

AGENDA

LICENSING COMMITTEE MEETING



Date: Thursday 14 November 2013
Time: 6.45 pm or at the conclusion of
the Licensing Act 2003
Committee, whichever is the later
Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Barned, Mrs Gibson, Mrs Grigg,
Mrs Hinder, Mrs Joy, B Mortimer,
Naghi, Newton, Parvin (Chairman),
Mrs Parvin and Yates

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members

Continued Over/:

Issued on 6 November 2013

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact JANET BARNES on 01622 602242** To find out more about the work of the Committee, please visit www.maidstone.gov.uk

**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

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|-----|--|-----------|
| 4. | Disclosures by Members and Officers | |
| 5. | Disclosures of Lobbying | |
| 6. | To consider whether any items should be taken in private because of the possible disclosure of exempt information. | |
| 7. | Minutes of the Meeting held on 7 October 2013 | 1 - 3 |
| 8. | Hackney Carriage/Private Hire Issues (if any) | |
| 9. | Report of the Head of Housing and Community Services - Hackney Carriage Fare Increase | 4 - 11 |
| 10. | Report of the Head of Housing and Community Services - Scrap Metal additional fee setting | 12 - 22 |
| 11. | Report of the Head of Housing and Community Services - Unmet Demand Survey A2Z licensing letter 29.8.13 | 23 - 110 |
| 12. | Report of the Head of Housing and Community Services - Hackney Carriage Licence - Unmet Demand Survey | 111 - 234 |

PART II

To move that the public be excluded for the items set out in Part II of the Agenda because of the likely disclosure of exempt information for the reasons specified having applied the Public Interest Test.

- | | | Head of Schedule 12 A
and Brief Description | |
|-----|---|--|-----------|
| 13. | Minutes (Part II) of the Meeting held on 24 June 2013 | 3 – Financial/
Business Affairs | 235 - 236 |

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON MONDAY 7 OCTOBER 2013

Present: Councillor Parvin (Chairman), and
Councillors Barned, Mrs Gibson, Mrs Grigg,
Mrs Hinder, Mrs Joy, B Mortimer, Naghi, Newton,
Mrs Parvin and Yates

30. APOLOGIES FOR ABSENCE

There were no apologies for absence.

31. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

32. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

33. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

34. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

35. EXEMPT ITEMS

RESOLVED: That the Items on the Agenda be taken in public as proposed.

36. MINUTES OF THE MEETING HELD ON 24 JUNE 2013

RESOLVED: That the Minutes of the Meeting held on 24 June 2013 be approved as a correct record and signed.

37. HACKNEY CARRIAGE/PRIVATE HIRE ISSUES (IF ANY)

It was raised by a Member that it had been noticed that there did not appear to be enough hackney carriage bays in King Street as the taxis were parking on double yellow lines.

RESOLVED: That Officers investigate the possibility of increasing the number of hackney carriage bays in King Street with Kent County Council.

38. LETTER FROM A2Z LICENSING

The Committee considered the report of the Head of Housing and Community Services regarding the outcome of investigation of the matters raised in a letter received on 21 June 2013 from A2Z Licensing in relation to the Unmet Demand Survey and the current position following further matters raised in a letter, from the same party, on 29 August 2013.

RESOLVED:

- a) That the results of the investigation of the issues raised by A2Z Licensing in their letter of 21 June 2013, as set out in the report of the Head of Housing and Community Services, be noted;
- b) That it be noted the further issues raised by A2Z Licensing in their letter of 29 August 2013 are the subject of on-going research; and
- c) That a further report be brought to the next meeting on 14 November 2013.

39. NEW SCRAP METAL DEALERS ACT 2013

The Committee considered the report of the Head of Housing and Community Services regarding the new provisions for licensing scrap metal dealers and the related fee levels.

Members were informed of an amendment to the proposed fees and, in response to a question from a Member, that there were currently 3 Sites and 22 Collectors registered.

RESOLVED:

- a) That the report be noted; and
- b) That the fees, as set out below, be agreed:-

Site Licence – Grant (3 years) £480.00
Renewal (3 years) £410.00
Collectors Licence (3 years) £320.00

40. OPERATIONAL CHANGES WITH REGARD TO DISCLOSURE AND BARRING SERVICE ("DBS") CHECKS

The Committee considered the report of the Head of Housing and Community Services in relation to recent changes made to the DBS checking services (previously known as CRB checks) and the impact on procedures for licensing drivers at Maidstone Borough Council.

RESOLVED: That the report be noted.

41. LOCAL CODE OF GOOD CONDUCT FOR COUNCILLORS AND OFFICERS DEALING WITH LICENSING MATTERS

The Committee considered the report of the Head of Housing and Community Services regarding changes to the Code of Conduct for dealing with Licensing Matters following the introduction of the new standards regime on 5 July 2012.

RESOLVED: That the revised Licensing Code, as attached at Appendix B to the report of the Head of Housing and Community Services, be agreed and the Council's Constitution amended accordingly.

42. LICENSING PARTNERSHIP

The Committee considered the report of the Head of Housing and Community Services outlining the performance of the Licensing Partnership for the financial year 2012/13.

RESOLVED: That the report be noted.

43. DURATION OF MEETING

6.30 p.m. to 7.10 p.m.

Agenda Item 9

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

THURSDAY 14 NOVEMBER 2013

REPORT OF THE HEAD OF HOUSING AND COMMUNITY SERVICES

Report prepared by Lorraine Neale

1. HACKNEY CARRIAGE FARE INCREASE

1.1 Issue for Decision

1.1.1 To consider the Maidstone Taxi Proprietor Association's request for an increase in fares.

1.2 Recommendation of the Head of Housing and Community Services

1.2.1 That the table of fares set out in Appendix C to this report be agreed.

1.2.2 That the Head of Housing and Community Services be authorised to give public notice of the Council's intention to fix this table of fares for Hackney Carriage vehicles in accordance with Section 65(2) of the Local Government (Miscellaneous Provisions) act 1976 to take effect from 7 December 2013.

1.3 Reasons for Recommendation

1.3.1 A request has been received from the Maidstone Taxi Proprietors' Association for an increase in fares, by means of a 3% decrease in the distance on the meter,(Appendix A). This will lead to an increase in fares of 2.07% for customers travelling a 2 mile journey on all 3 tariffs.

1.3.2 It is usual practice to review fares on receipt of such a request. The Association has made their request because of increases to the cost of living and also the maintenance of their London style cabs. The change in fares relates to the distance travelled and the waiting time with no change to the flag drop.

1.3.3 Attached as appendices to this report are the following:-

- B Current Fare Chart
- C Proposed Fare Chart

1.3.4 A comparison of all the Kent authorities for Tariff one as published by Private Hire Monthly (November 2013) for a two mile journey is as follows:-

Council	Cost £ per 2 miles	Proposed
Dartford	£6.60	
Tunbridge Wells	£6.60	
Gravesham	£6.40	
Maidstone	£6.40	£6.53
Sevenoaks	£6.32	
Swale	£6.30	
Tonbridge and Malling	£6.30	
Ashford	£6.20	
Shepway	£6.20	
Canterbury	£6.00	
Dover	£6.00	
Medway	£5.80	
Thanet	£5.00	

1.3.5 The increase is in line with the level of inflation as measured by the consumer prices index (CPI), which remains unchanged at 2.7% and as can be seen from the table the increase requested is not disproportionate to the fares charged in other Kent areas. Whilst Maidstone will be one of the higher fare levels it still remains competitive with other authorities. The last request for a fare increase was received in October 2012, where the trade asked for a 10% decrease in meterage, this resulted in a 6.7% increase overall. This meant that customers travelling over 2 miles found their fare increased from £6.00 to £6.40.

Therefore, it is considered that agreement to the request can be recommended and the scheme of Hackney Carriage fares amended accordingly.

1.4 Alternative Action and why not Recommended

1.4.1 It is necessary for the Council to consider this request and to set the rates for fares. To refuse to do so would leave the Council open to challenge.

1.5 Impact on Corporate Objectives

1.6 The increase in fares seeks to support the local business economy.

1.7 Risk Management

1.7.1 The undertaking of this exercise is in compliance with legislation. Not to consider this request would leave the Council open to challenge.

1.8 Other Implications

1.8.1

1. Financial	<input checked="" type="checkbox"/>
2. Staffing	<input type="checkbox"/>
3. Legal	<input checked="" type="checkbox"/>
4. Equality Impact Needs Assessment	<input type="checkbox"/>
5. Environmental/Sustainable Development	<input type="checkbox"/>
6. Community Safety	<input type="checkbox"/>
7. Human Rights Act	<input type="checkbox"/>
8. Procurement	<input type="checkbox"/>
9. Asset Management	<input type="checkbox"/>

1.8.2 Financial and Legal – Under Section 65 of The Local Government (Miscellaneous Provisions) Act 1976, the Council may fix the rate for fares for Hackney Carriage vehicles within the Borough, for time, distance and all other charges in connection with hire of the vehicle. To meet the requirements, it is necessary to advertise the agreed variation and allow for 14 days for any objections to be made.

1.9 Relevant Documents

1.9.1 Appendices

1.9.2 Appendix A - MTPA's request for an increase in fares.
Appendix B – Current Fare Chart.
Appendix C – Proposed Fare Chart

1.9.3 Background Documents

1.9.4 None

IS THIS A KEY DECISION REPORT?

THIS BOX MUST BE COMPLETED

Yes

No

If yes, this is a Key Decision because:

.....

Wards/Parishes affected:

.....



CHAIRMAN DENNIS CONYON. SECRETARY SUKHLINDER SINGH. TREASURER ALAN JEPSON

Chairman of Licensing Committee

This is the time of the year when fares are reviewed by members

The Maidstone TPA request a fare increase of three per cent in line with current inflation figures. If granted, the increase to be implemented on distance rather than flag fall

Yours Sincerely

Dennis Conyon (Chairman MPTA)



HACKNEY CARRIAGE FARES 2012/13
Effective from 10th December 2012

MAXIMUM FARES FOR DISTANCE AND/OR TIME

Maximum fares for Distance and Time (The appropriate metric measurements is shown in each case)

TARIFF 1

For the first 617 metres (674.5 yards)
 Or 3 minute 5 seconds waiting time or part thereof **£2.80**

For each additional 144.7 metres (158.2 yards)
 Or 37.2 seconds waiting time or part thereof **£0.20**
 (on 24 December up to 6.00pm Tariff 1 applies on 31 December up to 6.00pm Tariff 1 applies)

TARIFF 2

(A) For hirings commenced between midnight and 6.00am and all day Sunday and Bank Holidays 50% above Tariff 1 rate EXCEPT where Tariff 3 applies. (From 6.00pm to Midnight on 24 December Tariff 2 Applies, from 6.00pm to Midnight on 31 December Tariff 2 applies)

For the first 617 metres (674.5 yards)
 Or 3 minute 5 seconds waiting time or part thereof **£4.20**

For each additional 144.7 metres (158.2 yards)
 Or 37.2 seconds waiting time or part thereof **£0.30**

TARIFF 3

(B) For hirings commenced between Midnight 24 December and 6.00am on 27 December Tariff 3 Applies and Midnight on 31 December and 6.00am on 2 January 100% above Tariff 1 rate.

For the first 617 metres (674.5 yards)
 Or 3 minute 5 seconds waiting time or part thereof **£5.60**

For each additional 144.7 metres (158.2 yards)
 Or 37.2 seconds waiting time or part thereof **£0.40**
 NOTE: only one of the above charges A or B is payable in respect of one hiring.

EXTRA CHARGES

For vehicles hired for more than two passengers, an extra 10p charge for each additional person, (over two passengers) shall be charged.

FARES FOR TIME

If a Hackney Carriage is hired by time such fare shall be agreed with the hirer at the commencement of the hiring.

TAXIMETER

When a Hackney Carriage furnished with a taximeter is hired by distance the proprietor or driver thereof shall not be entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for extra charges authorised by the above mentioned table which it may not be possible to record on the face of the taximeter.

CONTAMINATION FEE

A fee of £50 will be permitted to be charged in cases of soiling or fouling within a Hackney Carriage, caused by any person or animal.



HACKNEY CARRIAGE FARES 2012/13
Effective from 7 December 2013

MAXIMUM FARES FOR DISTANCE AND/OR TIME

Maximum fares for Distance and Time (The appropriate metric measurements is shown in each case)

TARIFF 1

For the first 598.5 metres (654 yards)
Or 3 minute 5 seconds waiting time or part thereof **£2.80**

For each additional 140.4 metres (153 yards)
Or 37.2 seconds waiting time or part thereof **£0.20**
(on 24 December up to 6.00pm Tariff 1 applies on 31 December up to 6.00pm Tariff 1 applies)

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CONTAMINATION FEE

A fee of £50 will be permitted to be charged in cases of soiling or fouling within a Hackney Carriage, caused by any person or animal.

Agenda Item 10

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

THURSDAY 14 NOVEMBER 2013

REPORT OF HEAD OF HOUSING AND COMMUNITY SERVICES

Report prepared by Lorraine Neale

1. NEW SCRAP METAL DEALERS ACT 2013

1.1 Issue for Decision

1.1.1 To consider and set the remaining fee levels in respect of Scrap Metal Licensing.

1.2 Recommendation of Head of Housing and Community Services

1.2.1 Agree the fees as set out in the body of the report at 1.3.2, on the basis outlined at Appendix B.

1.3 Reasons for Recommendation

1.3.1 At the Committee meeting on 7 October 2013 the following fees were agreed under the Scrap Metal Dealers Act 2013. As they were felt to be the most relevant before any applications were submitted in advance of the 15, October 2013 transitional applications deadline.

Site Licence – Grant (3 years) £480.00
Renewal (3 years) £410.00
Collectors Licence Grant/Renewal (3 years) £320.00

1.3.2 However there are some further fees to be set and calculations relating to these have been attached as Appendix B. In setting these fees regard has been given to the guidance issued by the Secretary of State, the proposed fees have been calculated using that Guidance (Appendix A) and are as follows;

Variations – Collector to Site Licence (3 years) £225.00
Site to Collectors Licence (3 years) £130.00

Change of Site Manager £175.00

Minor administrative change £31.00

1.3 Alternative Action and why not Recommended

1.4.1 The introduction of new legislation replaced the previous legislation governing Scrap Metal and as such there is no alternative action.

1.5 Impact on Corporate Objectives

1.5.1 None

1.6 Risk Management

1.6.1 The legislation has been introduced in order to properly regulate the industry. It is considered that the reform of the Scrap Metal Dealers Act will improve the impact on metal theft affecting national transport infrastructure, electricity, telecommunication links and street furniture etc.

1.6.2 Other Implications

1.6.3

- 1. Financial
- 2. Staffing
- 3. Legal
- 4. Equality Impact Needs Assessment
- 5. Environmental/Sustainable Development
- 6. Community Safety
- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

1.7 Relevant Documents

1.7.1 Appendices

- A - Fees Guidance
- B - Fees

1.7.2 Background Documents

None

Scrap Metal Dealer Act 2013: guidance on licence fee charges

Context

The Scrap Metal Dealers Act 2013 (referred to in this guidance as the 2013 Act) received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. The 2013 Act will provide effective and proportionate regulation of the sector, creating a more robust, local authority run, licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators. It will raise trading standards across the whole sector.

Introduction

The 2013 Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon scrap metal dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.

Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. This element of the legislation will be the focus of this guidance.

The intention is for the act to be implemented in October 2013.

Licensing requirements placed upon scrap metal dealers

Section one of the 2013 Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer¹. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale. In addition, Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the authority.

Aim and scope

Local authorities will be responsible for administration and compliance activity in relation to the 2013 Act. This guidance is provided to local authorities in relation to the carrying out of their fee raising function. It also provides information for the benefit of those who will be applying for a scrap metal dealer's licence and the general public. This guidance applies to local authorities in England and Wales and is produced in accordance with the 2013 Act.

Legal status

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury. This Guidance is therefore binding on all licensing authorities to that extent.

What costs can local authorities charge for when issuing a licence?

The 2013 Act provides that an application for a licence must be accompanied by a fee set by the local authority. This fee raising power is an essential component of the legislation as it will provide local authorities with the funding they need to administer the regime and ensure compliance.

The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

LAs should specify fees for each category of application. Specifically we would expect a fee to be specified for the assessment of an application for a licence, the assessment of an application to vary a licence, and the assessment of an application for licence renewal.

Local authorities should specify fees which are payable by licence applicants for the assessment and administration activity within the new licensing regime brought about by the 2013 Act. They should do this by identifying what they need to do to assess the type of licence in question and calculating their best estimate of the cost to be incurred by the LA. The authority will then be able to calculate a best estimate of unit cost for each case.

In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority's enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs as are costs associated with contested licence applications.

Registering authorities should review fees regularly to check whether they remain appropriate.

Can a local authority charge for enforcement activity?

The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Any activity taken against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators includes issuing closure notices; with applications for closure orders subsequently made to a magistrates court. The cost of applying to the Magistrates Court for a warrant (Section 16(5)(6) and (7) of the 2013 Act) for entry to unlicensed premises, by force if necessary, will incur legal costs to be borne by the local authority and police.

What are the different types of licences?

There are two types of licence specified within the act, one is for a site licence and the other is for a mobile collector licence (carrying on business otherwise than at a site). The licence authorises the licensee to carry on business as a scrap metal dealer at the sites listed in it (in the case of a site licence) or within the local authority area (in the case of a mobile collector's licence).

Site licences

A site licence requires all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.

Collectors licences

A collector's licence authorises the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal.

The licence does not permit the collector to collect from any other local authority area. A separate licence should be obtained from each local authority from which the individual wishes to collect in. A collector's licence does not authorise the licensee to carry on a business at a site within any area. Should a collector wish to use a fixed site, they will need to obtain a site licence from the relevant local authority.

The Act 2013 also specifies that a licence will be issued by the local authority in whose area a scrap metal site is situated, or (in respect of a mobile collector) in the area that the collector operates.

Do different fees apply?

Yes. Fees charged for a site licence would reflect the extra work involved in processing these licences and will vary from a collector's licence.

Display of licences

The form in which a licence is issued must enable it to be displayed in accordance with section ten of the 2013 Act. All licensees are therefore required to display a copy of their licence. For site operators the licence must be displayed in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil this requirement. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

The cost of providing a licence in a form which can be displayed should be included in the local authority licence fee charges.

Police objections to licence applications

The police may object to a licence application where they believe that the applicant is not a suitable person as defined within the act. The police can object where, for example, the applicant has been convicted of a relevant offence. LAs should also consider representations from other organisations or individuals in considering the applicant's suitability

Where the police do object, the local authority should take this into consideration but must use their own judgement and discretion when taking a licence decision. The local authority must allow for the person whose licence is about to be refused or revoked to be afforded the right to make representations. The local authority considering the matter must restrict its consideration to the issue of suitability of applicant and provide comprehensive reasons for

its decision.

Costs associated with considering oral and written representations should be included in licence fee charges.

Appeals

There is a right of appeal to the Magistrates' Court against a decision to refuse a licence application, to include a condition within the licence, to revoke the licence or to vary the licence. The costs associated with appeals and the costs of defending an appeal in the Magistrate Court should not be included in licence fee charges.

The costs associated with defending a Judicial Review into whether the local authority has failed to have regard to the guidance on fees is not chargeable under the licence regime.

Revocation of a licence and formulating and imposing licence conditions

If a licence has been granted, it may be revoked or licence conditions imposed on a scrap metal dealer if the subsections within Clause 4 of the Scrap Metal Dealers Act are triggered. A local authority may impose conditions pending an appeal against revocation (section 4 (7)) or if the applicant or site manager has been convicted of a relevant offence (section 3 (8)).

