

**IN THE MATTER OF SALFORD CITY COUNCIL****DRAFT LICENSING POLICY  
FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES AND DRIVERS**

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**ADVICE**

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1. Salford City Council has drafted a proposed policy for hackney carriage and private hire vehicles and drivers (enclosure 5). The draft policy has been prepared following consultation and discussion with interested parties.
2. Hitherto the City Council has had no single policy which sets out its approach to the licensing of hackney carriage and private hire vehicles and drivers. The formulation of the draft policy is designed to bring clarity, certainty and consistency in the manner in which the Council undertakes its functions with regard to regulation of hackney carriage and private hire vehicles and drivers.
3. The draft policy is, in general terms, non contentious. However, one aspect of the policy clearly is contentious and this relates to whether the Council should retain a limit on the number of hackney carriage vehicle plates it makes available or whether that limit should be removed.
4. At the present time Salford City Council limits the number of hackney carriage vehicle licence plates issued. From time to time a need survey is commissioned by the Council. The last survey was commissioned in 2004 and resulted in the setting of a limit in 2005 of 79 plates. The Council concluded that there was an unmet demand and approved the release of one additional plate. The last need/demand survey is now out of date.

5. I am advised that the City Council accepts that the last survey can no longer be relied upon and that the question of present demand needs to be reconsidered. It is necessary to either remove the limit on the number of hackney vehicle licenses that can be issued or, if a limit is to be maintained, to commission a survey to measure whether there is any significant unmet demand existing at the present time. My understanding is that the City Council would like to delimit the number of hackney vehicle licences that can be issued thus removing the necessity for a further need/demand survey to be undertaken.
6. The removal of a limit on the number of hackney vehicle licences that can be issued by the City Council is particularly contentious and raises the very real possibility of judicial review. The limiting of the number of vehicle licences effectively gives those licences a large capital value that can be traded. The removal of the limit on the number of licences to be issued will remove the capital value currently attributed to current licences. The holders of current vehicle licences are likely to feel particularly aggrieved at the change in policy which effectively removes from them capital value.
7. In September 2005 the Buses and Transport Division of the Department for Transport published a response document "Taxi Licensing: Review of Local Authority Control Policies". This document summarised the responses from local licensing authorities to a letter sent by the Department for Transport to local licensing authorities asking them to review their policy of controlling taxi numbers. 151 local Licensing authorities were written to. 82 final responses were received by the Department. Of those responses 35 local authorities indicated a decision to remove quantity controls. 47 decided to retain a limit on the number of hackney licences they were prepared to grant.
8. In 2002/2003 the Office of Fair Trading undertook a study of the UK taxi and private hire vehicle market. A report was published in November 2003 and the principal recommendation was that local licensing authorities power to restrict the number of taxi licences they could issue should be repealed.
9. The government's response to the O.F.T. report was published in March 2004. The government did not accept the recommendation, taking the view that local authorities

should retain an ability to decide as to whether or not to control the number of taxis in their respective areas. However, the government conveyed its belief that, in general terms, quantity restrictions were unlikely to be in the best interests of the public.

10. In October 2006 the Department for Transport published "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance". The document was designed to assist local authorities in the way in which they approached regulation of hackney carriages and private hire vehicles. The guide was a response to the report by the Office of Fair Trading. A draft version of the Department for Transport guidance was published in 2005 and was the subject of consultation.
11. The Best Practice Guidance makes it clear that the aim of local authority licensing in respect of hackney carriages and private hire vehicles is to protect the public. The guidance makes it clear that the public should have reasonable access to taxis and PHV services because of the part that they play in local transport provision and that licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxis and PHVs.
12. Paragraph 11 of the Best Practice Guidance makes it clear that "*It is good practice for local authorities to consult about any significant proposed changes in licensing rules and that such consultation should include not only the taxi and PHV trades but also groups likely to be the trade's customers.*"
13. Paragraphs 29/35 deal with issues relating to quantity restrictions of taxi licences outside London. Annex A identifies a number of questions that should be addressed when considering the question of quantity controls of taxi licences. Any consultation process should address the issues raised in the questions posed at Annex A.
14. Subject to consideration of the issues raised in the Best Practice Guidance, the existing legal provision on quantity restrictions for hackney carriage licences outside London is established by the provisions of s.16 of the Transport Act 1985. This provides that the grant of hackney licences may be refused, for the purpose of limiting the number of licensed taxis, "*if, but only if, the local licensing authority is satisfied*

*that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet”.*

15. The provisions of s.16 therefore require periodic assessment of the question of unmet demand if quantity restrictions are to be maintained. If this is not done then the licensing authority risks judicial review in the event of a refusal to grant a licence. When refusing a licence the local authority must be able to establish that it had been satisfied that there was no significant unmet demand justifying the grant of a new licence.
16. The removal of quantity restrictions will of course remove the local authority from the burden of undertaking periodically a need/demand survey justifying the retention of quantity restriction.
17. It is not the function of the regulatory regime to maintain the capital value of licence plates. Clearly, any change in policy which does remove capital value from the holders of licences faces the possibility of judicial review as aggrieved holders of licences will perceive that they have lost capital value in the event of delimitation taking place. They may seek to challenge an alteration in policy on the basis that their property rights (i.e. the value of their licences) have been removed. In my judgement such an argument is unlikely to be successful (i.e. because (i) the licence of the individual operator will not have been removed and (ii) it is not the function of regulatory legislation to protect the capital value of Hackney carriage licences).
18. An analogy can be drawn with regard to the situation which existed with liquor licences. Many local licensing committees under the Licensing Act 1964 had policy documents which required an applicant for a new liquor licence to establish “demand” before a new licence could be granted. The practical effect of this was to ensure that existing liquor licences had a capital value over and beyond the value of the premises to which the licence relates. The Good Practice Guide issued by the Magistrate’s Association and Justices Clerk’s Society recommended that the “need” test be removed from local licensing policies. Virtually every licensing committee adopted the Good Practice Guide.

