bound to do. Unsurprisingly, Manchester recently now followed suit as did Peterborough earlier this week, following the outcome of its own review.

The position in Trafford

We now turn to Trafford's Policy.

Explanation given

We note that the 2008 Officers report offers only this by way of explanation for the Policy:

"7. Enforcement and local considerations

- 7.1 The differentiation between hackney carriage type and private hire vehicles is presently clear for both the public and the Council's Enforcement Officers. Should the present restriction be abandoned the difference between hackney carriage and private hire vehicles could be subject to a degree of confusion. The London style taxi also has international recognition that gives assurance when hiring vehicles in the street.
- 7.2 In addition, Trafford has for many years followed a similar approach to Manchester in view of the transport and community corridors, in particular around the major sporting venues. Manchester City Council's current policy is to only licence purpose built public hire vehicles, namely: London International, TX1 Bronze, TX2 Silver, Metrocabs and Fairways. This is more restrictive than Trafford's requirement to satisfy PCO conditions. Manchester will be considering a report later this month on whether to also licence the new Mercedes Vito.
- 7.3 Trafford, Salford and Tameside restrict hackney carriages to the PCO requirements, the other authorities bordering Manchester do not. However, none of these other authorities bordering Manchester have international cricket and football stadium, or a regional shopping centre."

No equality impact assessment or any other documentation showing thought had been had to the matters then made relevant by section 49A of the Disability Discrimination Act 1995 (the predecessor to section 149

of the Equality Act 2010) was before, or produced by, the Sub Committee. Both these duties were in force, but they simply did not feature in the decision making process.

Operation of a policy that is incompatible with EU law

A further difficulty with the 2008 review, as noted above, was that officers apparently did not appreciate the relevance of EU law to members' decision making.

As noted above, the E7 is licensed by almost every other UK licensing authority, none of which have identified safety or other significant concerns. Recognition difficulties simply do not arise because authorities simply stipulate livery and signage conditions which the E7 can easily meet. Further, to our own and Allied's knowledge, no health or safety concerns have ever been raised about the E7 being used in Trafford. Needless to say, the fact that "none of [the] other authorities bordering Manchester have international cricket and football stadium, or a regional shopping centre" has nothing to do with health and safety.

If there are any health or safety concerns, please set them out in your response to this letter and enclose copies of any supporting evidence on which they are based. If there are none, please confirm that is the position.

At present, however, there is no Article 35 justification for the restriction that Article 34 prohibits, less still an evidence-based one that would suffice in EU law. Maintaining the current policy with the effect that the E7 cannot be licensed in Trafford therefore breaches EU law on an ongoing basis. The position is identical to that in Liverpool.

Operation of a policy in breach of the Equality Act 2010 reasonable adjustments and due regard duties

The *Lunt* approach to the reasonable adjustments duty is also directly applicable in Trafford. The Council has its Policy. It plainly creates difficulties for a class of wheelchair users: see e.g. the comments in response to the 2008 consultation from Brian Hilton of the Greater Manchester Coalition of Disabled People and the Trafford Disability Partnership Board. That class will run to many hundreds of visitors and residents, possibly 1000s.

Taking residents alone, the NHS estimates that there are 1.2 million wheelchair users resident in the UK i.e. 2.3% of the general population (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103389).

Department for Transport research has also been undertaken into the dimensions of occupied wheelchairs in the UK which we append. Combining this data indicates that 58.2% of wheelchair users nationally use wheelchairs with a length of between 1,000mm and 1,200mm, i.e. c.

700,000 people; and 15.3% of wheelchair users nationally use wheelchairs that are larger still, with a length of 1200mm or more, i.e. c. 184,000 people.

Applying this data indicates that, of Trafford's population of c. 226,600, around 5219 residents are likely to be wheelchair users. Around 3,033 of them will be users of larger wheelchairs and about 798 will be users of particularly large wheelchairs

The extent of the impact will depend on wheelchair size. There are two groups of wheelchair users to consider in particular.

First, there are those for whom safe travel in many current fleet taxis is impossible, as it was for Mrs Lunt before she brought her challenge to Liverpool's licensing policy and, secondly, those for whom it is unreasonably difficult, given the size of their wheelchairs.