Variation of licence

Schedule 1 paragraph 3(1) indicates that a local authority may, on an application, vary a licence by changing it from one type to another and (2) if there is a change in any of the matters mentioned in section 2(4)(a), (c) or (d) or (6)(a).

These changes should be recorded by the local authority. The applicant is also under a duty to notify any convictions for relevant offences to the local authority. These measures ensure that a single record will be held of the licence holder's history in terms of licensing matters.

National Register of Scrap Metal Dealers

Whilst a local authority can recover any costs incurred in transmitting information about a licence, the costs which the Environment Agency incurs are not chargeable under the licence regime.

How long will a licence be valid for?

Schedule 1 paragraph 1 of the 2013 Act specifies the terms of a licence. It indicates that a licence expires at the end of the period of 3 years beginning with the day on which it is issued.

Additional regulations and guidance

The Home Office will be publishing regulations in relation to relevant offences and the identification required to sell scrap metal over the summer of 2013. These regulations will be published on www.gov.uk. We will also be working with the Local Government Association, the British Metal Recycling Association and British Transport Police to produce additional guidance on the requirements of the new act.

The Local Government Association guidance will include a breakdown of reasonable timescales for each of the activities associated with setting a fee.

Annex A - Definitions

What is a local authority?

'Local authority' means —

- (a) in relation to England, the council of a district, the Common Council of the City of London or the council of a London borough;
- (b) in relation to Wales, the council of a county or a county borough.

What is a scrap metal dealer?

21 'Carrying on business as a scrap metal dealer' and 'scrap metal'

(2) A person carries on business as a scrap metal dealer if the person—

- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

What is a mobile collector?

'Mobile collector' means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

What is a motor salvage operator?

(4) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists —

- (a) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
 - (b) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
 - (c) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or
 - (d) wholly or mainly in activities falling within paragraphs (b) and (c).
-

Appendix B

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Maidstone Borough Council's Scrap Metal Dealer's Site - Variation - collector to site licence	AO	£24.14	Admin Officer									
	HOS	£72.67	Head of Service									
	LEGAL	£80.40	Legal		rates per hour							
	CO	£33.76	Committee Officer									
	LO	£31.69	Licensing Officer									
	AO	LO	Time HOS	Legal	CO	AO	LO	HOS	Legal	CO	TOTAL	
Send application forms	0.17					£4.10						
Provide telephone/personal assistance and deal with queries regarding completion of application forms and general enquiries	0.25					£6.04						
Check all documentation is correct and valid	0.25					£6.04						
Verify cheque details, bank money and clear funds	0.5					£12.07						
Input application onto computer system (scanning in documents where necessary)	0.5					£12.07						
Confirm to applicant that application is complete/incomplete	0.25					£6.04						
Decide who to consult with e.g. Councillors, Environmental Health, UKBA, etc and send appropriate letters		0.5					£15.85					
Assess whether any representations received are valid/invalid and require investigation/hearing		0.5					£15.85					
Arrange Committee hearing, write report, inform all interested parties of details - 10% applications		4	1	1	1	£12.68	£7.27	£8.04	£3.38			
Attendance at hearing, draft and issue decision notice to applicant/objectors - 10% applications		4	1	4	4	£12.68	£7.24	£32.16	£13.52			
Draft and issue licence	0.5					£12.07						
Update register	0.1					£2.41						
Premises inspections/intervention and compliance, complaints/queries -annual		1					£31.69					
						£60.84	£88.75	£14.51	£40.20	£16.90	£221.20	

Maidstone Borough Council's Scrap Metal Dealer's Site - Variation - site to collector licence	AO	£24.14	Admin Officer										
	HOS	£72.67	Head of Service										
	LEGAL	£80.40	Legal		rates per hour								
	CO	£33.76	Committee Officer										
	LO	£31.69	Licensing Officer										
	AO	LO	Time HOS	Legal	CO	AO	LO	HOS	Legal	CO	TOTAL		
Send application forms	0.17					£4.10							
Provide telephone/personal assistance and deal with queries regarding completion of application forms and general enquiries	0.25					£6.04							
Check all documentation is correct and valid	0.25					£6.04							
Verify cheque details, bank money and clear funds	0.5					£12.07							
Input application onto computer system (scanning in documents where necessary)	0.5					£12.07							
Confirm to applicant that application is complete/incomplete	0.25					£6.04							
Decide who to consult with e.g. Councillors, Environmental Health, UKBA, etc and send appropriate letters		0.25						£7.93					
Assess whether any representations received are valid/invalid and require investigation/hearing		0.25						£7.93					
Arrange Committee hearing, write report, inform all interested parties of details - 5% applications		4	1	1	1		£6.34	£3.63	£4.02	£1.69			
Attendance at hearing, draft and issue decision notice to applicant/objectors - 5% applications		4	1	4	4		£6.34	£3.63	£16.08	£6.75			
Draft and issue licence	0.5					£12.07							
Update register	0.1					£2.41							
						£60.84	£28.54	£7.26	£20.10	£8.44	£125.18		

Maidstone Borough Council's - change of site manager	AO	£24.14	Admin Officer										
	HOS	£72.67	Head of Service										
	LEGAL	£80.40	Legal	rates per hour									
	CO	£33.76	Committee Officer										
	LOP	£31.69	Licensing Officer										
	AO	LOP	Time HOS	Legal	CO	AO	LOP	HOS	Legal	CO	TOTAL		
Send application forms	0.17					£4.10							
Provide telephone/personal assistance and deal with queries regarding completion of application forms and general enquiries	0.25					£6.04							
Check all documentation is correct and valid	0.25					£6.04							
Verify cheque details, bank money and clear funds	0.25					£6.04							
Input application onto computer system (scanning in documents where necessary)	0.25					£6.04							
Decide who to consult with e.g. Councillors, Environmental Health, UKBA, etc and send appropriate letters		0.5					£15.85						
Assess whether any representations received are valid/invalid and require investigation/hearing		0.5					£15.85						
Arrange Committee hearing, write report, inform all interested parties of details - 10% applications		4	1	1	1		£12.68	£7.27	£8.04	£3.38			
Attendance at hearing, draft and issue decision notice to applicant/objectors - 10% applications		4	1	4	4		£12.68	£8.21	£32.16	£13.52			
Draft and issue licence	0.5					£12.07							
Update register	0.1					£2.41							
						£42.74	£57.06	£15.48	£40.20	£16.90	£172.38		

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

THURSDAY 14 NOVEMBER 2013

REPORT OF HEAD OF HOUSING AND COMMUNITY SERVICES

Report prepared by Lorraine Neale

- 1. UNMET DEMAND SURVEY A2Z LICENSING LETTER 29.8.13**
 - 1.1 Issue for Decision
 - 1.1.1 To consider the content of the letter received from A2Z licensing on 29.8.2013 in respect of the Hackney Carriage rank at Maidstone East Station(Appendix A) and the recommended review of taxi rank provisions
 - 1.2 Recommendation of Head of Housing and Community Services
 - 1.2.1 a) Note the contents of the report and agree that a review of the current Hackney Carriage rank provisions within the Borough be initiated;

b) Proceed to consider the report on the hackney carriage unmet demand survey at Item 12 of this agenda.
 - 1.3 Reasons for Recommendation
 - 1.3.1 At the Licensing Committee meeting held on 7 October 2013 Members were asked to note the report on the investigation of the issues raised by A2Z Licensing in their 21 June 2013 letter and were also advised of the further issues raised in a further letter received on 29 August 2013, where the subject of taxi ranks and their lawful creation were being queried, particularly the rank at Maidstone East Station.
 - 1.3.2 A considerable amount of research has been undertaken by the Licensing department in an effort to find the evidence that has been requested by A2Z licensing. This has proven to be time consuming and difficult due to the historic nature of the information and it is not considered a productive use of time in provision of a good service for all. It is believed that ranks were correctly appointed and have remained unchallenged for many

years. Investigations will continue but because of the limited resource within the department a deadline for production of the information cannot be given.

- 1.3.3 It is considered that the rank information provided to Amey in respect of the survey was correct and certainly relates to the ranks in current use. However, in light of the query from A2Z, Amey were asked what the outcome of their survey would have been if the ranks surveyed had never been legally appointed. Amey have confirmed that it would not have affected their survey methodology and the outcome in respect of unmet demand would have been the same (Appendix B).
- 1.3.4 Consideration of the unmet demand survey has been deferred since the 24 June 2013 report to Committee, to enable consideration of the various matters raised by A2Z. The response to the issues in the 21, June 2013 letter was reported and noted at 7, October 2013 Committee. Further deferral took place to consider the issues raised in the 29 August 2013 letter. As Amey have confirmed that A2Z's query does not affect the outcome of their survey it is considered that Members can be satisfied with the evidential value of the survey and can consider the original report. The report is at item 12 of this agenda.
- 1.3.5 As a result of the queries raised and the comments made within Amey's report on ranks it is considered timely to undertake a review of the rank situation in the Borough to update the current position. It may be beneficial to remove any ranks in disuse and appoint any further ones which appear to be necessary. A full consultation with the trade and other interested parties would need to be undertaken.

1.4 Alternative Action and why not Recommended

- 1.4.1 An alternative course of action would be to continue to defer consideration of the unmet demand survey for research of questions raised. This would give rise to a continued risk of challenge on whether quantity restriction is lawful due to the time since the last survey and is not considered appropriate for the reasons set out in the report. Also, there could be no review of the rank provision as it stands but this is not considered to be way forward to provide the most appropriate facilities for the service.

1.5 Impact on Corporate Objectives

- 1.5.1 A review of taxi rank provision in the Borough will have a positive impact on the economic vitality of the town by providing an update

on efficient and effective sitings of ranks for the use of members of the public

1.6 Risk Management

1.6.1 There is no significant risk

1.7 Other Implications

1.	Financial	X
b)	Staffing	
c)	Legal	X
d)	Equality Impact Needs Assessment	X
e)	Environmental/Sustainable Development	
f)	Community Safety	
g)	Human Rights Act	
h)	Procurement	
i)	Asset Management	

1.7.1 There could be some financial implications in the siting of any new ranks which will be considered as part of a review and that funding would have to be found from existing budgets.

1.7.2 There may need to be legal advice on any proposed creation or removal of ranks should that be agreed at a later stage.

1.7.3 When assessing the provision of the ranks the needs of all will be considered as part of the review.

1.8 Relevant Documents

1.8.1 Appendices

Appendix A – A2Z letter 29.8.13
Appendix B – Amey’s e-mail on survey methodology

1.8.2 Background Documents

None

IS THIS A KEY DECISION REPORT?

THIS BOX MUST BE COMPLETED

Yes

No

If yes, this is a Key Decision because:

.....

Wards/Parishes affected:

.....



3 Biddick Hall Cottages, Lambton Park, Chester-le-Street DH3 4PH
 Tel: 0191 2449638 / 0191 3857313
 Fax: 0191 2475855

Specialist licensing advice, assistance and representation ■ taxis ■ alcohol and entertainment ■ wedding venues ■ gambling

Mr John Littlemore
 Head of Housing & Community Services
 Maidstone Borough Council
 Maidstone House
 King Street
 Maidstone
 Kent
 ME15 6JQ

Our Ref: DBW / Streamline
 Your Ref:
 Date: 29 August 2013
 Please ask for: David Wilson

**By First Class post and email to:
 johnlittlemore@maidstone.gov.uk**

Dear Mr Littlemore,

**Hackney carriage licensing – proof of extension and amalgamation of zones
 Local Government (Miscellaneous Provisions) Act 1976, Part II – proof of adoption
 Taxi ranks – proof of lawful creation, especially at Maidstone East Station
 Hackney carriage unmet demand survey**

Thank you for your letter, dated 22 August 2013, forwarded to me by your senior licensing officer, Lorraine Neale, on even date.

Having taken my client's instructions, I can advise that, pending the outcome of the appeal to the Divisional Court in Aylesbury Vale District Council v Call a Cab Ltd, my client does not propose to pursue the extension and adoption issues further at this time, but reserves its absolute right to resurrect and pursue either or both of these matters at any time in the future.

However, My client is now concerned by the assertions made in your letter, dated 2 August 2013, with regards to the hackney carriage unmet demand survey that the rank provision at Maidstone East Station has not been lawfully created by the Council.

In your letter you asserted:

“The ‘rank’ at the [Maidstone] East Station is on land in the ownership of the rail network and any vehicles using it require permits from Meteor, it is not a public highway rank. The Council understood there to be 5 spaces for use by Hackney Carriages and this area was notified to Amey as it was considered to be an area where there is demand. I am told that the current lined spaces, as photographed by your client, were painted during 2012.”

Principal:
 David B Wilson Cert HELL, MLoL, MBII.tp
Website:
 www.a2zlicensing.co.uk
Email:
 enquiries@a2zlicensing.co.uk

In association with:
 a2z Licensing Ltd
 3 Biddick Hall Cottages, Lambton Park, Chester-le-Street DH3 4PH
 Tel: 0191 2449638 / 0191 3857313
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Since as long ago as 1925, the creation of taxi ranks at railway stations in areas to which hackney carriage licensing applied under the Town Police Clauses Act 1847 have had to be created by councils, firstly by way of byelaws made under section 68 of the said Act and more recently, subject to the adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976, in accordance with the provisions of section 63 of the said 1976 Act.

In this regard, please note the provisions of section 76 of the Public Health Act 1925, which I reproduce below for your ease of reference:

76 As to public vehicles taken at railway stations.

In any area within which the provisions of the Town Police Clauses Act 1847, with respect to hackney carriages are in force, those provisions and any byelaws of the local authority with respect to hackney carriages shall be as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area, as if such railway station or railway premises were a stand for hackney carriages or a street:

Provided that—

- (a) the provisions of this section shall not apply to any vehicle belonging to or used by any railway company for the purpose of carrying passengers and their luggage to or from any of their railway stations or railway premises, or to the driver or conductor of such vehicle;
- (b) Nothing in this section shall empower the local authority to fix the site of the stand or starting place of any hackney carriage in any railway station or railway premises, or in any yard belonging to a railway company, except with the consent of that company.

As you will appreciate, the effect of the above was to extend hackney carriage licensing to privately owned railway land to which the provisions of the 1847 Act, with respect to hackney carriages, had not necessarily applied before the said Act was enacted.

Somewhat fortuitously, the whole legislative framework regarding the creation and management of hackney carriage ranks and hackney carriages at railway stations, including the operation of permit schemes, was considered by the High Court, Chancery Division in *Jones & Tighilt v Greater Western Ltd* [2013] EWHC 1485 (Ch) as recently as late April this year.

For your ease of reference, I enclose a copy of the very detailed and comprehensive 78 page judgment (although it should be acknowledged that the last nine pages are

concerned with post judgment matters) of His Honour Judge McCahill QC, sitting as a High Court Judge.

Whilst I am sure you and your lawyers will read and consider the whole judgment, I respectfully refer you to paragraphs 202 – 204 at which the court said:

202. The effect of the 1925 and 1976 legislation was, in my judgment, merely to extend the licensing system and regime created by the 1847 Act and the taxi byelaws to private land, albeit only with the consent of the landowner. It created no new rights.
203. Moreover, the consent of the landowner to the fixing of the stand on his land, a stand which was to be subject to the regulatory regime of the taxi byelaws, is, in my view, entirely different and separate from the necessary permission which must be obtained from the landowner to go on to private land to access that stand.
204. In other words, a landowner's right to withhold permission to taxi drivers to go on to his land is not spent once he has given his consent to taxi byelaws fixing a stand on his land until that byelaw is amended.

As the Council seems not to have extended any taxi rank at Maidstone East Station in 2012, that part that is an extension of the previous rank (if it were ever legally created) has not been legally created and calls into question the legality of this rank and all others within the Borough.

In the circumstances, I should be obliged if the Council would kindly provide copies of all the byelaws made under section 68 of the Town Police Clauses Act 1847 creating, amending or revoking any such rank prior to the (unproven) adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976 on 5 June 1978 and / or the resolutions and published statutory notices made thereafter under section 63 of the said 1976 Act in relation to taxi ranks.

As for the hackney carriage unmet demand survey, having raised concerns in this letter and in earlier correspondence, my client acknowledges that it is for the Council alone to decide whether to take action to alleviate its concerns and, should the Council not do so, it would then be a matter for my client to pursue, if it considered the Council had failed to ensure that its decision-makers had been presented with all relevant information and no irrelevant or inaccurate information.

Whilst not expressed as a request for information under the Freedom of Information Act 2000, I trust the Council will be able to provide the requested information regarding taxi ranks (which I trust will be readily to hand in any event) within the 20 working days in which the information would have to be provided under the 2000 Act.

I look forward to hearing from you; and thank you in anticipation of your further prompt and kind attention to these matters.

Yours sincerely,

A handwritten signature in black ink that reads "David B. Wilson". The script is cursive and fluid, with the first letters of each word being capitalized and slightly larger than the rest of the letters.

David B Wilson

Licensing Consultant, Mediator and Trainer

Email: david.wilson@a2zlicensing.co.uk

Mobile: 07794 776383

Neutral Citation Number: [2013] EWHC 1485 (Ch)

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

BRISTOL DISTRICT REGISTRY

Date: Thursday, 25 April 2013

Before:

HIS HONOUR JUDGE McCAHILL QC

(Sitting as a High Court Judge)

Between:

(1) PATRICIA JONES

(2) MOURAD TIGHILT

(Suing on behalf of themselves and all other members of the Bristol Branch of the National Taxi Association) **Claimants**

and

FIRST GREATER WESTERN LIMITED

Defendant

MR D FLETCHER (instructed by Stones LLP) appeared on behalf of the Claimants

MR E PATON (instructed by Burges Salmon LLP) appeared on behalf of the Defendant

JUDGMENT

Introduction

1. The core issue in this case is whether the defendant, First Greater Western Limited ("FGW") - as the private lessee and station franchise operator of railway premises, namely Bristol Temple Meads ("BTM"), within which are located Hackney Carriage stands fixed by local byelaws ("the taxi byelaws") - is lawfully entitled to introduce and enforce a permit scheme.

2. This permit scheme requires Hackney Carriage drivers to pay an annual fee for the privilege or opportunity of plying for hire from within the station forecourt or for standing for hire at those prescribed taxi stands, as well as requiring them to conform to certain standards of conduct whilst at BTM, on pain of having their permit revoked.

3. The scheme, which came into practical effect on 1 March 2012, does not prevent (1) licensed Hackney Carriage drivers without permits or private hire vehicles from dropping off passengers at the station entrance; or (2) private hire vehicles from picking up passengers who had pre-booked a private hire vehicle to pick them up from the forecourt at Bristol Temple Meads.

The defendant

4. FGW is a passenger railway franchise holder, operating train services on the great western section of the national rail network, from London Paddington to the south west of England and South Wales.

5. FGW is wholly owned by First Rail Holdings Limited, which is itself wholly owned by First Group plc.

6. FGW is a commercial undertaking, employing railway assets for profit in accordance with a franchise agreement with the Secretary of State for Transport dated 12 December 2005. FGW's activities include carrying passengers in exchange for fares and entering commercial arrangements with third parties to exploit its land by way of concessions.

7. As part of its railway services, it is the current operator of BTM which was leased to it by the freehold owner, Network Rail Infrastructure Limited ("Network Rail") by a lease dated 30 September 2009 for a term starting on 1 October 2009 and ending at 2 am on 13 October 2013, some five to six months hence.

8. The lease includes the station approach land accessed from the public vehicular highway on the south west known as Temple Gate. This approach land includes the access road and pavements known as Station Approach, car parks and 46 taxi stands located in two ranks, one for four taxis, the other for 42. There is also an additional pedestrian side access to the station, from the northern direction of Avon Street, via a pedestrian bridge over the Floating Harbour.

9. FGW took over as the operator in 2006 from Great Western Trains Company Limited ("GWTC") by a transfer scheme dated 31 March 2006.