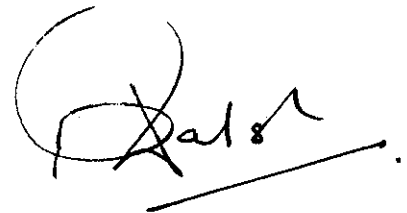
19. The Licensing Act 1964 was effectively abolished by the Licensing Act 2003. That Act together with guidance issued under s.182 of the Act makes it abundantly clear that need and demand are not relevant issues to the question of whether a licence should be granted under that legislation. The introduction of the Good Practice Guide applicable to the 1964 Act and the introduction of the Licensing Act 2003 has escaped any challenge on the grounds that the removal of the demand test had adversely affected property rights which may fall to be protected under the Human Rights Act 1998. In my judgement, the change in a policy of a licensing authority removing a pre-existing restriction on the number of hackney carriage licences issued will not be susceptible to judicial review if the change in policy has been appropriately conducted. This is of critical importance as any change to a pre-existing policy may be susceptible to judicial review if appropriate procedures have not been followed.
20. It is essential therefore for the licensing authority to ensure that careful consideration has been given to the Department for Transport "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance" and in particular to the issues raised in Annex A. Adherence to the Best Practice Guidance will not render immune from Judicial Review a change of policy but will significantly enhance prospects of successfully defending any such claim.
21. I have considered the documents which have been enclosed with my brief of instructions. It is clear that the Council has undertaken a far-ranging and lengthy consultation process prior to preparing the draft policy document. Consideration has been given to the questionnaires distributed in 2007 and 2008 and to the responses received which included responses from local authority councillors, members of the public, businesses, wheelchair users and significantly, "the trade".
22. The responses led to the formulation of a draft policy which was published in December 2008. That draft policy and its appendices were, as I understand the position to be, sent in December 2008 to all members of "the trade" who had previously responded to the questionnaires which had been sent out in 2007/2008. The letter of the 5th January 2009 from Ron Pennington (Assistant Director of Regulatory Services) indicates the main changes proposed in the draft policy and makes it clear that those changes include the removal of the current restriction on the

number of hackney carriage licences issued by the Council. Attention is drawn in that letter to the draft policy document and the letter indicates that responses to the draft policy document would be welcomed. The letter makes it clear that any responses should be received by the 31st January 2009.

23. It should be noted that the letter of the 5th January 2009 was the response to a far-reaching consultation process. Although a request was made by "the trade" to extend the consultation process this request was denied. In an undated letter (enclosure 8) Mr Pennington indicated that the licensing authority was of the view that the timescale set out in his letter of the 5th January was reasonable. I note that notwithstanding the decision not to extend the consultation period Mr Pennington made it clear that if there were any additional matters that "the trade" wished to raise which were not contained in the original responses then they should be forwarded to him for consideration by the 13th March 2009 *"in order that they can be presented to the lead member as part of the decision-making process"*. I assume that any further such responses were considered prior to the issue of the "post consultation draft policy" dated April 2009.
24. I have considered the draft report to lead member (enclosure 1). It seems to me that that report appropriately represents the manner in which the consultation process was undertaken, the responses received and the legal issues raised in the implementation of a new policy which incorporates "quantitative delimitation".
25. It is impossible for the licensing authority to make itself immune from judicial review although, of course, an aggrieved party will need to obtain permission before being able to pursue a challenge to the introduction of the policy by way of judicial review.
26. Having considered the documentation which was forwarded to me and the report to the lead member, I am of the view it would be difficult to successfully challenge by way of judicial review the way in which the draft consultation process has been undertaken. Furthermore, I am satisfied that the draft report to the lead member deals appropriately with the history of consultation relating to the introduction of the draft policy. I assume that any further representations received by Mr Pennington following the sending out of the undated letter (enclosure 8) were taken into account

prior to the formulation of the draft policy document. On this assumption, I am of the view that the local authority has done all that can reasonably be done to protect itself from challenge by way of judicial review.

27. My instructing solicitor will of course recognise that because the introduction of delimitation will have adverse financial consequences for the existing holders of licences, an attempt to challenge the implementation of the new policy by way of judicial review is a very real possibility. All that the licensing authority can do is to put itself in the best position to defend any such challenge and I believe appropriate steps in this regard have been taken.
28. I will be happy to advise further either in writing or in conference should my instructing solicitors feel that clarification of anything in this Advice is necessary.

A handwritten signature in black ink, appearing to read 'M. F. Walsh', written over a horizontal line.

**MARTIN F WALSH**

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10th June 2009

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COUNCIL**

**DRAFT LICENSING POLICY  
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PRIVATE HIRE VEHICLES AND  
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**ADVICE**

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