The direct effects for those who cannot be turned and secured at all (generally those with larger wheelchairs, but also those with unusual features to accommodate particular impairments) include:

1. having to make an invidious choice of travelling unsafely, unsecured in a sideways facing or angled position or not at all (a choice no other taxi or car users are forced to make (sideways-facing seats are banned under EU law in the class of passenger vehicles that include taxis: see Directive 2005/39/EC amending Directive 74/408/EEC relating to motor vehicles' seats, anchorages and head restraints, and under regulation 5 of the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, as amended, every person riding in a front or rear seat of a motor vehicle must wear a seat belt where one is available);
2. exposure to the risk, and the fear, of serious injury and possibly even fatal injuries in extreme cases (Mrs Lunt and a fellow disability rights campaigner, Jean Price, gave examples to the Court in their evidence in the Lunt case and a fatality occurred in Birmingham in the tragic case of Ramzan Begum, see: <http://democracy.york.gov.uk/mgConvert2PDF.aspx?ID=37524>);
3. acute discomfort, including that caused by having to hold on during a journey; and
4. undermining of the dignity of wheelchair-using passengers forced to travel in this manner because of their disability, when others are not.

Secondly, there are those with wheelchairs that can be turned and secured, but only with difficulty. Their lack of a choice of a more accessible vehicle means:

5. discomfort and inconvenience as the wheelchair is being turned into a rearward facing position (often involving the chair being

tipped up on two wheels and/or forcibly shoved sideways - see the appended See the HSE report on loading and unloading of wheelchairs in taxis); and

6. an undermining of dignity (for example, drivers will often have to stoop to get the necessary leverage to turn the chair and manoeuvre it into position, during which time they will be at the waist level of the passenger; something which the witness Mrs Price explained in the *Lunt* case was humiliating for her and necessitated her wearing trousers).

There are also clear indirect effects for both groups:

7. when a wheelchair cannot easily be accommodated in a taxi, or is forced into a sideways facing or angled position because of the vehicle's dimensions, the wheelchair user is unlikely to be able to travel with more than one companion - a clear disadvantage which no non-wheelchair using passenger will experience;
8. some drivers are further dis-incentivised from picking up wheelchair users when hailed in the street - a practice which, although directly discriminatory and thus unlawful, is exceptionally difficult to challenge (Allied knows of no case being brought, less still succeeding); and
9. tension can arise between drivers and wheelchair using passengers over questions of how they should be secured and, if they can, the best means to achieve that. Drivers may be concerned, for example, that declining to carry a wheelchair passenger or carrying a wheelchair passenger in an unsafe manner may put them in breach of the conditions of their licence - yet the dimensions of their vehicle may make it impossible for them to do so safely.

These effects are clear from Lowland Market Research's 2008 'Wheelchair User Experience Taxi Survey which was reviewed by the Court in the *Lunt* case (it too is appended to this letter). The survey found that in 96% of journeys in taxis in Manchester and London, the wheelchair user (of a "reference-sized" wheelchair, which is smaller than the average size) was not properly secured for travel.

It cannot sensibly be suggested that the effects do not amount to a substantial disadvantage for section 20 purposes.

The duty to make reasonable adjustments therefore applies, just as it did in Liverpool. No such adjustments have been made in Trafford, however.

Moreover, section 149 of that Act obliges the Council to grapple with this conscientiously because there can be no "due regard" to the effects on disabled people either unless the legal and factual position is properly understood. We also consider the response to the Freedom of

Information Act 2000 request mentioned above is significant in this regard. It says:

“What are your accessibility requirements for hackney carriage vehicles?

- *Trafford Council only license London Style Hackney Carriages (LTI TX2 & TX4) which are all wheelchair accessible.*

Do you inspect the taxis and wheelchair accessible vehicles for Accessibility?

- *No.”*

The Council was simply wrong about its current Hackney carriage fleet vehicles being “all wheelchair accessible”, an error which has presumably come about because it does not actually inspect taxis for accessibility. “London Style Hackney Carriages (LTI TX2 & TX4)” are no more wheelchair accessible in Trafford as they were in Liverpool at the time of the *Lunt* case; ‘accessibility’ depends on the wheelchair.

Trafford has made precisely the same fundamental error of fact as Liverpool did.