Nationalisation of the railways

10. By way of background history, the railways and other forms of private inland transport had been nationalised under the Transport Act 1947, which had also created the British Transport Commission.

11. Under the Transport Act 1962, the British Transport Commission was replaced by four separate organisations, one of which was the British Railways Board ("British Rail"), which thereafter owned all railway stations, railway premises, including taxi ranks and infrastructure, as well as operating the national railway service and network.

Privatisation of the railways

12. By the Railways Act 1993, operations of British Rail were to be privatised and separated into a number of separate businesses, including businesses providing passenger and freight services using rolling stock, which were known as the Train Operating Companies; and a business which managed the infrastructure, namely the track and railway property, to be called Railtrack plc.

13. GWTC, initially a subsidiary of British Rail, had taken over operation of BTM from the British Railways Board in December 1994 as part of the preparations for privatisation of the railways under the Railways Act 1993.

14. GWTC was subsequently sold by British Rail to private operators, to which the relevant Track Agreement and Station Franchise Agreement were granted. The newly privatised business, GWTC, ran BTM and the rail network from February 1996 to December 2005.

15. Following the insolvency of Railtrack plc in 2002, it was restructured as National Rail Infrastructure Limited, called Network Rail, in October 2002.

16. For a more detailed history of the privatisation process, the parties are referred to paragraphs 4.3 to 4.9 of the second witness statement of Mr Bartlett at pages 41 to 42 in bundle C.

17. Both FGW and GWTC are subsidiaries of First Group plc and, as both trade or traded as 'First Great Western', third parties, including the public, would not have noticed any practical difference upon the change of operator in 2006.

The claimants

18. The claimants, representing the members of the Bristol Branch of the National Taxi Association, initially brought an application for an interim injunction to restrain the implementation of the scheme. The application for the injunction was compromised on the terms of an order and undertakings agreed at court on 9 March 2012. Those undertakings were slightly varied by orders of 19 April 2012, 28 February 2013 and, most recently, 26 March 2013.

19. The orders and undertakings enabled a category of claimant taxi drivers, protesting against the permit scheme but wishing to ply for hire on the station land in the interim, to pay an equivalent sum into court in lieu of the permit fee. They were the 'B List' and then the 'B1 List' claimants, who pending trial were also bound by undertakings to comply with the defendant's terms and conditions for permit holders.

20. I shall refer in the rest of this judgment to licensed Hackney Carriages as 'taxis' and to their drivers as 'taxi drivers'.

21. The claimant Association comprises between approximately 180 and 200 taxi driver members, referred to on 'List A' attached to the pleadings, some of whom do not ply for hire from BTM at all ('List C'). It is currently the only taxi association in Bristol. It follows that

there are many taxi drivers who do ply for hire at BTM who are not members of the claimants' Association. Former taxi associations, active in the 1970s and 1980s, have been disbanded or no longer exist.

The licensing authority

22. The relevant taxi licensing authority is Bristol City Council ("BCC").

23. A taxi driver requires her or his own personal licence as a driver to ply for hire in a taxi. The taxi vehicle itself must also be separately licensed by its proprietor. The taxi licence or 'plate' is marketable, but it must be sold with the vehicle to which it relates.

Taxi statistics and the introduction of the permit scheme

24. Since deregulation there is now no limit on the number of taxis that can be licensed by BCC. In 2011, there were about 771 taxis, of which 581 then plied for hire from BTM. When the permit scheme came into effect on 1 March 2012, there were about 900 taxis, of which 252 held FGW permits and a further 74 operators, the 'B List' taxis, had paid into court the equivalent of the FGW permit fee of £375 under the terms of that interim court order, which allowed them to use their taxis to ply for hire at BTM, without formally submitting to the new permit scheme. They displayed a modified form of permit on the windscreen of the taxi.

25. As at 1 April 2013, 58 taxis held permits issued for the new year and a further 203 vehicles held 'B' or 'B1' list authorisations, having paid into court the equivalent of the 2013/2014 fee effective from 1 April 2013, namely £400.

26. The most expensive permit fee currently charged elsewhere by FGW is in the region of £700. It can therefore be confidently predicted that, if FGW is successful in this litigation, the BTM permit fee will soon rise to that level or beyond since BTM is the station with the highest footfall of passengers under FGW's control and management.

27. The current comparatively low permit fee is, according to FGW, a reflection of the fact that the last permit fee had been charged in 1974 and, therefore, FGW wished to increase the fee gradually. The claimants regard the current comparatively low entry level fee as a cynical ploy by FGW, since FGW's long-term intentions are obvious.

28. FGW manages 210 stations, at 41 of which it operates a permit scheme because of the number of passengers frequenting that station and the number of taxi drivers who convey them. However, BTM is the only FGW station, of which I am aware, where local byelaws regulating the taxis are in force and, if FGW succeeds in this case, will remain in force alongside the terms and conditions of the permits. In addition to levying a charge, the permits also seek to regulate the behaviour of taxi drivers when on BTM premises. The defendant will enforce the permit conditions as part of the operation and management of the station.

The permit

29. The permit and its conditions are set out between pages 211 and 218 of the Core Bundle. I should refer to some of the conditions at this stage. The parties to the agreement are expressed to be FGW, the licence holder, which is the proprietor of the vehicle, and any applicable driver. In the permit, "*Driver means (except where specifically mentioned otherwise) the licence holder holding the licence for the vehicle issued under the Town Police*

Clauses Act 1847 and any additional driver named above." The permit agreement enabled additional drivers, beyond the Owner driver, to become parties to the agreement.

Permit conditions

30. Clause 4 of the permit cast upon the licence holder a number of obligations, including clause 4(c):

"(c) Comply in all respects with any regulations, conditions of licence and bye-laws of the council and in particular with such of the said regulations and bye-laws as relate to any uniform to be worn by and the conduct of drivers while on duty."

31. Clauses 4(e) and (f) require the licence holder to:

32. *"(e) Comply with the requirements of every statute regulation or bye-law relating to motor vehicles (so far as applicable to taxis) and with the bye laws and regulations of the company and the requirements and directions of the Police (including officers of British Transport Police) and other authorised officials.*

33. *"(f) Ensure that the manager of the station be furnished with full particulars of any parcel or package or other articles left or deposited in any taxi by any passenger carried to or from the station as soon as practicable after the discovery of such parcel package or other article."*

34. Clauses 5, 6, 13, 15 and 16 of the permit place upon the driver of any taxi a number of other obligations and restrictions when at BTM:

"5. The driver of any taxi shall not ply for hire at the station except in accordance with this agreement and the company's requirements hereunder.

"Whilst upon entering or leaving the station of the company the driver will not:

"(a) Drive dangerously, recklessly or carelessly

"(b) Tout for hire either by word, signal or otherwise

"(c) Unreasonably refuse a fare when not engaged

"(d) Leave any taxi unattended

"(e) Be under the influence, whilst driving, of alcohol, non prescribed drugs or any other controlled substance

"(f) Use any insulting or abusive or offensive language, or be guilty of any indecent or improper conduct

"(g) Cause or permit any nuisance, annoyance or obstruction, danger, damage, loss or inconvenience to the company or to their servants or agents, or to any person or property being adjacent thereto or to any person hiring or seeking to hire any taxi for the purpose of being carried to or from the station.

"(h) Dispose of litter, e.g. cigarettes, food, drink and packaging, etc. whilst on the station premises, anywhere other than in the designated refuse containers.

"6. In the event that the rank or designated feeder lane to the ply for hire rank is full, drivers shall not attempt to ply for hire from any other part of the company's premises.

"7. The company's staff at the railway station may require the permit holder to collect passengers from a different part of the station (other than the taxi rank). All permit holders must comply with these requests.

"13. Termination or suspension - the company or any authorised person may at any time terminate or suspend this contract by written notice served on the driver of the vehicle at that time but without prejudice to any other rights or remedy, which they may possess.

"15. The company may terminate this contract:

"(a) If the sum due under clause 11 [that is the permit fee] ... [is] not paid.

"(b) If the licence holder/driver fails to comply with any other obligations on their part herein contained in this agreement.

"(c) If the licence holder/driver shall act contrary to the provisions of this agreement.

"(d) If the licence holder is unable to satisfy his/her debts or if the licence holder shall compound or make any arrangements with his/her creditors.

"16. The company reserves the right not to renew any licence holder/driver's agreement. The company will use its discretionary power not to disclose any information to the licence holder/driver with regard to this decision."

35. I have recited the material provisions, but the whole permit agreement has to be looked at to see the full extent of the control which it exercises on taxis and their drivers. As I have already indicated, the parties to the permit agreement are the proprietor of the licensed taxi, as well as any other authorised driver of that vehicle, on the one hand, and FGW on the other. FGW have also retained the power both to limit the number of permits and, under clause 15, to terminate or revoke any permit it granted for breach of any of the permit conditions.

The unique position of BTM

36. No other FGW station the subject of an FGW permit scheme is regulated by taxi byelaws.

FGW's primary submission in summary

37. Mr Paton, counsel for FGW, has distilled the core issue thus: do the claimant taxi drivers have a *right* to conduct their business at the taxi stands on the defendant's land at Temple Meads Station without the defendant's permission, so that the defendant cannot oblige them to obtain an annual permit to do so?

38. He answered his own question in his written skeleton argument as follows:

39. (1) The real issue is not whether the claimants are barred for ever from conducting their trade at Temple Meads, it is whether they will have to obtain a permit for the privilege of doing so, abide by the defendant's terms and conditions of access when on its land and pay

a fee, having not paid any fee or been required to sign up to terms and conditions of behaviour for the preceding 38 years.

40. In this respect, it is a question of whether the current operator of the station can reintroduce the permit arrangements in place prior to 1974 when taxi drivers paid British Rail for the privilege of conducting their trade on its land. The premium charged in 1973 was £25 per year. There was no suggestion that, at that time, there was any reason why British Rail could not control access over its land or require payment for the right to conduct a trade on it.

41. Mr Paton added that such had been the clear legal position in relation to land owning railway companies even before British Rail existed. He referred to Perth General Station Committee v Ross [1897] AC 479, where it was held there was no right of access to the station for hotel porters; and to Barker v Midland Railway Company (1856) 18 CB 46, where it was held there was no right of access to the station for bus drivers.

42. This, therefore, he submitted is the modern day starting point for any analysis, namely that station premises are private land.

43. (2) His second overarching point was that the claimants have focused in particular on the cost of purchasing a permit. The current asking price for that privilege is £400 (£375 last year). On the claimants' own stated case and figures - specifically their figures for alleged loss of earnings in the brief interim period of 12 days between 1 March and 12 March 2012, before the compromise in the injunction proceedings was implemented, and now set out in the amended schedule of damages - the annual value of the privilege of conducting their business on the station land to each of them was claimed, in that schedule, to lie in the approximate range of between £9,000 and £24,000 per annum, with the majority of claimants in the upper end of that bracket.

44. The current cost levied, therefore, is some 1 to 2 per cent of the benefit to be gained from access to the defendant's property and to its customers, disgorged by its own trains on delivering them to its own station.

45. So, for FGW the position is straightforward: As landowner, it has an unqualified private right to determine who, and on what terms, it permits to come on to the land of which it is lessee, and that includes the station approach road and taxi stands, even if, as was the case, the position of those taxi stands within BTM had been fixed as Hackney Carriage stands, with the consent of British Rail in 1974, by the taxi byelaws.

46. The taxi byelaws, according to FGW, merely extended BCC's supervisory and regulatory regime over taxi drivers, confined normally to the public highway, to private railway land, but conferred no right of access for taxi drivers to BTM land including those stands.

47. Mr Paton submitted that this proposition had been clearly established by the Divisional Court in the case of Hulin v Cook [1977] RTR 345, a unanimous decision of Lord Widgery CJ, Melford Stevenson and Slynn JJ. That judgment was delivered by the Divisional Court on 22 June 1977, in respect of an offence allegedly committed at Cardiff Railway Station on 15 September 1975.

48. Mr Paton accepted that I, sitting in this case as a High Court Judge, am not technically bound by another High Court or Divisional Court decision.

49. Nevertheless he submitted that the recognised position is that set out in the following passage in Halsbury's Laws, volume 11, Civil Procedure, at paragraph 98:

"Where, however, a judge of first instance, after consideration, has come to a definite decision on a matter arising out of a complicate and difficult enactment, the opinion has been expressed that a second judge of first instance of coordinate jurisdiction should follow that decision and the modern practice is that a judge of first instance will, as a matter of judicial comity, usually follow the decision of another judge at first instance unless he is convinced that that judgment was wrong."

50. Reference was made, in the footnote to that extract from Halsbury's Laws, to the case of Huddersfield Police Authority v Watson [1947] KB 842.

FGW has also sought to justify the permit scheme under powers conferred on it by the Railway Byelaws 2005 made by the Strategic Rail Authority under the Transport Act 2000.

The claimants' case in summary

51. Mr Fletcher, on behalf of the claimants, has attacked the permit scheme and/or FGW's right to charge taxi drivers for plying for hire from BTM on the following bases.

52. (1) The fixing of taxi stands within BTM impliedly granted taxi drivers the free right to go on to BTM to ply for hire within BTM or to park at the taxi stands pending hire, absent any revocation or amendment of the relevant taxi byelaw which had fixed the location of the stands within BTM.

53. Mr Fletcher's submission was that a taxi stand is either public or private. He gave the example of a private stand within a hotel. He submitted that a stand cannot be both public and private, which he argued is precisely what FGW was trying to achieve.

54. (2) He also argued that Hulin v Cook is an unsatisfactory authority because:

55. (i) The facts were not fully explored and some important matters were either unknown or assumed;

56. (ii) Unlike the instant case, there had been no attack on the permit scheme which was operated at Cardiff; rather that was a case where there was a conflict between the taxi byelaws and the then current railway byelaws, whereas he submitted that clash has been removed by the modern 2005 railway byelaws;

57. (iii) There had not been a full analysis of the legislation under which the taxi byelaws in that case had been made;

58. (iv) Since that case the position has been materially affected by section 63 of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act");

59. (v) FGW's powers under the permit scheme could have the effect of reducing the number of taxi drivers at BTM, whereas the 1976 Act had enacted a statutory procedure to be followed if the number of taxis at each stand was to be varied;

60. (vi) The effect of the permit scheme would be double regulation of taxi drivers, namely by BCC and by FGW.

61. (3) In any event, as an alternative submission, Mr Fletcher argued thirdly that the Station Approach is a public vehicular and pedestrian highway by virtue of section 31 of the Highways Act 1980 as a result of its presumed dedication after public use for 20 years both

on foot and with vehicles. Therefore, taxi drivers have that right, free of charge, to access BTM land, because it is subject to and burdened with public vehicular rights.

62. FGW resisted the public highway argument on the grounds, inter alia, that:

63. (a) Any use was permissive and not as of right;

64. (b) The creation of any public or private right of way by prescription or user is, in fact, prevented by section 57 of the British Transport Commission Act 1949;

65. (c) Any such public vehicular right was extinguished by the Natural Environment and Rural Communities Act 2006; and

66. (d) Even if there had been a presumed dedication, that could be negated by evidence showing that there was no such intention to dedicate. Such evidence exists and should be accepted in this case.

67. (4) Mr Fletcher's fourth point was that FGW had relied upon its powers, in whole or in part, contained in the Railway Byelaws in imposing the permit scheme. Either it had no such power under the byelaws as a matter of interpretation of the 2005 byelaws, when compared with their predecessor, or, even if it did have relevant powers under the Railway Byelaws 2005, it was seeking to use those byelaws for an improper and ulterior purpose, namely to raise revenue, a function for which the powers had not been granted.

68. In either event he said that the scheme was beyond the powers of FGW and should be restrained by injunction, requiring FGW to reconsider its position with a view, if so advised, to introducing a new permit scheme wholly within its powers. He submitted that this argument still applied, even if FGW had purported in fact to introduce the scheme both under its powers as a private landowner and in the exercise of statutory powers. The fact that it had relied, albeit in part, on a byelaw power it did not possess, infected the whole scheme which should be struck down, until it was properly reconsidered and then reintroduced on a wholly correct legal basis.

69. (5) If the taxi drivers used the station approach road and stands only by reason of FGW's permission and not by right, either as a highway or under the taxi byelaws, and even if the permit scheme is not beyond the powers of FGW, nevertheless the permit scheme violated the taxi drivers' rights under Article 1, Protocol 1, that is the peaceful enjoyment of possessions, under the European Convention of Human Rights and Fundamental Freedoms as incorporated in and enforceable by the Human Rights Act 1998.

70. This argument, as well as a purported claim for damages under the Human Rights Act 1998, is premised on an assertion that "in relation to their management of the accesses to Temple Meads Station the defendant are a public authority as defined in section 6 of the Human Rights Act 1998".

71. The claimants do not say on this argument that they should have had more time or notice of the implementation of the permit scheme; they claim that the defendant could not withdraw the permission at all save in pursuit of a legitimate aim and, in doing so, in striking a fair balance between their own rights and the public interest and/or the livelihood of the claimants.

72. This human rights argument has, therefore, given rise to the subsidiary issues of whether:

73. (1) In exercising their function of controlling access to BTM, FGW was, for these purposes, a public authority;

74. (2) The permission granted to the taxi drivers to access BTM was a possession for the purposes of Article 1, Protocol 1 of the Convention and the Act;

75. (3) In revoking the permission, FGW interfered with or deprived the taxi drivers of their possessions; and

76. (4) Even if it did, it was in the public interest and subject to the conditions provided for by law? In short, was it a justified and proportionate control on a fair balance struck between the demands of the general interests of the community and the protection of the fundamental rights of the taxi drivers?

Compromise

77. FGW has also contended that the claimants had compromised their claim against FGW as a result of an agreement between Mr Bartlett of FGW and Mr Lloyd, then Chairman of the claimant Association, at some time between Friday 27 and Monday, 30 January 2012. Whilst there remains a stark conflict of evidence between Mr Bartlett and Mr Goldring on behalf of FGW on the one hand and Mr Lloyd and Ms Jones of the claimants on the other hand, over what was said or not said at the time, I am satisfied, as I made clear during final submissions, that Mr Bartlett knew that Mr Lloyd had no authority to bind the individual members of the claimant Association; and that, in the end, it was for each taxi driver to decide whether or not to apply for a permit if he or she wished to ply for hire from BTM.

78. In any event, even if it had been successful, such a defence of compromise would not have been a complete answer to the claim since many taxi drivers ply for hire from BTM who are not members of the claimant Association or who only became members in February 2012, after the date of the alleged compromise.

Pleadings and overview

79. These various arguments on both sides have, of course, featured in the pleadings. Indeed, as a result of an amendment allowed by me at the beginning of the trial, the claimants' case was finally set out in the re-re-re-amended particulars of claim.

80. Of all the issues in the case, the claimants have accepted that their principal claim relates to the implied grant of free access to BTM for taxi drivers under the taxi byelaws. It is therefore necessary to consider the legislative framework and content of these byelaws before conducting an historical review of the period between 1974 -- and I add the relevant byelaw first came into effect on 6 December 1974 -- and 2010/2011 when FGW first raised the possibility of a permit scheme at BTM with both BCC and the taxi drivers.

81. It seems to be common ground that the private permit scheme operated by British Rail up to 1974 was legally unobjectionable. It was unchallenged that BTM, the station forecourt, the approach road and the taxi rank were privately owned by British Railway, as shown in the Perth and Barker cases, and now, under its lease, by FGW.

82. The question is whether that ownership is subject to any prior rights in favour of the taxi drivers.

Withdrawal of permission

83. Before privatisation there had been two unsuccessful attempts, namely in 1985 and 1991, by British Rail to reintroduce a permit scheme, when taxi byelaws were already then in existence. These attempts came to nothing, and the idea just seemed to peter out in the face of opposition from BCC and the taxi drivers. Indeed, when FGW resurrected the notion of a permit scheme with BCC in 2010/2011, BCC again raised legal arguments why such a scheme could not or should not be introduced.

84. However, BCC took a completely different view of the situation on 26 January 2012 when it notified the claimant Association that it would not be supporting the taxi drivers in their dispute with FGW. Their final position was expressed in letter dated 22 February 2012 to Ms Jones, the current Chair of the claimant Association. It is set out at D4/997 and CCB/120 as follows:

85. *"Dear Sir/Madam.*

"RE: PERMIT SCHEME AT BRISTOL TEMPLE MEADS RAILWAY STATION.

"You may be aware that with effect from 1 March 2012 hackney carriages licensed by Bristol City Council will only be able to ply for hire at Temple Meads station if in possession of a permit issued by First Great Western (FGW). The taxi rank at Temple Meads remains in operation however access will be restricted to permit holders only. Hackney carriages operating as private hire vehicles will continue to be able to access the station for dropping off and picking up of pre booked fares.

"FGW first made the council aware of their intentions to introduce a permit scheme in November 2010. The original proposals were to go live in March 2011. The proposed permit fee at the time was significantly higher than the current fee.

"Since the council became aware of this issue we have raised a number of concerns with FGW regarding the scheme resulting in a series of communications between the two parties. This has resulted in the implementation date being deferred and a lower permit fee. However we have reached a position that whilst we will continue to discuss the matter with FGW the Council is not able to prevent FGW from reviewing the basis on which they permit access to their land, which is essentially a matter between the company and the affected drivers."

86. This was repeated in the minutes of the Hackney Carriage and Private Hire Forum between BCC and the claimants and other taxi proprietors on Friday, 11 May 2012, which is at D4/1080.

87. There Mr Carter, the head of enforcement of the taxi byelaws, is reported as having said this under item 2:

88. *"NC [that is Mr Carter] provided background to Bristol City Council's (BCC) approach to the Permit scheme. Advised that BCC first became aware of the proposals 18 months ago when approached by First Great Western (FGW). Since that time BCC have been in dialogue with First and raised a number of concerns over the proposed scheme. Unfortunately a stage had been reached where FGW decided to proceed with the scheme.*

89. *"BCC had brokered an agreement in 1974 with FGW predecessors and the then taxi association. However FGW have withdrawn from that agreement to allow free access at Temple Meads rank.*

90. *"NC stated that Byelaw 16" -- that is the byelaw which incorporated the Temple Meads stands within the taxi byelaws -- "did create a public rank, but the land was owned by the rail operator and, as the landowner, they have the power to restrict access. NC made reference to a similar situation at Cardiff General Station where case law had been established, Hulin v Cook, regarding access.*

91. *"Enforcement on the rank will still be carried out by BCC Enforcement Officers."*

92. FGW had revoked or purported to revoke the permission of taxi drivers to access and ply for hire from BTM, by letters dated 4 November 2011 both to the claimant Association, see claimants' core bundle page 90, and to all taxi drivers:

93. *"Dear Tim.*

"Introduction of Permit Scheme for Hackney Carriage Drivers at Temple Meads Railway Station and revocation of permission to access land to tout for trade.

"Further to our discussions with yourselves and Bristol City Council regarding the Temple Meads forecourt, I thought I would let you know that FGW is now moving forward with introducing a permit scheme for any taxis which wish to ply for hire at Temple Meads Station. The intention is to introduce this scheme from 1 February 2012.

"I am consequently writing to you on behalf of FGW as the representative of the NTA to give you, the NTA and your members formal notice that FGW is withdrawing its current permission to access railway property at and leading up to Bristol Temple Meads station with effect from 1 February 2012. Please can you pass this notice on to NTA and its members. We are also writing directly to each of the taxi drivers identified in the Council's register to inform them of this change.

"The withdrawal of permission is to allow the introduction of the permit scheme from that date. It is therefore our intention to conduct and conclude the introduction of the permit scheme in time to 'go live' on 1 February 2012. We are writing directly to each of the taxi drivers identified in the Council's register to inform them of this change and have set up a dedicated mailbox (fgw.taxis@firstgroup.com) to answer any further enquiries they might have about it. We would also be happy to engage with you and the NTA on their behalf to ensure everyone understands what is happening and how to ensure they can apply if they choose to do so. If you would like a meeting with us (and, if they are willing to attend, the Council who we have briefed on the plans) then please do let me know when would be convenient.

"Whilst I appreciate that nobody welcomes the prospect of the payment of any additional fees, it is important that the anomaly situation at Temple Meads is brought to an end and that we start to build a relationship that further improves our customer service in line with out other taxi driver relationships across FGW.

"FGW have appointed Cabfind as our agents for the introduction of the permit scheme at Temple Meads. They will shortly be writing to all drivers with further details and how to apply.

"We are hopeful that this change of arrangements can be introduced smoothly to ensure that there is no adverse effect upon the service provided to customers on 1

February 2012. In order to ensure that, we would be happy to take you through the arrangements and to discuss with you how they will be introduced."

94. FGW's letter to the individual taxi drivers, whose names they obtained from the register held by BCC, is at claimants' core bundle page 91.

95. *"Dear Sir/Madam.*

"Introduction of Permit Scheme for Hackney Carriage Drivers at Temple Meads Railway Station and revocation of permission to access land to tout for trade.

"As you may be aware, Bristol Temple Meads Station, and the station approach road leading from Temple Gate Road to the front of the station, as well as the current taxi stand in front of Temple Meads Station, are leased to and controlled by First Greater Western Ltd ('FGW').

"Currently access to this land for taxi drivers (including yourself) to ply for hire is permitted according to a general permission granted on behalf of the railways. FGW has, however, decided to terminate that permission. Please therefore take notice that permission to access railway land for the purposes of plying for hire as a Hackney Carriage will cease on 1 February 2012. Until that date FGW continues to extend its permission on a temporary basis so you will not observe any immediate changes.

"From 1 February 2012 FGW will be introducing a permit scheme to ply for hire on railway land leading to and at the entrance to Bristol Temple Meads Station. The aim of the introduction of the permit scheme is to realise a more consistent approach to taxi standards through the building of a closer relationship with taxi drivers and your representative associations that will benefit both FGW customers and other key parties.

"The scheme will bring Bristol Temple Meads in line with all other FGW taxi ranks and will work in conjunction with the existing taxi byelaws applying across the rest of the city. All currently licensed taxi drivers can apply for a permit and all will be considered in accordance with the rules of the scheme.

"FGW have appointed Cabfind as our agents for the introduction of the permit scheme at Temple Meads. They will shortly be writing to you with further details of the scheme, including details of forthcoming advertisements in trade magazines and information on how to apply for a permit.

"In the meantime should you have any further enquiries in relation to the introduction of the scheme please direct them to the email address fgw.taxis@firstgroup.com.

"Please note that the scheme, when introduced, will not affect the picking-up and dropping-off of pre-booked customers by licensed taxi drivers."

96. FGW subsequently wrote again, on 20 January 2012, to all taxi drivers who had not by then applied for a permit, notifying them further of the introduction of the permit scheme and the withdrawal of any permission to ply for hire at BTM. This letter is set out at D4/925.

97. *"Dear Sir/Madam.*

"Introduction of Permit Scheme for Hackney Carriage Drivers at Bristol Temple Meads Railway Station.

"As set out in our letter to you of 4th November 2012 (copy text attached for your reference) First Greater Western Ltd ('FGW') is introducing a permit scheme for access to Bristol Temple Meads Railway Station to ply for hire from 1 February 2012.

"According to our records you have not yet applied for a permit under this scheme and consequently (subject to having a permit issued to you by FGW) you will not be permitted to ply for hire as a Hackney Carriage at Temple Meads Station (including all railway land leading to it, including station approach) or use the taxi stand at Temple Meads Station at any time after 00.01 hours on 1 February 2012. For the avoidance of doubt FGW's permission for you to ply for hire at Temple Meads station and access its land to use the taxi stand is withdrawn at that time and you should not attempt to access the station, including the station approach, with intent to ply for hire or to park your vehicle, without a permit.

"You will continue to be permitted access to the station for the sole purpose of setting down passengers who have in good faith retained your services to carry them to Temple Meads Station. However, once setting down any such passengers you will be required to leave Temple Meads Station promptly without picking up any customers or attempting to park your vehicle at the station.

"You should note there will be stewards at Temple Meads Station from the 1 February to direct you on where to stop to unload and to assist you with maintaining a free flow of traffic. Please co-operate with their instructions.

"Any attempts to ply for hire without permission from FGW may be considered a breach of the railway byelaws and result in a formal warning that may impact upon any future application you may wish to make to ply for hire at Temple Meads station.

"If you have mislaid your application form for a permit to ply for hire or have any other enquiries or need any further assistance to apply please contact Cabfind directly.

"Cabfind "Permits Department "Egerton House."2 Tower Road.

"Birkenhead. "Wirral. "CH41 1FN.

"permits@cabfind.com. "T: 0843 658 1190 "F: 0843 658 1191."

98. The reference to the railway byelaws, present in that letter of 20 January, was not in the letters of 4 November 2011.

99. It will be observed, therefore, that those letters, even with that reference to railway byelaws, are silent as to the powers relied on to impose the scheme or to withdraw the consent or permission previously enjoyed by taxi drivers, as opposed to a possible breach of byelaws for plying for hire without FGW's permission.

100. There is no reference, in that correspondence, to the railway byelaws as the source of the power to introduce the permit scheme. If anything, looking at that correspondence in the round, the source appears to stem more from FGW's position as the lessee and controller of BTM from references such as permission to 'access its land'.

Legislative framework: Statutes

Town Police Clauses Act 1847

101. Section 37 provides:

"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), hackney coaches or carriages of any kind or description adapted to the carriage of persons."

102. Section 47 imposed a penalty on those who plied for hire without a licence.

103. Section 68 states:

"The commissioners may from time to time (subject to the restrictions of the and the special Act) make Bye laws for all or any of the purposes following; (that is to say),

"For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:

"For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed:

"For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of cheek strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided:

"For fixing the stands of such hackney carriages, and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance:

"For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares:

"For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof."

104. That legislation envisaged plying for hire on the public highway only and not on private land. However, railway passengers would need to be conveyed to and from railway stations even though railway stations were, of course, private property. This issue was addressed in section 76 of the Public Health Act 1925 which provided:

"In any area within which the provisions of the Town Police Clauses Act 1847, with respect to hackney carriages are in force, those provisions and any byelaws of the local authority with respect to hackney carriages shall be as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area, as if such railway station or railway premises were a stand for hackney carriages or a street:

"Provided that-

"(a) ...

"(b) Nothing in this section shall empower the local authority to fix the site of the stand or starting place of any hackney carriage in any railway station or railway premises, or in any yard belonging to a railway company, except with the consent of that company."

105. So, with the consent of the railway company, a taxi stand could be fixed on private railway premises which were then regulated by the licensing authority *as if* the railway station or premises were a stand for Hackney Carriages or a street.

106. This was the state of the law at the time the alleged offence in Hulin v Cook was committed. It is the state of the law at the time of the decision of the Divisional Court in Hulin v Cook.

107. After that case, the Local Government (Miscellaneous Provisions) Act 1976 was enacted. That Act received the Royal assent on 15 November 1976. Section 63 of that Act is in the following terms.

"Stands for hackney carriages.

"(1) For the purposes of their functions under the Act of 1847, a district council may from time to time appoint stands for hackney carriages for the whole or any part of a day in any highway in the district which is maintainable at the public expense and, with the consent of the owner, on any land in the district which does not form part of a highway so maintainable and may from time to time vary the number of hackney carriages permitted to be at each stand.

"(2) Before appointing any stand for hackney carriages or varying the number of hackney carriages to be at each stand in exercise of the powers of this section, a district council shall give notice to the chief officer of police for the police area in which the stand is situated and shall also give public notice of the proposal by advertisement in at least one local newspaper circulating in the district and shall take into consideration any objections or representations in respect of such proposal which may be made to them in writing within twenty-eight days of the first publication of such notice.

"(3) Nothing in this section shall empower a district council to appoint any such stand-

"(a) So as unreasonably to prevent access to any premises;

"(b) so as to impede the use of any points authorised to be used in connection with a local service within the meaning of the Transport Act 1985 or PSV operator's licence granted under the Public Passenger Vehicles Act 1981, as points for the taking up or setting down of passengers, or in such a position as to interfere unreasonably with access to any station or depot of any passenger road transport operators, except with the consent of those operators;

"(c) on any highway except with the consent of the highway authority;

"And in deciding the position of stands a district council shall have regard to the position of any bus stops for the time being in use.

"(4) Any hackney carriage byelaws for fixing stands for hackney carriages which were made by a district council before the date when this section comes into force in

the area of the council and are in force immediately before that date shall cease to have effect, but any stands fixed by such byelaws shall be deemed to have been appointed under this section.

"(5) The power to appoint stands for hackney carriages under subsection (1) of this section shall include power to revoke such appointment and to alter any stand so appointed and the expressions 'appointing' and 'appoint' in subsections (2) and (3) of this section shall be construed accordingly."

108. It can be seen, therefore, that the 1976 Act contained a consultation requirement and process before varying the number of Hackney Carriages to be at each stand. Moreover, that Act extended to any land not forming part of the highway and not just railway premises as the 1925 Act had provided with the consent of the owner.

Legislative framework: Taxi Byelaws

109. There are, and for many years have been, byelaws in Bristol "with respect to Hackney Carriages and motor vehicles let for hire". They have been amended many times. The amendment to byelaw 16, to bring the stands at BTM within the byelaws, was made by the city on 30 October 1974 and confirmed by the Secretary of State on 5 December 1974. Those byelaws came into effect on 6 December 1974.

110. They are similar to the equivalent byelaws operating in Leeds, Manchester Victoria, Leicester and Cardiff Central railway stations.

111. The structure of the Bristol taxi byelaws as follows.

112. Paragraph 1 is an interpretation paragraph.

113. Paragraphs 2 to 9 are provisions:

"For regulating the conduct of the proprietors and drivers of Hackney Carriages plying within the district in their several employments and determining whether such drivers shall wear any and what badges."

114. Of note, within that group of byelaws 2 to 9 are the following.

115. Byelaw 2:

"The driver of a hackney carriage when standing, plying or driving for hire shall conduct himself in an orderly and proper manner towards every person seeking to hire or hiring or being conveyed in such carriage and shall comply with every reasonable requirement of any such person."

116. Byelaw 3:

"The driver of a hackney carriage shall, when plying for hire in any street and not actually hired,

"(a) proceed with reasonable speed to one of the stands fixed by the byelaw in that behalf.

"(b) if a stand, at the time of his arrival, is occupied by the full number of carriages authorised to occupy it, proceed to another stand.

"(c) on arriving at a stand not already occupied by the full number of carriages authorised to occupy it, station the carriage immediately behind the carriage or carriages on the stand and so as to face in the same direction.

"(d) from time to time when any other carriage immediately in front is driven off or moved forward cause his carriage to be moved forward so as to fill the place previously occupied by the carriage driven off or moved forward."

117. Byelaw 9:

"The driver of a hackney carriage shall

"(i) if the taximeter is fitted with a flag or other device bearing the words 'FOR HIRE':

"(a) when standing or plying for hire keep such flag or other device locked in the position in which the words are horizontal and legible;

"(b) as soon as the carriage is hired by distance, and before commencing the journey, bring the machinery of and the taximeter into action by moving the flag or other device so that the words are not conveniently legible and keep the machinery and taximeter in action until the termination of the hiring;

"(ii) if the taximeter is not fitted with a flag or other device bearing the words 'FOR HIRE':

"(a) when standing or plying for hire keep the taximeter locked in the position in which no fare is recorded on the face of the taximeter and operate the sign provided in pursuance of Byelaw 11 so that the words 'FOR HIRE' are clearly and conveniently and legible by persons outside the carriage;

"(b) as soon as the carriage is hired whether by distance or by time, operate the said sign so that the words 'FOR HIRE' are not conveniently legible by persons outside the carriage;

"(c) as soon as the carriage is hired by distance, and before commencing the journey, bring the machinery of the taximeter into action by moving the key or other device fitted for the purpose so that the word 'HIRED' is legible on the face of the taximeter and keep the machinery of the taximeter in action until the termination of the hiring.

"(iii) cause the dial of the taximeter to be kept properly illuminated throughout any part of a hire which is during the hours of darkness as the defined for the purpose of Road Transport Lighting Act, 1957, and also at any other time at the request of the hirer."

118. Clauses 10 to 13 (including 10A, 11A, 11B and 11C) of the byelaws regulate how such Hackney Carriages are to be furnished or provided, including, under Byelaws 10 and 11, the requirement of a taximeter with a 'For Hire' flag or otherwise with a 'For Hire' sign to be operated so as to indicate to those outside the taxi whether it is for hire. Byelaw 10A qualifies Byelaws 10 and 11 in the case of an EU compliant taximeter. Byelaw 11A further requires a taxi to display a 'Taxi' sign on its roof, and to keep it illuminated, during the hours of darkness, when the taxi is standing, plying or being driven for hire.

119. Clauses 14 and 15 are for regulating the manner in which the number of each carriage corresponding with the number of its licence shall be displayed.

120. Byelaw 16 is the relevant byelaw for fixing the stands of such Hackney Carriages.

121. Including the amendment to byelaw 16, effective on 6 December 1974, the following was stated under byelaw 16:

"Each of the several places specified in the following list shall be a stand for such number of hackney carriages as is specified in the list.

"1. Temple Meads Station.

"(a) Stand for four carriages on the north-east side of the station approach.

"(b) Stand for 42 carriages in the central area. (Carriages are to stand three-abreast and to be moved in rotation to the stand ((a) above) when the circumstances permit."

122. Byelaw 16 then continued with details of 20 other stands in the city.

123. Ms Jones told me that, during the daytime, there are 114 rank spaces in Bristol, of which 46 are at Bristol Temple Meads.

124. Byelaw 17 is for the fixing of rates or fares to be paid for such Hackney Carriages within the district and for securing the due publication of such fares.

125. Byelaws 18 to 20 are the permitted fares for distance. Byelaw 21 provides for penalties for the breach of the byelaws.

126. Byelaws 22 to 24 are inapplicable to Hackney Carriages. They apply to motor vehicles let for hire.

127. Finally, Byelaw 25 dealt with the repeal of previous byelaws.

128. I have now given the structure of the byelaws, their groupings and what they regulate or purport to regulate.

S.167 Criminal Justice and Public Order Act 1994

129. I make reference to this section here as part of my overall review of the legislative framework, although this section is principally relevant to Mr Fletcher's submissions on the correct interpretation of the Railway Byelaws 2005 made by the Strategic Rail Authority and how those byelaws compared and contrasted with their predecessor byelaws made by the British Railways Board.

130. I now quote from section 167 of the 1994 Act which has, as a general heading, the words, "Taxi touts". The heading of the section, 167, is, "Touting for hire car services".

"(1) Subject to the following provisions, it is an offence, in a public place, to solicit persons to hire vehicles to carry them as passengers.

"(2) Subsection (1) above does not imply that the soliciting must refer to any particular vehicle..."

131. This is then followed by these words:

" ... nor is the mere display of a sign on a vehicle that the vehicle is for hire soliciting within that subsection."

132. I observe that the statute specifically stated that displaying a 'For Hire' sign is not soliciting for the purposes of this offence. That is a point to which I shall return when dealing with the authorities to which Mr Fletcher referred me. The statute continued:

"(3) No offence is committed under this section where soliciting persons to hire licensed taxis is permitted by a scheme under section 10 of the Transport Act 1985 (schemes for shared taxis) whether or not supplemented by provision made under section 13 of that Act (modifications of the taxi code).