The interim position pending completion of the review

None of this is new. Despite the Council making a commitment to review the Policy in 2010 and being prompted to reconsider it following *Lunt* by Allied and, we understand, The Equalities and Human Rights Commission, that reconsideration has yet to be completed.

As noted above, the review is now taking place. But this still presents a difficulty for the Council because, if it were to maintain the existing policy rigidly in the meantime, the E7 would remain excluded from the local market until the review is completed.

That would be unlawful for the reasons we have explained above. It would also be a fettering of the Council’s discretion. The fact of the review would preclude any consideration of the E7 on its merits, taking into account the effects of *Lunt*. That would not be lawful either.

There is, however, a straightforward and practical solution which we suggest officers urgently recommend to the Sub Committee. It is for the Sub Committee to agree to authorise you and your colleagues to consider individual applications to license the E7 on their merits, with appropriate legal advice. It may either wish to consider your recommendations on each such application, or authorise you to determine them.

This would mean the Council could avoid breaching EU law or fettering its discretion in relation to individual applications. It would not address the legality of the policy generally or its effects for disabled people, but

the most immediate and pressing difficulty of the policy's application would be eased.

As you may know, Manchester's officers considered a similar proposal and decided, on legal advice, to recommend it to that authority's licensing committee which accepted it. Interim arrangements were implemented pending Manchester's review and they worked well for everyone.

We would be grateful if you could ensure that this proposal is put before and discussed at the next Sub Committee meeting and for your response to it shortly afterwards. We accept, of course, that it would be for the Sub Committee to decide whether to make an exception to the current policy in this way. If you are unwilling to put the proposal to the Sub Committee, please explain why in your response to this letter.

Framework for progressing the review

Last, Allied has some suggestions to make as to how best to progress the review at a general level.

Allied suggests the following 'core principles' are adopted:

1. all regulation must be shown to be justified in the public interest, not in the interests of taxi operators or vehicle manufacturers;
2. regulation must be proportionate and compatible with EU law;
3. there should be a strong presumption in favour of competition and consumer choice, manifested in a range of vehicles being available for hackney carriage users; and
4. restrictions on the licensing of vehicles which, were they licensed, would result in improved accessibility for people with particular disabilities should be critically examined by means of an equality impact assessment and only maintained if justified under the strict standards imposed by the Equality Act 2010.

The last two of these points are especially important because there is powerful, objective evidence that restrictions on the range of vehicles licensed as Hackney Carriages have a particularly acute impact on disabled people. For example, the OFT 2003 market study into the taxi and PHV sector in the UK concluded at paragraph 7.38:

"As disabled people have a range of different requirements, it is important that there is a range of taxi vehicles that are able to meet their varied needs".

The value of positively promoting a range of taxi and private hire vehicles is underscored in the Department of Transport's Best Practice Guidance on Taxi and Private Hire Vehicle Licensing, the 2010 edition of which states:

“27. Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.

28. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle.”

This principle is also acknowledged in the Law Commission’s recent consultation report at paragraph 11.13:

“It is generally recognised that it would be impossible to design a vehicle suited to the needs of all disabled people given the wide and disparate variety of needs present within the disabled community. It is perhaps more important to consider the range of vehicles available in an area, in order that disabled passengers can exercise choice over how they travel.”

The point is, in a sense, an obvious one. However, a comparison of the different internal measurements of the leading wheelchair accessible taxis, carried out by STATUS using PAS 2012 methodology, demonstrates that it is only by having a range of taxis that a licensing authority can ensure that vehicles are available to accommodate a range of wheelchair users, depending on the width, length or height of their particular wheelchair.

Concluding remarks

We hope the information in this letter will be of some assistance.

Please confirm receipt by return.

We look forward to hearing from you on the requests above. In summary, we seek:

1. confirmation of the steps the Council will be taking in the course of the review and its timetable;
2. confirmation that this letter will be shared with the Council’s own solicitors, your colleagues with specific responsibility for equality and diversity matters and, most importantly, members of the Sub Committee
3. an indication of whether there are any known health or safety concerns about licensing the E7 for use as a Hackney taxi; and
4. confirmation that the interim position proposal will be put to the Sub Committee.

We would like a substantive response on these matters within 14 days, please.

Yours faithfully

Bindmans LLP

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