"(4) It is a defence for the accused to show that he was soliciting for passengers to be carried at separate fares by public service vehicles on behalf of the holder of a PSV operator's licence for those vehicles whose authority he had at the time of the alleged offence.

"(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

"(6) In this section-

"'public place' includes any highway and any other premises or place to which at the material time the public have or are permitted to have access (whether on payment or otherwise); and

"'public service vehicle' and 'PSV operator's licence' have the same meaning as in Part II of the Public Passenger Vehicles Act 1981."

133. That section applies, as case law has established, to Hackney Carriages. It is not limited to private hire vehicles. It is an offence for both private hire vehicles and licensed Hackney Carriages to solicit passengers, otherwise than by displaying a 'For Hire' sign.

134. Mr Fletcher drew this section to my attention, and its analysis, in the Administrative Court by Pitchford J in the case of R (on the application of Robert David Oddy) v Bug Bugs Limited and others [2003] EWHC 2865.

135. Having read the report, I am satisfied that, but for one matter, the headnote is accurate:

136. The first defendant owned a number of bicycle rickshaws called pedicabs which were non-motorised and powered only by pedal power. The first defendant hired pedicabs to the second and third defendants. The second and third defendants were riding along the road when they were each hailed by passengers and by request transported them. The drivers charged each passenger a separate and distinct fare which was collected at the end of the journey. A private prosecution was brought on behalf of the Licensed Taxi Drivers Association charging the first defendant with owning a pedicab which was plying for hire notwithstanding that it was an unlicensed hackney carriage contrary to section 7 of the Metropolitan Carriage Act 1869. The second defendants were charged with soliciting persons in a public place to hire a pedicab to carry them as passengers contrary to section 167 of the Criminal Justice and Public Order Act 1994 which I have just recited.

137. The district judge, before whom the prosecution was conducted at first instance, decided that the pedicab was not a hackney carriage within the 1869 Act but a stage carriage

for the purposes of section 4 of that Act because of the method of charging. The District Judge also dismissed the charges against the second and third defendants ruling that although a pedicab came within section 167, the drivers were not soliciting because they had done nothing to actively invite passengers and that they acted as would a licensed hackney carriage driver in responding to a hail from a member of the public. The prosecution appealed against the acquittal by way of case stated.

138. The headnote stated that the appeal would be allowed. In fact, that is incorrect. Reading the judgment, the appeal was not allowed.

139. Pitchford J held that the pedicabs operated by the defendants were to be classified by stage carriages rather than hackney carriages for the purpose of the Metropolitan Carriage Act 1869.

140. Therefore, he agreed with the District Judge.

141. He also held that Section 4 of the Act was a deeming provision which caught all carriages falling within its terms. The method of charging was determinative of the status of the vehicle. As pedicab passengers all paid separate fares the vehicles were stage carriages. There was nothing to show that anything without predetermined stops would not be a staged carriage nor did the absence of a conductor alter its status. Accordingly, there was no requirement for the pedicabs to be licensed.

142. That was also the decision to which the judge below had come.

143. He then went on further to hold that the drivers were not soliciting within the meaning of section 167 of the 1994 Act. Again, the same decision as the judge in the court below. He considered that, subject to the exceptions provided by section 167 what would amount to soliciting would depend upon the nature of the activity proved and the circumstances of the case. The terms plying for hire and soliciting were not coterminous, which meant that the draftsman had to have something more in mind than just the presence of a vehicle in the street. Moreover the purpose of the section was to prevent touting by unscrupulous unlicensed cabs. Having regard to the dictionary definition of soliciting, which was asking for or trying to obtain from someone or accosting someone, what would be needed for soliciting was some sort of invitation on the part of the driver. That had not occurred on the facts of the instant case and the district judge had been correct to rule as she had.

144. That is the headnote, which is in error in saying that the appeal was allowed when it was not. It was not even allowed on the question of costs, which is not dealt with in the headnote but is dealt with in the context of the judgment.

145. It is necessary, even though I have said the headnote is accurate, to refer to certain passages of the judgment, because they are important.

"36. The appellant's case before the District Judge was that the mere appearance of the pedicab constituted an invitation to hire; as such, custom was being solicited. He relied upon the decision of this court in Behrendt v Burr ridge 63 Criminal Appeal Courts 202. There the prosecutor charged the defendant with an offence contrary to section 1 of the Street Offences Act 1959 which provided:

"It shall be an offence for a common prostitute to loiter or solicit in a street or other public place for the purpose of prostitution."

"37. The defendant, a prostitute wearing clothing which, by the standard of 1976, was revealing, sat silent and motionless behind a bay window, illuminated by a red light, to advertise her services as a prostitute. The Divisional Court held that she was soliciting, in the sense of tempting or alluring prospective customers to visit her for the purposes of prostitution. No movement, signal or words were required. In giving the leading judgment of the court, Mr Justice Boreham said:

"In my judgment the facts here are conclusive against the defendant, and, as I see them, in the light of the law which is to be applied to them, there is but one answer. This young woman, sitting on a stool scantily clad, in a window bathed in red light and in an area where prostitutes were sought, might just as well have had at her feet an advertisement saying "I am a prostitute. I am ready and willing to give the service of a prostitute and my premises are now available for that purpose." It is clear, in my judgment, that she was soliciting in the sense of tempting or alluring prospective customers to come in for the purpose of prostitution and projecting her solicitation to passers-by.'

"38. Further authorities upon the meaning of soliciting, within the context of section 1(1) Street Offences Act 1959 and section 32 Sexual Offences Act 1956 were drawn to my attention. It was the prostitute who was guilty of soliciting by his or her physical presence. It was not enough for a written advertisement to be placed by him or her, or on their behalf, in a public place. (See *Weitz and Another v Monaghan* [1962] WLR 262 and *Burge v Director of Public Prosecutions* [1962] WLR 265).

"39. The respondents' argument before the District Judge was that the terms of section 167(2) of the 1994 Act were critical. The mere display of a sign on the vehicle that the vehicle is for hire does not amount to soliciting. In the context of this legislation, advertisement on the vehicle itself is not soliciting. If, by the mere presence and availability for hire of the conveyance, the pedicab operator was soliciting within the meaning of section 167(1), then so must a licensed cab, since that is exactly what a licensed cab does. On the contrary, submitted Mr Wolfe, Parliament specifically exempted from consideration signs specifying availability for hire. It cannot have been the intention of Parliament that the other distinguishing features of the cab, such as its shape, colour and size, constituted soliciting.

"40. Mr Francis recognised the problem with the application of *Behrendt v Burrige* to the context of taxi cabs. He made two distinctions between the hackney cab and the pedicab. First, the taxicab, subject to limited exception, was obliged by the terms of its licence to carry the passenger where he wanted to go. The pedicab, being unlicensed, had no such obligation. The driver could accept or refuse the fare. Second, the taxicab is licensed and a pedicab is not.

"41. Mr Francis submitted, boldly, that section 167 has no application to the activities of licensed cab drivers. Accordingly, construction of the word 'solicit' cannot be affected by the activities of such cab drivers. He relies, first, on section 167(3). Mr Francis suggests that subsection (3) demonstrates an intention that licensed taxi drivers should not be penalised for performing their ordinary functions. I do not see how that submission supports the appellant's case. On the contrary, I would have thought the draughtsman found it necessary to include it to express exclusions in

subsections (2) and (3), which otherwise might have attributed to a conclusion of soliciting.

"42. The inference is that none of the other features of a London cab and its normal work could, alone, amount to soliciting. In other words, being in the street waiting to be paid was not regarded by the draughtsman as soliciting. Had it been, then given the intention behind subsection (2), at least it, too, would have been excluded. Mr Wolfe submitted that there is no justification for the assertion that black cabs are excluded from the generality of section 167. I agree. Black cab drivers are, subject to the exceptions, just as capable of committing the offence of soliciting as any other driver, licensed or unlicensed.

"43. Mr Francis referred me to extracts at pages 236 and 238 of the appeal bundle. He wished me to draw from the statements of Ministers a conclusion that section 167 was aimed only at unlicensed taxi drivers. As I read the passage, what was aimed at was touting by the unscrupulous, particularly at London stations and Heathrow. The government recognised the current touting problem was created by the drivers of unlicensed cabs. It is not the case, in my judgment, that Parliament had any intention of exempting licensed cab drivers altogether. In my view, had that been the intention then Parliament would undoubtedly have said so.

"44. The Oxford English Dictionary describes the meaning of 'solicit' as:

"(1) Ask for or try to obtain (something) from someone. Ask for something from. (2) Accost someone and offer one's or someone else's services as a prostitute."

"45. Mr Francis argues that by a combination of actions and words, the second and third respondents did ask for or try to obtain from someone. The evidence of what they did was agreed. Mr Oddy described the first transaction with Mr Mlynarski as follows:

"We parked and went to Blackfriars Road. Richard Massett and I waited on the pavement on the west side of Blackfriars Road, adjacent to the northbound carriageway, close to the junction with Stamford Street. Steve McNamara stood behind us by the side of a bus shelter, from which position I knew he would be filming with a video camera. Within a few minutes of our arrival in Blackfriars Road, a Bugbugs pedicab approached from the direction of Chancel Street. I put my hand out in the manner one would do when hiring a taxi. The rider, a man, stopped the pedicab and Richard asked him if he was for hire. He said he was. I asked if he would take us to Waterloo Station and he agreed to do so."

"46. An hour and a half later, Mr Oddy and his colleagues were back at Blackfriars Road. The second incident is described by Mr Richard Massett:

"Steve McNamara and I waited for some time. Another pedicab came by. Steve put his hand up to hail it in the manner one would hail a taxi. The pedicab, ridden by a man, coming from the direction of Chancel Street, stopped. I asked the man if he was for hire and he said he was. I believe it was Steve who asked if he would take us to Waterloo. He agreed and said it would be £2.50 each. We got in and the rider took us south along Blackfriars Road,

turning left into Stamford Street. On the way, he stopped, at our request, by a shop. I stayed on the vehicle and Steve McNamara went into the shop. I engaged the rider in conversation. Amongst other things, I asked him if he owned the bike. He said he didn't and that it was owned by Bugbugs.';

"47. Mr Wolfe has provided for me a copy of the Stroud Judicial Dictionary meaning of the word 'solicit'. In it is cited the decision of this court in Darroch v The Director of Public Prosecution [1990] 91 Cr App R 378 in which Behrendt v Burridge was relied on by the prosecutor. The appellant was charged with persistently soliciting a woman for the purposes of prostitution, contrary to section 2, subsection 1 of the Sexual Offences Act 1985. He was observed on several occasions driving his car slowly around a red light district. On one occasion he beckoned a woman towards him. As he was driving with the woman in his car, he was stopped and arrested. He was convicted by the Justices and appealed.

"48. The court found that in order to be persistent, at least two acts of soliciting were required. One of the acts relied upon was the beckoning of the woman to the car. The court found that the Justices were fully entitled to regard that as an act of soliciting. As to cruising in a motor vehicle, however, Watkins LJ said at page 383 of the report:

"I entirely agree that it is necessary for the prosecution to establish that the defendant, of whom it is said he has been soliciting a prostitute, had given some positive indication, by physical action or words, to the prostitute that he requires her services.'

"49. It seems to me that subject to the exception specifically provided by section 167 of the 1994 Act, what may amount to soliciting would depend upon the circumstances under consideration. Whether an activity proved against a defendant amounts to a request to another, will depend upon the nature of the activity proved and the circumstances in which the activity took place. In Behrendt, the appearance of the woman amounted to an invitation; in Darroch, cruising in a red light district, alone, did not.

"50. My attention has been drawn to cases on the meaning of plying for hire. The term appears particularly in the context of plying for hire without a licence. It is apparent that the term 'plying for hire' may include soliciting, but soliciting is not required before a carriage is plying for hire. It can be plying for hire merely to wait in the street, available to passengers (see Sales v Lake [1922] 1KB 553 at pages 557 to 558). Later cases suggest that it is the exhibition of the vehicle for hire through the agency of the driver which is the essence of the offence of plying for hire, unlicensed, under section 7 Metropolitan Police Public Carriage Act 1869 (see Cogley v Sherwood [1959] WLR 781 and Nottingham City Council v Wooding [1994] RTR 72).

"51. I do not consider, in the light of these authorities, that the terms 'plying for hire' and 'soliciting' are co-terminous. This, in my view, serves to demonstrate that the draughtsman of section 167 of the 1994 Act had in mind something more than the presence of a vehicle in the street. The District Judge concluded:

"I found that the drivers were not soliciting for the following reasons:

"i) The Statute does not provide a definition of soliciting.

"ii) The dictionary definition is ". . . ask for or try to obtain . . . from someone . . . ask for something from. 2) Accost someone".

"iii) The pedicab drivers according to their own evidence, the evidence of Mr Oddy and the video did nothing to actively invite passengers and, as above, acted as would a licensed hackney carriage driver in responding to a hail from a member of public.

"iv) The case of Behrendt v Burridge (1976) 63 Cr App R 202 is not applicable. The decision therein related to the Street Offences Act 1959 and the issue was one of soliciting for the purposes of prostitution, an entirely different set of facts and law.'

"52. In my view, the District Judge was right. What was required to establish soliciting in this context was some form of invitation to a prospective hirer. There was none. Only when hailed by Mr Oddy and Mr Massett did the drivers indicate they were available for hire. At that moment it is possible to conclude that the driver was plying his pedicab for hire but not, in my view, that he was soliciting custom. This conclusion may be tested by further reference to the facts in Darroch. Had the driver been stopped by the prostitute who offered him her services, would the driver, by accepting that offer, have been soliciting her services? I think not. I would answer the District Judge's third question in the affirmative."

146. What was being argued there, on behalf of the appellant taxi driver association, was that the get up and the presentation of the pedicab was effectively a representation that it wanted and was soliciting custom.

147. In paragraph 41 of that report, the submission of counsel for the appellant taxi Association was recorded:

"Mr Francis submitted, boldly, that section 167 has no application to the activities of licensed cab drivers. Accordingly, construction of the word 'solicit' cannot be affected by the activities of such cab drivers. He relies, first, on section 167(3)."

148. Section 167(3) refers to a defence where there are schemes for shared taxis.

"Mr Francis suggests that subsection (3) demonstrates an intention that licensed taxi drivers should not be penalised for performing their ordinary functions. I do not see how that submission supports the appellant's case. On the contrary, I would have thought the draughtsman found it necessary to include it to express exclusions in subsections (2) [ie the reference to the 'For Hire' sign] and (3), which otherwise might have attributed to a conclusion of soliciting."

149. The clear suggestion by Pitchford J was that a taxi, displaying itself as being for hire by an illuminated sign or some other communication, was soliciting custom, and it was only the provision in that statute, which deemed it not to be soliciting, which prevented the commission of that offence.

150. Further elucidation of the relationship between soliciting and plying for hire was given in the case of Sales v Lake [1922] 1 KB 553, at pages 557 to 558 in the judgment of the Lord Chief Justice, Lord Trevithin, and at pages 561 and 562 in the judgment of Avory J, with whom McCardie J agreed.

151. That case concerned a charabanc and a company organising a trip, if it had enough customers. It would pick people up on the way. Again, there was a suggestion that this was unlawfully plying for hire.

152. The Lord Chief Justice said this:

."The charabanc therefore would not be within para. 17(2) of the Order unless it 'plies for hire in any street, road or place.' In my judgment a carriage cannot accurately be said to ply for hire unless two conditions are satisfied. (1) There must be a soliciting or waiting to secure passengers by the driver or other person in control without any previous contract with them, and (2.) the owner or person in control who is engaged in or authorizes the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers."

153. Avory J said:

"The cases of Bateson v Oddy and Allen v Tunbridge are perhaps the most favourable authorities in support of the appellant's contention. In neither of these cases, however, was it necessary to prove that the carriage was plying for hire in a public street, road or place, and as Montague Smith J said in the latter case 'plying for hire' is very different from a customer going to a job-master to hire a carriage, and I think Mr Meadows White was right in his argument in that case when he said 'plying for hire' means soliciting custom without any previous contract."

154. Then, at the end of his judgment, Avory J continued:

"McCardie J desires me to say that he has read the judgment which I have just delivered, and that he agrees with it."

155. So, two members of the three person court held that "plying for hire" meant soliciting custom without any previous contract.

156. In summary, therefore, there is something of an overlap between the concepts of plying for hire and soliciting.

Hulin v Cook

157. Having summarised the relative legislative background, I now consider Hulin v Cook, a case which Mr Paton has submitted provides the clear answer to the core issue in this case. I take the facts from the headnote of the case which, after reciting sections 37, 45 and 68 of the Town Police Clauses Act 1847 above, went on to summarise the facts as follows:

158. The driver of a hackney carriage held a duly authorised licence granted by the city of Cardiff council for the use of a hackney carriage under the council's byelaws with respect to Hackney Carriages in the City of Cardiff, dated 12 February 1971, made in accordance with section 68 of the Town Police Clauses Act 1847. By byelaw 16 - the same byelaw number, as it so happens, as obtains in Bristol - a stand for hackney carriages was provided in Central Square and there was no stand in the square other than at Cardiff Central Station, which was owned by British Railways Board. Mr Cook, the driver, who plied for hire at the station, was not on the list of persons having permission of an authorised person to ply for employment of any description while upon the railway in accordance with byelaw 22(2)(c) of British Railways Board Byelaws 1965 made under section 67 of the Transport Act 1962.

159. I add that byelaw 22(2) of the British Railways Board Byelaws then provided:

"No person while upon the railway, shall, except by permission of an authorised person ... (c) ...ply for ... employment of any description."

160. Mr Cook was charged with contravening that byelaw. He submitted that he had no case to answer at the end of the prosecution's case, in that, by virtue of section 76 of the Public Health Act 1925, the council's licence exempted him from the requirement of the board's byelaw. The magistrate was of opinion that section 76 of the Act of 1925 had the effect of making the provisions of sections 37 to 68 of the 1847 Act and the council's byelaws of 1971 applicable to licensed hackney carriages on railway premises as on the streets, and he upheld the submission and dismissed the information.

161. The prosecution, that is British Railways, appealed against the fact that these men were found not guilty. The decision of the Divisional Court was made, as I have said, by Lord Widgery CJ, Melford Stevenson and Slynn JJ.

162. They allowed the appeal. They held that sections 37 to 68 of the Town Police Clauses Act 1847 did not create new rights or any new and separate privilege of plying for hire; and that the combined effect of sections 37 and 45 of the 1847 Act was restrictive of the right of all citizens to ply for hire on all road business providing for an authority to issue licences to ply for hire; and that an offence was committed by a person who plied for hire without a licence.

163. They went on to hold that section 76 of the Public Health Act 1925 extended the licensing system under the 1847 Act to the area of railways and railway premises which were private property; and that section 76 of the 1925 Act itself conferred no new right so that a hackney carriage driver plying for hire within the confines of railway property required not only a licence issued by the local authority under the Act of 1847 but also a permission in accordance with byelaw 22(2)(c) of the British Railways Board Byelaws 1965.

164. Accordingly, they held that the magistrate below had erred in upholding the submission that there was no case to answer and remitted the case back to the magistrate to carry on and hear the case.

165. That is a summary of the facts and the decision in the headnote. It is an accurate headnote, having read the judgment.

166. The arguments which had been advanced in the court below and which were recorded in the case stated by the magistrate are set out at page 347 in the judgment:

"It was contended by the prosecutor in reply to a submission by the defendants of no case to answer: (a) under section 57 of the British Transport Act 1949 no rights could be acquired over railway property; (b) British Railways Board having set aside a site for a hackney carriage stand under section 67 of the Transport Act 1962, had the right to make orders governing its use; (c) byelaw 22(2)(c) of the British Railways Boards Byelaws 1965 gave British Railways Board power to prevent a lawfully licensed hackney carriage proprietor from plying for hire on their property unless with their authority; and (d) section 76 of the Public Health Act 1925 did not detract from the board's right as a landowner to specify who should or should not enter upon its property whether he had previous permission to enter or not."

"It was contended by the defendants in a submission of no case to answer, that (a) section 76 of the Public Health Act 1925 applied to the stand for hackney carriages at

the station and the stand fell within the Town Police Causes Act 1847 and the Cardiff City Council Byelaws. Consequently British Railways Board could not determine by subsequent regulations which individual licence holders should be permitted to ply for hire at the stand; (b) the City Council Byelaws limited the number of hackney carriages but imposed no limitation on individual licensees; (c) byelaw 22(2)(c) of British Railways Board was ultra vires because it imposed a fresh set of rules; and (d) there was a conflict between statute and byelaws and statute must prevail."

"The magistrate was of opinion that, by virtue of section 76 of the Public Health Act 1925 (no contention of absence of consent under proviso (b) of that section having been raised), the provisions of the Town Police Clauses Act 1847 and the Cardiff City Council byelaws were applicable to licensed hackney carriages on railway premises as on streets; there being no restriction by the council limiting the individual licensees to specific stands, the driver could not be restricted from plying for hire at any stand; and that where a conflict existed between statute and byelaws, the statute must prevail. Accordingly the submission was upheld and the informations were dismissed."

167. The judgment of the Lord Chief Justice begins at page 348:

"One begins, I think, logically by looking at the byelaw which is said to have been infringed, 22(2):

"No person while upon the railway, shall, except by permission of an authorised person:... (c) tout, ply for, or solicit alms, reward or custom or employment of any description.'

"The magistrate found as a fact that the defendant Cook, the driver, had been plying for hire in the Cardiff General Station, so there was on the face of it a finding of fact that byelaw 22(2)(c) had been breached. The reason why the magistrate did not accept that situation and proceed to a conviction on the strength of it was that it was argued before him, and argued successfully, that a line of legislation running in parallel with that which gave British Railways Board power to make byelaws had in fact exempted the driver from any responsibility towards British Railways Board even when he was plying for hire on a station the property of the board.

"I note in passing that Mr Moseley has helpfully co-operated in many ways in this case, not least by accepting that the byelaws were intra vires British Railways Board by virtue of section 67 of the Transport Act 1962, which gives wide power to the board to make byelaws of that kind. As I say, the whole argument for the defence was that, although on the face of it there had been a breach of byelaw 22, there was in fact an excuse to be found in this parallel legislation, as I have described it.

"What does the parallel legislation amount to? It amounted to this. One starts with the Town Police Clauses Act 1847, section 37 of which authorised the commissioners to license vehicles to ply for hire within the prescribed distance in the town, city or place concerned. One finds, therefore, the conception at a very early stage of the local authority issuing licences to people who are to exercise the function of plying for hire within the city. The same Act provided by section 45 that there should be a penalty to be obtained from anyone who plied for hire who had not obtained a licence duly granted to him under section 37. One gets the conception -- perhaps a little novel

in 1847 but common enough today -- of a citizen being told that he can do a certain thing only if he is prepared to take out a licence for the privilege, and that situation has prevailed in regard to taxi cabs since 1847.

"What one must notice at once in my judgment, because it is fundamental to the whole of this case, is that section 37 and the remaining provisions of the Act of 1847 did not create new rights. No doubt the owner of a cab was entitled to drive down any street in Cardiff which was a public street because any citizen has access to a public highway. But that statute does not superimpose on that right of a member of the public any new and separate privilege of plying for hire. All that the Act of 1847 says is that the authority can issue licences to ply for hire, and if anyone plies for hire without a licence he commits an offence. The combination of those two provisions in sections 37 and 45 of the Act of 1847 does not, as I say, create any new right; it is restrictive. It restricts the previous right of all citizens to ply for hire on all roads, and provides that, within Cardiff at all events, no one shall ply for hire unless he has the appropriate licence.

"So the matter rested for quite a long time, and it was not until 1925 that any change of real consequence occurred. That was in section 76 of the Public Health Act 1925. Prior to the passing of the Act of 1925 it had been established (as we have been told by Mr Scrivener, and it has not been challenged by Mr Moseley) that a person plying for hire from private property did not commit an offence under the Town Police Clauses Act 1847, and since that had caused a certain amount of difficulty, particularly in railway stations which were private property, section 76 of the Act of 1925 deals with that situation. Section 76 provides:

"In any area within which the provision of the Town Police Clauses Act 1847, with respect to hackney carriages are in force, those provisions and any byelaws of the local authority with respect to hackney carriages shall be as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area, as if such railway station or railway premises were a stand for hackney carriages or a street.'

"Reflect again on the situation before that section was passed. The licensing system of the Act of 1847 was in force but no right had been conferred on a licensee. It is contended however that under section 76 some new right to ply for hire was thereby conferred, but, in my judgment, that is not so. The position after the passing of the Act of 1925 was that the licensing system under the Act of 1847 was extended to a new area. It was extended to the area of the railways and to railway premises, and anyone wishing to ply for hire on railway premises thereafter required a licence under the Act of 1847, despite the fact that the property was private property, but nothing in the way of a further right was thereby conferred.

"Once the Act of 1925 was passed, the position in Cardiff, and for all I know in other places as well, was simply this. The typical taxi driver who wished to serve customers in the area, whether they came from airport, railway stations, bus stations or elsewhere, would need the ordinary 1847 Act licence in order to carry on his trade in Cardiff at all. In addition to that, if he wanted to serve passengers in the Cardiff General Station, he would have to make his peace with the Railway Board in as much as he would require their consent under their byelaws before he could ply for hire

within the confines of the railway property. That, in my understanding of the position, is how the law now stands, and it follows from that that the magistrate was in error when he considered, as he evidently did from the form of his case, that the effect of section 76 was to give a new right which had not previously existed in that it licensed taxi drivers to ply for hire in Cardiff."

168. The ratio which I take from that case is that the legislation referred to, namely the Acts of 1847 and of 1925, together with the fixing of the stand on railway premises, with railway consent, under the Cardiff taxi byelaws created or conferred no new right on the taxi driver to go on to the railway premises without the owner's consent. The 1925 Act merely extended the licensing system and regulatory regime to the stands on railway premises.

169. Mr Fletcher has questioned the correctness of this decision and/or its applicability to the facts of this case. He argued that I should not just follow it slavishly, but rather look at the matter entirely afresh and come to my own independent view of the legislative framework, particularly in light of the legislation enacted in 1976 which was not on the statute book on the date of Mr Cook's alleged offence.

170. I have, therefore, approached the case with an open and fresh mind, resolved to reach my own independent view, before considering whether I am free to do so on the basis of the doctrine of precedent or of judicial comity.

Is this case distinguishable from Hulin v Cook?

171. In his written skeleton argument, supplemented by oral opening and closing submissions, Mr Fletcher submitted that there were grave problems with the propriety of the decision in Hulin v Cook.

172. He made the following submissions.

173. (1) No argument appears to have been addressed to the legality of a permit scheme in that case which, assuming it was operating in a station with a byelaw stand, appears not to have been challenged either by the licensing authority or by the driver. Thus the issue raised in the case which I am deciding -- whether a permit scheme can lawfully be introduced at all -- was not addressed at all and not tested. The court, in Hulin v Cook, merely assumed that the Cardiff scheme was valid.

174. In my judgment, the case before the stipendiary magistrate and before the Divisional Court was argued on the basis that the stand was a taxi byelaw stand on the private premises of Cardiff Railway Station. That is explicit in the judgment. It is not an assumption.

175. Moreover, Mr Fletcher's point fails properly to consider the historical analysis of the legislation conducted by the Lord Chief Justice under which he concluded that neither the 1847 Act nor the 1925 Act nor the taxi byelaws conferred any right on the taxi driver to go on to railway premises. That was the important point.

176. The taxi driver had no right to go on to the railway premises other than with the consent of the railway owner. If the taxi driver had no other right of access, how could a permit scheme allowing access only with that permission be unlawful?

177. In any event, as the Lord Chief Justice pointed out, *"the whole argument for the defence was that, although on the face of it there had been a breach of byelaw 22, there was in fact an excuse to be found in this parallel legislation"*.

178. In other words, it was argued on behalf of the taxi driver that the 1847 and the 1925 Acts, together with the taxi byelaws, entitled the taxi driver to do what he did, and his right to do so could not subsequently be revoked by a later scheme, namely the Railway Byelaws. Put differently, the council's licence exempted him, he said, from the requirement of the board's byelaws. That contention was expressly rejected by the Divisional Court.

179. So far as the absence of any contention by the licensing authority in that case is concerned, it will be remembered that, in the instance case, whatever BCC's original views were, its final and considered view was that "*BCC is not able to prevent FGW from reviewing the basis on which they permit access to their land, which is essentially a matter between the company and the affected drivers*".

180. Mr Fletcher's second point was that no argument appears to have been addressed to the legal consequences of the fixing of a stand by byelaw -- and these are the important words -- *with the consent of the railway company*; and no argument appears to have been addressed as to the consequences of section 63 of the 1976 Act. Neither of these issues is addressed in the judgment of Hulin v Cook.

181. Of course, the 1976 Act was wholly irrelevant to Hulin v Cook since the alleged offence in Hulin v Cook had occurred before the enactment of the 1976 Act.

182. However, I consider that the 1976 Act makes no difference to the situation. I accept the 1976 Act created a public duty of consultation, (see section 63(2)) before varying the number of hackney carriages *to be at each stand*. But this is entirely different from the power of a landowner to regulate who can *access* his land and who can solicit custom there, as well as to regulate behaviour of taxi drivers once on the private land.

183. Whilst it is correct that the Lord Chief Justice made no express reference in Hulin v Cook to the need for the consent of the railway owner to the fixing of a stand on railway premises under the 1925 Act, the case had proceeded on the basis. As I have already read out in the case stated, no contention of absence of consent under proviso (b) of section 76 had been raised.

184. However, I acknowledge that the argument was not expressly advanced that, once a railway owner had given his consent to the fixing of the stand within the railway station, the right of access to the stand could not be denied until the byelaw was amended to delete that stand. Namely -- and this is Mr Fletcher's submission -- the power to refuse permission to access railway land was *spent*, once the position of the stand was fixed by a local byelaw enacted with the consent of the railway owner.

185. However, in my view, this was, in real terms, dealt with by the Lord Chief Justice in his analysis of the purpose of the 1925 Act. He said that the position after the Act of 1925 was that the licensing system under the Act of 1847 was extended to a new area. It was extended to the area of the railways and to railway premises; and that anyone wishing to ply for hire on railway premises thereafter required both a licence under the Act of 1847, and "would have to make his peace" -- in the words of the Lord Chief Justice -- with the Railways Board, in as much as he would require their consent under their byelaws -- which is what the Lord Chief Justice was referring to -- before he could ply for hire within the confines of the railway property.

186. In my judgment, there is no difference between requiring the landowner's consent under the byelaws and the landowner's consent *qua* landowner under a permit scheme. The

right to give consent or permission under the railway byelaws was ultimately derived from and built on the Railways Board's position as the owner of the land itself -- the private owner of the private land.

187. Mr Fletcher's third submission, suggesting that Hulin v Cook was wrongly decided was that, in dealing with section 76 of the 1925 Act, the court treated it as simply extending the jurisdiction of the licensing authority to such taxis as plied for hire at railway premises (that is the first part of the section), and did not go on to consider the legal consequences of the proviso (b), (ie the fixing of the stand with the consent of the railway company).

188. It can be seen that that ground of objection is substantially same as the preceding one, namely stemming from the legal consequences of proviso (b) to section 76 with which I have just dealt. In other words, it seems to me that argument 3 does not add anything to my decision on argument 2.

189. Mr Fletcher's fourth submission was that no argument appears to have been addressed to the point that, if a railway company is permitted to control those accessing the stand by a permit scheme, the licensing authority no longer controls either the stand or the number of taxis accessing it, thereby defeating the statutory purpose of the stand, namely the fixing power in section 68 of the 1847 Act and in section 63 of the 1976 Act.

190. This submission was expanded orally by Mr Fletcher into two distinct strands. The first one is the generic one, that a taxi stand must either be public or private, but it could not be both. The taxi drivers, he submitted, could not be subjected to double regulation, namely by both BCC and by FGW. The second strand was that in attempting to regulate or control the taxi drivers, FGW was usurping, trespassing or displacing the statutory functions of BCC, as the relevant licensing authority.

191. He drew my attention, as indeed did Pauline Powell of BCC in the correspondence which had gone on between the lawyers in this case, to Byelaw 3 of the byelaws which I have read out, namely that licensed Hackney Carriage drivers have a duty in certain situations to proceed directly to the Temple Meads taxi stand, regardless of whether or not they do have a public right of access. It is said that the obligation, set out in Byelaw 3, surely must convey the notion that one cannot expose a taxi driver to criminal prosecution, for not doing that which he is prevented by somebody else from doing. Because that would be a curious state of affairs, the argument is that Byelaw 3 supports the contention that there has been this implied grant of a right to access Bristol Temple Meads.

192. The question was asked rhetorically: how can taxi drivers discharge that obligation on them imposed by the taxi byelaws, if they have no *right* of access and require the permission of FGW to do so? Without being disrespectful, the simple answer to the question is: buy a permit. A taxi driver would thereby be able to discharge his duty under Byelaw 3 in any event.

193. However, even if a taxi driver declined to buy a permit, in my judgment Byelaw 3 must be read subject to the condition precedent that taxi driver must have the prior consent or permission of the landowner before going on to private land. In other words, it would be a defence to any criminal prosecution, alleging an infraction of Byelaw 3, for the taxi driver to raise the fact that his permission to the access the land, on which the taxi stand was fixed, had been withdrawn by the landowner.

194. In any event, FGW is not seeking any amendment to the taxi byelaws in Bristol. It wants the existing byelaws to continue to apply to and to be enforced at the taxi stands at BTM. The permit scheme at BTM is not seeking to alter the maximum or minimum number of taxis standing on each stand; it is seeking to regulate the number of taxis accessing and seeking to trade from BTM, as well as the conduct of taxi drivers.

195. A comparison of the taxi byelaws and the conditions of the permit show that there are many aspects of management and control, of interest and relevance to a railway operator, which would not be covered by the taxi byelaws. I do not accept Mr Fletcher's fundamental submission that taxi stands must be either public or private but not both. I see no reason, in principle, why a taxi stand on private land should not be subject to both the regulatory regime of the licensing authority in relation to matters within that authority's jurisdiction, whilst simultaneously be subject to the management restriction and controls imposed by landowner as condition of access to the land on which the stands are located.

196. Taken to its logical conclusion, the claimants would argue that they have an enshrined right of access to BTM for so long as the byelaws fix the stand within those railway premises, and that that right can only be abrogated by an amendment to the relevant byelaw.

197. Yet under the 1976 Act any private property -- not just railway property -- can have a taxi stand fixed on it with the consent of the owner. It is no longer just railway property for which special provision has been made. In my judgment, it would be a curious consequence of Mr Fletcher's argument that a landowner would have his land subject to rights of way which he could not control or limit, which were not rights in fee simple or for a term of years, whose continued existence was dependent upon a licensing authority's decision to amend or not to amend a byelaw by deleting a particular stand.

198. Finally, as a general point, Mr Fletcher submitted that the facts as revealed in the report of the case were murky or shadowy and that, overall, the case was unsatisfactory.

199. For all of those reasons, therefore, he submitted that Hulin v Cook ought not to be relied upon as an authority on the issues raised in this case.

Was Hulin v Cook correctly decided?

200. Approaching afresh, as I do, the legislative framework in this case, in the light of Mr Fletcher's attack on that decision, and coming to my own view independently of that authority, I am nevertheless in total in agreement with the analysis of the legislation by Lord Widgery in Hulin v Cook.

201. Even if I were not convinced that the decision was manifestly correct, I would, nevertheless, have followed it, unless I was convinced it was wrong. On any view, it would be hard for anyone to conclude with the necessary conviction that the Lord Chief Justice's analysis, with which the two other members of the court agreed, was so flawed as to justify that conclusion.

202. The effect of the 1925 and 1976 legislation was, in my judgment, merely to extend the licensing system and regime created by the 1847 Act and the taxi byelaws to private land, albeit only with the consent of the landowner. It created no new rights.

203. Moreover, the consent of the landowner to the fixing of the stand on his land, a stand which was to be subject to the regulatory regime of the taxi byelaws, is, in my view, entirely

different and separate from the necessary permission which must be obtained from the landowner to go on to private land to access that stand.

204. In other words, a landowner's right to withhold permission to taxi drivers to go on to his land is not spent once he has given his consent to taxi byelaws fixing a stand on his land until that byelaw is amended.

205. In 1974, British Rail never agreed to surrender, nor did it surrender, its right to control access by taxi drivers to its land, merely because it consented to the inclusion of the stands at BTM in Byelaw 16. Indeed, as an entirely separate matter, it is difficult to see how, but for the byelaw argument, the 1974 agreement is legally enforceable today. The taxi drivers are different, the associations are different from 1974. This was, in 1974, a unilateral and gratuitous concession by British Rail which, at best, was a personal arrangement which did not bind successors in title.

206. It follows, therefore, that, subject to the contention that the station approach road is a public highway, taxi drivers have no right of access to Bristol Temple Meads Railway Station without the permission of FGW. If they wish to pick up passengers at BTM, subject to the highway argument, then they must buy a permit for that trading opportunity.

History: 1974 to 1991

207. Up to 1974, British Railways ran a private permit scheme for taxi drivers seeking to ply for hire from Bristol Temple Meads. Although there were taxi stands at BTM at that stage, they were not hackney carriage stands, but represented a purely private arrangement between taxi drivers and British Rail.

208. There plainly had been some difficulties about ensuring an adequate supply of taxis and/or of complaints by passengers causing British Rail to want to suspend its private permit scheme and to ask the local licensing authority to take responsibility for the ranks. It was hoped that this would create an improved taxi service at BTM.

209. Page 25 of the claimants' core bundle is a letter from British Rail to the City Clerk:

"The District Council and I have a common aim in seeking to provide adequate availability of taxis to meet demand at Bristol Temple Meads at all periods of the 24 hours. In recognition of this I have stated my willingness to withdraw the existing licensing arrangement, which provides me with limited control over the licence holders, in favour of arrangements within the terms of agreement reached between the District Council, the Taxi Proprietors Association and British Railways, designed to make Temple Meads an open and free station to all Hackney Carriages licenced by the Local Authority and for the Local Authority to exercise control over Hackney Carriages serving Temple Meads Station.

"I have a continuing responsibility to the rail traveller who requires a taxi from Temple Meads station and until I am satisfied that the revised arrangements have resulted in a lasting improvement which justifies the arrangements becoming permanent I must regard them as experimental and temporary. Should there be no improvement, or should there be a decline in availability I would need to be in a position to meet my responsibility towards the rail passenger by taking back control of the taxi arrangements."

210. The negotiations for this arrangement between British Rail, BCC and the taxi trade association are summarised at pages 22 to 26 of the claimants' core bundle. These negotiations culminated in an agreement or understanding between the parties, set out at

pages 27 and 28 in the claimants' core bundle, comprising nine numbered paragraphs and a final paragraph signed in manuscript, dated 10 May 1974:

"City of Bristol

"City Clerk's Department

"The following is a document setting out the terms of an agreement made between British Railways (Western Region), The Bristol Taxi Owners Association and the Bristol Taxi Drivers and Owners Association. This agreement is to take effect from the 1st April 1974.

"(1) That Temple Meads Station be open and free of charge to all public hackney carriage vehicles licensed by the City Council of Bristol.

"(2) That for an experimental period the British Rail contract system operating at Temple Meads Station be formally terminated on 31st March 1974 and that no charge be made to the hackney carriage drivers and proprietors when operating from Temple Meads after 25th March 1974.

"(3) During the period of experiment the City Council of Bristol be given the consent to enable the Taxi stand at Temple Meads to be treated as a public stand and thus become temporarily subject to the same byelaws as other taxi stands in the City."

211. Paragraphs 1, 2 and 3 above seem to me to be dealing with British Rail's prospective consent to the byelaw.

(4) That adequate provision of parking space free of charge be made available in the high level car park to accommodate taxis wishing to use the facilities of the Taxi rest (and that this provision should amount to at least 23 parking spaces for the taxi trade associations which it is understood is the number allocated prior to 31st March 1974). This provision is however subject to a review of the parking facilities at present afforded in the station approach area.

"(5) The liaison with the Railway Police, the Police Authority and the City Council of Bristol be maintained in order to control the are of Temple Meads frequented by the hackney carriages.

"(6) That only taxis waiting to feed into the stand provided can park in the taxi-cab waiting area compound on the Incline at Temple Meads Station.

"(7) That reviews be held after periods of six months and twelve months experience from the date of introduction of the arrangements which for this purpose shall be deemed to be the 1st April 1974.

"(8) That after the period of twelve months mentioned in paragraph (7) above British Rail shall have the right to withdraw from the arrangements set out in this document and agreed in the event of the management of British Rail deciding that it would be in the best interests of British Rail customers or business to do so.

"(9) That the Taxi trade association are free to operate the taxi rest facilities and appoint a person to manage it on their behalf subject however to negotiating a proper market rent with British Rail for the property concerned.

"The above terms and conditions are acceptable to British Railways (Western Region), The Bristol Taxi Owners Association and the Bristol Taxi Drivers and Owners Association which bodies have indicated this by the signature below of their authorised officer."

212. In other words, the reviewability and revocability of the arrangement were still retained by British Rail, notwithstanding its consent to the experimental period and to the inclusion of the stand within the byelaws.

213. At pages 30 - 32 of the claimants' core bundle are the minutes of a meeting of Monday, 6 January 1975 between representatives of BCC and British Rail. It will be remembered that, by January 1975, the byelaws had just been amended and came into effect on 6 December 1974.

214. Some salient features of those minutes are as follows:

"2(c) The station rank and waiting area had now been included in the City Byelaws covering Hackney Carriages with effect from 6th December, 1974.

"4(a) Mr Windsor said he would be looking to the Local Authority to assess the position as to whether the City has a sufficient number of taxis operating and he considered there would be a progressive increase the size of the fleet.

"7. Mr Viney [of BCC], in agreeing that the Council can only work within the framework of the present legislation suggested that as the new bye-laws had only come into effect on the 6.12.74 we should agree to extend the 12 months trial period to evaluate its effects.

"8. In response to Mr Catherall's request to state their position on the next future step, Mr Viney stated that it was his council's wish that the present experimental arrangements be allowed to continue and that the council on their side would proceed with the various measures open to them to gain some betterment in the service ..."

215. That document, created after the byelaw came into effect, envisaged an extension of the ongoing review and, in my judgment, the reservation to British Rail of its right to withdraw from the scheme, if it were so advised.

216. In my judgment, this period of 12 months from 1 April 1974, which was being considered in the agreement, was an experimental period during which the stands at BTM would be operated *as if* they were already controlled by byelaws, because the City had only approved the amendments to the byelaws in October 1974, and they only came into effect on 6 December 1974.

217. It seems to me that the experimental period would continue, as those minutes clearly indicated, even though the amended byelaw was in place, on the understanding that British Rail's rights were reserved and that the experimental byelaws would be revoked, in any event, if the experiment were not a success.

218. At that time, there was a clear implication that the amendment of the byelaw to include BTM and its revocation would take place at the request of British Rail. Attitudes between British Rail and BCC had not hardened. It seemed then, as is implicit in that documentation, that what British Rail gave, British Rail could take away, with BCC doing

what British Rail requested, since everything proceeded on the common understanding that British Rail was the owner of the relevant land.

219. British Rail then tried to change the arrangement in 1985. I refer, at this stage, to the letter dated 6 June 1985 from British Rail, from Mr Sach, its customer services manager, to the City Clerk of BCC.

"Dear Sir.

"Re: Taxi Franchise at Temple Meads Station.

"The present arrangements whereby taxis licensed by the City Council may ply for hire on the rank at Temple Meads without charge has now been in operation since 1974.

"As you are doubtless aware, it is the requirement of the Secretary of State for Transport that the Inter City Sector of B.R., should become fully self supporting before the end of the decade and that the cost of the tax payer in real terms of providing provincial Services should be reduced. As Temple Meads Station exists to serve these two business sectors we are fully committed to reducing costs where possible and to maximising the revenue which we obtain for the station, including not only fares but also such things as Station Trading, and my attention is now focusing on the question of taxi franchise.

"Facilities for taxis are very good, comprising a stand for 4 cabs and a reserve stand for 42.

"Free parking is made available to Drivers visiting the cafe, which is the subject of a tenancy. The latter leads to a good deal of litter which B.R., has to clear. Lastly, of course, the franchise itself is a very valuable one and the growth of long distance rail travel has tended to make it more valuable.

"Taking account of the foregoing, I have concluded that the case for introduction of charges for a franchise is a very strong one. Charges are raised at all neighbouring main stations, in excess of £100 per taxi, per annum, and I would envisage £100 as the likely charge at Bristol/

"There would be advantages to us and the trade if I were to negotiate a collective agreement with the taxi association and I would be grateful to you if you could let me know the names and addresses of the secretaries and whether all the licensed taxi drivers are in fact members, and I shall be grateful for your general comments and advice on this whole issue.

"The Temple Meads stand is now supervised by your Inspectorate and I would like this to continue.

"Dependent upon your response, I will make an approach to the Associations and put more definite proposals to them, perhaps followed by a meeting including you or one of your officers if you consider this appropriate."

220. That prompted a letter from the City Clerk's department in July 1985 to Councillor Fisk, which is at the claimants' core bundle at page 40.

"Dear Mr Fisk.

"Taxis -- Temple Meads Station.

"I understand from Mr Jennings that British Rail have convened a meeting for next week to confirm arrangements for the allocation of licences to taxis to ply for hire at Temple Meads Station.

"Since I was the Committee Solicitor in the 1970s involved in the negotiations for the opening up of Temple Meads Station to any licensed Public Hackney Carriage, I thought it might be useful if I set down a few notes about the situation as it then existed.

"It must be remembered that the incline approach to Temple Meads Station is private property owned by the British Railways Board and to the best of my knowledge they have taken steps to ensure that the public have not been granted rights of way over the land. It therefore follows that taxis, indeed any vehicle, entering the land does so with the consent of British Railways Board who have the legal right to control access.

"The situation, as it existed in the 1970s, was that any Public Hackney Carriage or Private Hire Vehicle was allowed to set down passengers at the Station. However, only those taxis which had been granted a franchise by British Railways Board were allowed to ply for hire at the taxi rank and pick-up passengers.

"As I recall some 150 taxis had been granted a franchise for which they paid an annual fee and there were constant complaints from people arriving at the Station to the effect that the taxi service was abysmal. The reason being that in those days taxi drivers were, perhaps, more choosy than they are today, tended to work shorter hours and there were never sufficient taxis at the Station to meet the demand, particularly at peak times.

"Also, taxis which had not been granted a franchise arriving at the Station, finding a queue of passengers waiting, and no taxi at the rank were tempted to pick up a passenger. That driver would be spotted by the next franchise driver to arrive which led to a heated argument though I do not think that there was any actual physical violence. This state of affairs caused embarrassment to the passengers and led to complaints.

"After discussions commenced, largely at the initiative of your then Licensing Officer, British Railways Board agreed to open the Station to any Public Hackney Carriage without payment of fee and, at the same time, arrangements were put in hand for the improvement of the taxi rank and for the provision of the overflow reserve rank. The service so far as passengers were concerned was greatly enhanced, there were no longer any rows between taxi drivers and the spin-off so far as your Licensing Section were concerned was that they were able to keep an eye on a far greater number of taxis simply attending Temple Meads Station on a regular basis.

"My personal view is that we should try to meet British Rail to ask them to reconsider their decision to grant a franchise and to take whatever steps we can to impose pressure to avoid what appears to be almost a fait accompli.

"Should you require any further information, or if you feel I can assist in any way, please let me know."

221. The relevant taxi Association also wrote to the City Clerk in July 1985. That is CCB/42.

"Dear Sir.

"Temple Meads Station -- taxi operations.

"Prior to 1st April 1974, the facility for hackney carriages to stand at Temple Meads station was restricted to 100 of those taxis licensed by the City of Bristol and those taxis so permitted made a payment to British Rail for the privilege. After 1st April 1974 this arrangement changed and any of City's hackney carriages could stand, free of charge, on the rank at Temple Meads station. This system has applied from 1974 to the present time. The change took place following complaints from passengers waiting an excessive time at the station, criticism of the system from local M.P.s and Councillors and pressure from the taxi trade.

"We have now been advised by British Rail that they intend to re-introduce a charge of £120 per annum on those taxis who wish to stand on Temple Meads station. We have, together with other interested parties, including the Hackney Carriage Department of the Council, been invited to a meeting on 8th August 1985 to discuss this proposals.

"We are very concerned about this. We feel it to be a retrograde step which will be against the interests of passengers arriving at Temple Meads station and requiring taxis. The number of such passengers fluctuates; the station is not as busy as it once was, but occasionally, particularly on a Sunday, demand can be high. The more taxis permitted to stand at Temple Meads, the quicker the public can leave the station. To impose a charge will certainly lead to a reduction in the number of taxis standing at Temple Meads. This cannot benefit the public. It is also a further financial imposition on the taxi trade which has been badly hit by the recession.

"When the discussions prior to 1st April 1974 were taking place, the taxi trade received the support of Bristol City Council in their request that the station be open and free to all Bristol hackney carriages. We hope that the Council will, at this time, feel able to support us when we express our concern to British Rail over the proposal they are making."

222. The Bristol Public Hackney Carriage Association, as it then was, felt that the introduction of a permit scheme was a retrograde step.

223. On 13 August 1985, the City Solicitor wrote to British Rail. That is at the claimants' core bundle, CCB/45:

"Dear Mr Markham.

"Taxi Services at Temple Meads Station.

"I refer to the recent meeting between your Mr. Sachs and representatives of the Taxi Trade to discuss the implementation of your proposals for a taxi franchise at Bristol Temple Meads to which the City Council was invited. I thought it might be useful if I set down in writing the main points which were made by the City Council's representatives at that meeting.

"1. The Council considers that the provision of a good and reliable service to be of paramount importance. Failure to provide and maintain that service will inevitably result in unsatisfied customers (your passengers) and will lead to complaints to both yourself and the Council and will create a very bad first impression to visitors to the City.

"2. In order to provide that service it is necessary to have adequate taxis available during periods of peak demand and it is by no means certain that adequate numbers of taxi owners will make applications to you for a franchise.

"3. It will, without doubt, be necessary for you to carefully police the taxi rank and the station approach to ensure that only franchise drivers operate out of the station. In the interest of members of the public your staff will also need to be on hand to settle disputes and complaints. The policing of both private hire vehicles and public hackney carriages and attending to complaints is presently undertaken by staff of the City Clerk's Licensing Section and it is the City Council's view that if you are to properly police the situation you will no doubt expand more than you anticipate receiving by way of franchise.

"4. As a result of the 1974 Agreement the taxi rank at Bristol Temple Meads is a public rank, that is, it is subject to byelaws which have been made by the City Council and have been confirmed by the Secretary of State. If you are to 'close' the station except to franchise taxis then it will be necessary for those byelaws to be withdrawn. This will drastically reduce the powers and authority of the City Council's Licensing Officers at the station. Further, since the byelaws were made for 'good rule, order and management' it will be necessary to convince the Secretary of State, who will have to confirm the amending byelaws, as to why the present state of affairs make the old byelaws no longer necessary.

"5. Whilst the taxi rank remains a public rank, any public hackney carriage licenced by the City has the right to ply for hire. In the event of the City Council refusing to amend the byelaws it will be necessary for you either physically prevent licensed public hackney carriages from using the public rank or seek your own private statutory powers to rescind the byelaws.

"6. As you are aware the City Council will shortly be looking in detail at proposals for the tourist and visitor development of the Temple Meads Complex as a whole, in partnership with yourselves, the English Tourist Board, the County Council and the Manpower Services Commission.

"The provision of an efficient and effective taxi service for your rails customers would seem to be a key element in such arrangements and I would suggest that your current proposal be held over until these other issues are considered.

"Whilst writing, I would like to reiterate the very valid point which was put forward by the Taxi Trade during the meeting. British Rail Property Board does receive a considerable income for what is a very small room used by the Taxi Trade as a 'cabman's rest'. If you implement your proposals then it is more than likely that fewer taxis will be attracted to the station and as a result there would be a reduction in trade which could lead to the closure of the 'cabman's rest'.

"You will recall that it was at the time of the 1974 Agreement that you first introduced a rental for the occupation of that room to replace the income which you had previously received from the franchise. That income presently amounts to some £5,000 per annum. It occurs to me that perhaps some of this money which is paid to your Property Board should be transferred to your Operations Department though this is, of course, an internal matter for your consideration.

"I look forward to hearing from you after you have had an opportunity of considering the views put forward at the meeting together with the contents of this letter. We would also ask you to consult with your Passenger Consumer Association and obtain their views on your proposals.

"If you are then still mindful to proceed with your proposals the City Council's representatives would wish to have a meeting with you in order that they may discuss the matter further.

"Meanwhile, if you require any further information of if there is any way in which I can assist you in this matter, please do not hesitate to let me know."

224. Although that letter represented a more resistant view by the City Council, it still appeared to accept that British Rail had the right physically to prevent licensed public hackney carriages from using the public rank even if the taxi byelaws were not amended.

225. On 19 September 1985, British Rail replied to the City Solicitor at CCB/49:

"Dear Mr Pitt.

"I am now able to reply more fully to your letter dated 13th August 1985. I will comment on the points made in the same order.

"1. I quite agree that the provision of a good service to our passengers is of very great importance and I would not wish to jeopardise this in any way. There are, however, numerous major stations at which excellent taxi service is provided under a charged system.

"2. I believe that the proposed charge of £120 is sufficiently reasonable to attract an adequate number of taxis. In the event of a shortage market forces will doubtless attract additional franchise holders and experience at other stations suggests that there will be an adequate number of applicants.

"3. British Rail will judge the level of staff and British Transport Police presence that will be necessary when the new arrangements apply. As you will be aware, the change we propose follows the 'Open and Charged' principle approved by the Director General of Fair Trading arising out of his investigation into the Board's arrangements at Brighton. It would be the view of the Director General that many of the problems to which you refer will be resolved by market forces which any open system, whether charged or uncharged, without quantitative restraint, will allow to operate."

226. The following paragraph is particularly germane:

"4. Though the public have unfettered access to Temple Meads Station for the purpose of railway business it is not a public highway, and your taxi byelaws only apply by virtue of the consent that the board agreed to give for an experimental

period in the 1974 Agreement . The introduction of an 'Open and Charged' arrangement at Temple Meads means that the experimental period will be brought to an end and that British Rails will no longer consent to the application of the bye-laws to its private property or to the designation of land not a public highway as a taxi stand. Under the Local Government (Miscellaneous Provisions) Act 1976, such consent is a pre-condition to designation. Certainly this is the basis of an arrangement which the Board is currently finalising with Newcastle City Council for the use of the taxi rank at Newcastle Central Station to be designated under the City Taxi Bye-Laws."

227. At that stage, British Rail was asking or hinting that the byelaws should be changed, to delete the Temple Meads stands from Byelaw 16 The letter continued:

"5. With every respect, my advice is that this point is based on a misconception and ignores the fact that British Rail's consent in this matter was for an experimental period, which experiment will be brought to an end when the 'Open and Charged' arrangements are introduced.

"6. We are also interested in the matter of tourist development but I repeat that I am confident that an efficient taxi service can be provided under a changed arrangement.

"The matter of the taxi driver's cafe is quite independent of the franchising issue. The current rental is a commercial rental, reflecting the market value and is collected by our Property Board as such.

"We have considered carefully the view expressed at the meeting held on 5th August 1985 and summarised in your letter, but I have concluded that it would be in the best interest of the business to go ahead with the introduction of charges. I wonder, however, whether your Council would be interested in an arrangement similar to that which has been negotiated successfully with Newcastle, and has operated without difficulty there for some 15 months? In that case, the City Council have negotiated an agreement whereby all licenced taxis in Newcastle will be permitted to ply for hire and a proportion of the licence fee that the Local Authority collect relates to the station franchise and is paid to British Rail.

"I would be glad to hear your views on this possibility."

228. Finally, at CCB/51, the City Clerk replied effectively saying that by no stretch of the imagination could it be thought that they were still dealing with an experimental period. Nevertheless, the letter still seemed to contemplate the fact that it was open to British Rail to reintroduce a private permit system.

229. The council discussed the problem at its meeting on 21 October 1985, but the correspondence then seemed to end in 1985. No permit scheme was introduced in 1985, and the subject raised its head again in 1991.

230. At CCB/61 is a letter dated 21 January 1991 from BCC to British Rail. This letter appears to raise the argument, for the first time, that it would be illegal for British Rail either to close the taxi rank or to impose a permit fee:

"Taxi Licence Fee -- Temple Meads Station.

"Thank you for your letter dated 9th January. I assume that you are still prepared to have a Taxi rank at the top of the incline for the convenience of your passengers and that the only matter which has changed is that, quite understandably, you wish to achieve some revenue from the facility.

"As you will be aware from your reading of previous correspondence, the Taxi rank on the incline at Temple Meads Station was not provided under the Local Government (Miscellaneous Provisions) Act but in pursuance of the Town Police Clauses Act and under bye-laws made by the City Council to which British Rail did not object and in which there is no saving provision for British Rail. The Bye-law was made following negotiations and with the full agreement of British Rail but is not dependent upon British Rail's consent.

"It is my interpretation of the situation that the Taxi Rank must remain open to all Public Hackney Carriages licensed by the City Council until such time as the City Council resolves to amend or revoke the bye-law, which, incidentally, will also require Ministerial consent. When I last discussed your difficulties with your predecessor it was agreed that British Rail would not be taking any steps to close the rank because at that time you had proposals to close the incline to all traffic and to create a new main entrance off of Temple Way.

"I am happy to give you an assurance that the City Council, through its Health and Public Protection Committee, will consider any approaches which you may wish to make concerning the amendment of the bye-laws but it is my view that it would be illegal under the present bye-laws for you to either close the Taxi rank, or indeed impose a charge on any Public Hackney Carriage licensed by the City Council to ply for hire from the Taxi rank.

"I look forward to hearing from you in due course."

231. On 12 March 1991, the legal department of British Railways Board sent a letter to its own Area Manager in Bristol, but the full addressee is not entirely clear. That is at CCB/62. Again, that letter is suggestive of the fact that the consent of British Railways was still necessary for the byelaw to make the taxi stand at BTM a taxi byelaw. The author of the letter wrote:

"I would suggest, however, that the wording of Section 76(b) [of the 1925 Act] makes such consent essential to the operation of the Bye-laws at all to the extent that if revoked, the local authorities will fail regarding the railway premises."

232. Throughout all that correspondence, no one referred to Hulin v Cook, the Divisional Court's decision which had been delivered in June 1977. In my review of the historical correspondence so far, I have been considering the period between 1985 and 1991.

233. Whatever may have been the view of British Railways at that time – and it seemed to include trying to persuade BCC to amend Byelaw 16 to delete the reference to the stand at BTM, the position today is that FGW has no desire to withdraw its consent to the application of the taxi byelaws to the ranks at BTM. FGW merely argues that the *presence* of the ranks confers *no right of access* to them because, as landowner, it can still give or withdraw its permission, conditionally or unconditionally, to taxi drivers to go onto its land. That was the view to which BCC finally came in January 2012, as expressed in its letter to Ms Jones on 22

February 2012. However, as in 1985 so in 1991, British Rail did not introduce any permit fee in 1991 and the correspondence stopped.

History: 2010 to 26 January 2012

234. FGW started to raise the possibility of introducing a permit scheme in late 2010. There had been a long and detailed history of congestion and complaints about the layout and use of the taxi rank at BTM.

235. In his witness statement at C/38 Mr Bartlett, between clauses 2.5 and 2.6 attempted to explain and justify the introduction of the permit scheme then.

236. He said this:

"FGW consequently began considering the introduction of a permit scheme at BTM in around August 2010 and took steps to engage with the relevant stakeholders from around November 2010..."

"FGW decided to introduce a Permit Scheme at BTM in order to impose greater practical and administrative control over the forecourt of its station. Its aims in doing so included:

"(a) To gain greater control over the drivers providing taxi services on its land;+

"(b) To reduce instances of unacceptable behaviour of such drivers on the forecourt including illegal parking, bad language used in the presence of passengers, overcrowding, disregard to the instructions of station staff for the management of the station, interference with the use of Station Approach by other legitimate traffic and disputes between drivers in the presence of or involving passengers;

"(c) To improve overall safety of the forecourt, including by a reduction in the number of taxis and therefore the risks associated with the overcrowding of the forecourt;

"(d) To improve safety for all station customers and taxi drivers by reducing the risk of road traffic accidents;

"(e) To obtain a reasonable income flow from the conduct by taxi drivers of their business on railway land, in part to fund the above objectives; and

"(f) To facilitate the remodelling of the Station Approach to improve the flow of traffic and provide better provision for the appropriate number of taxis and buses."

237. I am satisfied that the dominant motive in introducing the permit scheme was to generate income for FGW. BTM was fairly unique in not requiring taxi drivers to pay for the opportunity to ply for hire at BTM, given the significance of the station to the region.

238. Moreover, I am of the view that FGW would have wished to introduce the scheme, even if none of the revenue derived therefrom, or merely a very minimal part of it, was used to improve facilities for taxi drivers and taxi users of BTM. It was the commercial opportunity which FGW felt it could and should exploit. Why should it not generate some

income from those who traded from its premises, in the same way as it charged shopkeepers or store holders?

239. However, I am also satisfied that, in fact, FGW's intention is to, and that they will, use a substantial proportion of the permit income, but not all, to improve taxi facilities and the layout of the approach road with a view to improving or relieving the congestion at BTM and increasing the throughput of cars, taxis with paying passengers and traffic in and around FGW's land in front of BTM.

240. This was not, in my judgment, merely an exercise in the commercial exploitation of its assets by FGW motivated by the simple desire for profit. I am satisfied that the permit fee income would be substantially reinvested in a way which would financially benefit taxi drivers, even if it was intended, as was the case, that FGW would still derive a not insignificant profit from the exercise overall.

241. I accept that FGW's desire effectively to manage and control taxi drivers trading from their premises is a genuine one and not a sham. The conditions on the permit are not, in my view, mere window dressing, giving a veneer of respectability to a scheme of naked profiteering.

242. I see no reason why FGW should not wish to have a contractual relationship with and/or have control over and/or derive an income from all who trade and make a profit from FGW's premises and FGW's passengers.

243. Details of the steps taken by FGW to introduce the permit scheme, along with an analysis of its consultations and correspondence with the claimants and BCC are set out in paragraphs 14 and 15 of Mr Bartlett's first witness statement at C/11 to C/14, which I accept is an accurate summary of those efforts. Particular landmarks within that general body of correspondence are as follows.

History: 4 August 2010 – 19 April 2011

244. 4 August 2010: FGW had initial internal e-mails on the possibility of a permit scheme at BTM.

245. November 2010: FGW started its consultation process with BCC.

246. 21 February 2011: Mr Bartlett contacted the Bristol Branch of the NTA to discuss permit implementation.

247. 1 March 2011: There was a meeting between Mr Bartlett, Mr Lloyd and Patricia Jones (then the NTA secretary).

248. 21 March 2011: There was a meeting between BCC and members of the taxi trade.

249. 13 March 2011: NTA stated they relied on the 1974 agreement as the basis of resisting the permit scheme.

250. 13 March 2011: NTA provided FGW with a copy of that 1974 agreement.

251. 19 April 2011: Mr Lloyd, Chair of the claimant then, directed that any further communications which FGW wished to have with the claimants should be directed to BCC and not to the NTA.

Mouchel Report: 18 February 2011

252. As part and parcel of its desire to implement a permit scheme, FGW commissioned what has been called the Mouchel report, which was dated 18 February 2011.

253. This was a report commissioned by FGW to provide an evidential basis for the permit scheme, including the number of taxis required to operate an efficient service from BTM, and the income derived by taxi drivers from plying for hire at BTM. The report also dealt with known problems of congestion and conflict.

254. In this context, I refer to the following paragraphs of the Mouchel report and also the summary and conclusions.

"1 Introduction.

"1.1 Study background and brief.

"Mouchel Ltd was appointed by First Great Western to undertake a review of the current demand for hackney carriage services at Bristol Temple Meads station. The survey seeks to identify the valuation in demand and the impact this has on the service to passengers and the waiting times for the hackney carriage vehicles serving them. The aims of this review are to understand the likely number of vehicles required to provide a service to rail passengers based on a reasonable understanding of the level of remuneration for each taxi. This information will be used alongside the introduction of a permit system for the rank at this location.

"The study began with a site visit to the station on 14 January 2011 which was a follow-up to a pre-appointment site visit on Friday 17th December 2010. These visits identified the current provision for those wishing to arrive and depart from the station by both private hire car and hackney carriage. They also identified current known problems with the operation of licensed vehicle services at the station. Locations for the observation cameras were agreed, together with the requirements for health, safety and security documentation to allow the survey to take place.

"1.2 Study Aims and Objectives.

"This report forms a review of the demand for hackney carriages at Bristol Temple Meads station. It focuses on current demand identified through video surveys and recording of hackney carriage vehicle plate numbers as they entered and left the station area.

"1.3 Study outputs and outcomes.

"This study provides documentation of the observations undertaken of the operation of the taxi rank at Bristol Temple Meads station. It provides an evaluation of the level of demand in order to identify the minimum and maximum level of vehicles required to provide adequate service to the rail users of this station. It also establishes the current level of average remuneration per vehicle based on current fares.

"4 Summary and Conclusions.

"4.1 Background.

"This report forms a review of the demand for hackney carriages at Bristol Temple Meads Station. It focuses on current demand identified through video surveys and recording of hackney carriage vehicle plate numbers.

"4.2 The taxi fleet and industry structure.

"The Bristol City Council hackney carriage fleet available to serve passengers at Bristol Temple Meads Station amounts to some 771 vehicles, all of which are wheelchair accessible. There is no limit on this number of vehicles, and they are supplemented by a slightly larger fleet of private hire vehicles which people can book before arriving at the station.

4.3 Rank activity.

"The rank saw some 489 passengers on the Friday, 692 on the Saturday and 637 on the Sunday during the hours observed. The highest hourly number of passengers was 85 on the Saturday (in the 13:00 hour), followed by 82 on the same day in the 20:00 hour. Sunday generally had higher passenger volumes overall, though the maximum number recorded was 79 persons -- a level achieved over two consecutive hours (18:00 and 19:00). The highest number of passengers on Friday was 55 at 18:00.

"Saturday saw an increase in the number of vehicles serving the rank, and some reduction in the wait times of hackney carriages for fares, although it also saw some passengers waiting when no vehicles were immediately available for hire. Despite that, no-one waited over 7 minutes on the Saturday. In general most waiting resulted from waiting for a vehicle to move up the rank.

"During the high demand day some 316 passengers were observed to experience a wait for a hackney carriage. A significant number of waits were restricted to 1-5 minutes with the vast majority within the 10 minute threshold when the delays might be considered significant. Very few passengers experienced a wait of over 10 minutes -- just 4 on the Friday, none on the Saturday and 7 on the Sunday.

4.4 Overall conclusions.

"Taking all observed supply and demand into consideration we would conclude that at the time of the survey, there is a good service of hackney carriages to the rank at Bristol Temple Meads Station.

"The survey was undertaken at a time of year when demand was 'typical' and that we have not omitted any key observable demand either within the main centre or at any other location within the licensing area. Our surveys tested times of high demand and found the service generally able to react to the demand in a positive manner 4.5 recommendations.

"The current service at Bristol Temple Meads seems to generally meet the passenger needs generated by the station. At present, there is a plentiful supply of hackney carriages available from Bristol City Council, all of which are wheelchair accessible. Some 581 different vehicles were observed serving the rank during our sample observations. This level of provision of vehicle only occasionally had difficulties in meeting observed passenger demand. However, for most of the time the balance of vehicle waits for passengers was quite long, so for much of the time demand would be met by a lesser number of vehicles being available.

"The main issue needing to be addressed to ensure that hackney carriages can more promptly serve their potential passengers, and that passengers can quickly identify their vehicle. At present, there is a significant confusion resulting in passengers

waiting longer at a given point than is necessary. Hackney carriages are hindered from serving passengers by other vehicles -- including other hackney carriages -- setting down in the same area as the rank.

"There is no clear point at which people should wait for hackney carriages. This means that the exit from the station is blocked by passengers waiting for hackney carriages, and encourages entry into one vehicle at a time.

"The current layout of the rank also leads to the following safety issues:

"Vehicle conflicts arising from set downs and pick-ups occurring in the same space.

"Blocking of the passenger exit of the station from queues of people waiting for hackney carriages.

"Passengers passing through the waiting taxis to gain access to the car park and cycle area.

"Passengers set down are usually in a hurry and take less care in a more dangerous environment.

"However, First Greater Western did agree that, despite the safety concerns noted, there was no history of any accidents at this location and that the current layout had in fact operated relatively satisfactorily for a considerable time, although it was also very clear that improvement was overdue.

"In order to resolve these issues, we would recommend a five space rank be introduced located a little further round the kerb from the current location, towards the airport bus stop. Barriers and signing should be used to encourage passengers to queue further away from the station exit. This arrangement would also encourage passengers to enter more than one hackney carriage at a time. It would also prevent set-downs occurring between the head of the current rank and the airport bus. It would also encourage those crossing to the car park and cycle spaces were crossing between the waiting hackney carriages queue and the set down queue.

"The arrangement would allow a small set down area to be provided at the rear of the rank, which would need to be strongly enforced. This would ensure passengers being set down, who are often in a hurry, would be alighting on to the pavement and in a safer location.

"In order to encourage proper use of the new arrangements marshalls may be needed for extended periods for the first few weeks, until the new layout becomes familiar to passengers.

"We believe that this new arrangement would also reduce the current potential conflicts to a reasonable degree, with safety benefits."

255. The Mouchel report was largely focussed on the number of taxis trading from BTM at different times, with a view to identifying what income was likely to be generated from that traffic.

256. However, as the summary and conclusions themselves also indicated, the report did deal with current layout problems and suggested solutions to them. So, whilst predominantly a document gathered for an evidential base to justify a permit scheme, it also touched upon

what was necessary in order to alleviate the congestion and layout problems at Bristol Temple Meads.

257. Armed with that Mouchel report, FGW began to move in earnest towards the introduction of a permit scheme.

History: May 2011 – January 2012

258. On 4 May 2011, Mr Bartlett sent an e-mail to Mr Carter indicating that FGW intended to implement the scheme in June 2011.

259. On 9 June 2011, Mr Bartlett contacted Mr Carter stating that the defendant would implement the permit scheme with effect from 1 September 2011.

260. On 14 June 2011, FGW formally notified BCC of its withdrawal of the 1974 permission.

261. As I have already indicated, on 4 November 2011, FGW formally notified each registered Hackney Carriage driver and the Association of its withdrawal of permission and implementation of the permit scheme with effect from 1 February 2012.

262. On 20 January 2012, it sent the reminder letter, which I have read out, to each registered Hackney Carriage driver of withdrawal of permission and the implementation of the permit scheme with effect from 1 February 2012.

263. Finally, on 26 January 2012, at the meeting between BCC and the claimant Association, BCC informed the Bristol Branch of the National Taxi Association that they would not oppose permit implementation.

Legal debate between BCC and Burges Salmon

264. Pauline Powell, a senior solicitor at BCC, wrote to FGW on 14 June and 5 July 2011 raising legal arguments against the introduction of the permit scheme. Those are essentially the arguments which Mr Fletcher has adopted and developed in the case before me.

265. On 28 July 2011, Burges Salmon wrote to Pauline Powell setting out, in great detail, its legal claims to be entitled to introduce the permit scheme, purporting to address all the legal points which had been previously raised by her, and specifically drawing her attention to Hulin v Cook.

266. Pauline Powell replied to Burges Salmon's letter on 26 August 2011 and 10 January 2012, eliciting a reply, dated 19 January 2012, from Burges Salmon again dealing with BCC's responses.

267. This correspondence -- and I mean no disrespect because it is probably the original formulation of claim and counterclaim and defence -- is now merely rehearsed in the arguments which have been deployed by counsel in front of me.

268. Essentially Burges Salmon argued that FGW was entitled to introduce the permit scheme (i) both as a private landowner and under the railway byelaws; (ii) the public had acquired, by prescription or user, no right of way over the station approach because of section 57 of the British Transport Commission Act 1949; (iii) because FGW is not a public authority or amenable to judicial review, for these purposes; and (iv) in any event, taxi drivers had no human rights to access private property to carry on their business for free. Therefore, there was no justifiable public law or human rights attack on the withdrawal of this permission.

27 January 2012 to 15 February 2012.

269. Notwithstanding this correspondence, which had been engaged in by Pauline Powell in her dialogue with Burges Salmon, on 26 January 2012, BCC informed the Bristol Branch of the NTA that they would not oppose permit implementation. This meant that, from then on, the claimants could no longer rely on BCC to represent their interests against FGW, leaving the claimants and other taxi drivers to resolve the issue with FGW direct.

294. It is at this point that the alleged compromise of the claimants' rights against FGW was made between Friday, 27 January 2012 and Monday, 30 January 2012 between Mr Bartlett for FGW and Mr Lloyd for the claimants. It was the evidence of Mr Lloyd and Ms Jones that they, in their dealings with FGW on and after 27 January 2012, were only engaged in a fact-finding mission, with a view to reporting to the general body of the Association at a meeting which had been pencilled in for Sunday, 29 January 2012.

270. In the end, that meeting was called off or cancelled because no suitable venue was available. Moreover, Mr Lloyd and Ms Jones said that their fact-finding exercise continued at the meetings which they had on Wednesday, 1 February 2012 with Mr Bartlett of FGW and with Mr Goldring and Mr Bradshaw of Cabfind and, on 9 February 2012, with Mr Bartlett.

271. Mr Lloyd was adamant that, at no stage, had he ever given any indication that the claimant would drop its objection to the permit scheme or even that he was prepared to make any commitment as to what his personal recommendation to that meeting would be. However, as he told me in evidence, Mr Lloyd's personal view was that, following the withdrawal of support by BCC on 26 January 2012, the permit scheme probably would be implemented, given the cost of litigation and the limited number of members in the claimant Association.

272. In the end, a meeting of the taxi drivers took place on 13 February 2012, at which the members were said to have voted unanimously to seek an injunction. At the end of that meeting, Mr Lloyd resigned as Chair of the claimant organisation. There had been some general dissatisfaction expressed at the AGM. The meetings of that meeting, at D4/993 recorded:

"There followed a long and heated discussion about TMS. The overwhelming view was that the committee should not have met with FGW at all and we should continue to fight FGW with or without BCC."

273. On 10 February 2012, FGW received an application from Mr Lloyd for a permit.

274. Mr Bartlett's evidence was that, on Friday, 27 January 2012, he and Mr Lloyd had two telephone conversations during which it was agreed conditionally that FGW would delay implementation of the permit scheme by one month to 1 March 2012, in exchange for the claimant Association and its members agreeing to the permit scheme. Those conversations on the Friday, the 27th, were taking place against the background of both Mr Lloyd and Mr Bartlett knowledge that there was a planned meeting for the taxi drivers due to take place on the Sunday of that weekend.

275. On Monday, 30 January 2012 Mr Lloyd telephoned Mr Bartlett to tell him that the meeting had not taken place but that he, Mr Lloyd, had had conversations during the day -- hence the lateness of the telephone call -- with key members of the claimant Association. It

must be said at this point Mr Bartlett's evidence became somewhat inconsistent. He said both that the Association had agreed to drop its objection to the permit scheme and that, at a meeting yet to take place, Mr Lloyd would recommend to the membership that its objection should be dropped.

276. Whichever version was correct -- and I prefer the second formulation -- I am satisfied that Mr Lloyd did lead Mr Bartlett to believe that the claimant Association's opposition to the scheme was or would be withdrawn, in exchange for one month's delay in the implementation of the scheme to enable drivers to buy the relevant permits.

277. Moreover, I accept the evidence of Mr Bartlett and Mr Goldring in relation to the meeting of 1 February 2012. This had proceeded on the basis that Mr Lloyd and Ms Jones were resigned to the fact that the scheme would be implemented without further objection.

278. In the end, the defence of compromise failed because there was no concluded agreement, since Mr Bartlett knew that the membership had to vote at a forthcoming meeting and, in the end, it was down to each individual taxi driver to decide whether to apply for a permit or not.

279. Even if there had been any such concluded agreement, it would be difficult to know who was bound by it and whether, in fact, the agreement was sufficiently certain to be enforceable in law.

280. Nevertheless, given the stark conflict of evidence and the strong feelings which this dispute has provoked, it is necessary for me to explain why I have preferred the evidence of Mr Bartlett and Mr Goldring. Moreover, a lot of time and money has been spent in trying to identify accurately whether the meeting with Mr Bartlett and Mr Goldring took place on 30 January 2012, as Mr Lloyd and Ms Jones had previously maintained, or, as now conceded, on 1 February 2012.

281. In turn, this has questioned the authenticity of certain documentation relied on by the claimants, and the truthfulness of certain passages in the witness statements of Mr Lloyd and Ms Jones.

Assessment of witnesses

282. Mr Bartlett struck me as a confident, honest and reliable witness. The accuracy of his recollection was undoubtedly impaired by the fact that he had made no notes of the telephone conversations which he had on 27 and 30 January 2012 or of the meetings on 1 and 9 February 2012. Nevertheless, unless Mr Bartlett was deliberately setting a false trail -- an idea which I unreservedly reject -- his genuine state of mind can be deduced from other contemporary documentation in the case, starting with a voicemail message which Mr Bartlett left at 15.29 hours on 27 January 2012 for his solicitor at Burges Salmon, Mr Tucker.

283. That voicemail was as follows:

"Hi Ian it's Kevin, Kevin Bartlett from First Great Western. Just a quick courtesy call really late on Friday and I will follow it up with just a quick email with you on that one.

"We just literally got out of some discussions with the NTA who have now acknowledged our rights to seek to apply permit fees there in terms of the railway land, the station approach and forecourt.

"They are going to be recommending to the trade on Sunday that they pay the permit fees and stuff and as a result of that they are looking for a stay of implementation date up until the 1st of March. We have agreed in principle to that subject to the finally confirmation that the trade will pay the permit fees and agreement of a press statement that hopefully we will get out on Monday.

"So just wanted to say thanks for all your efforts and stuff. Still a little bit of a way to go to get that Monday agreement piece and stuff but we are going to probably release on Monday and stand down the piece on Wednesday.

"No doubt with all the effort there that everybody has put in it has been instrumental to at least allowing us to get to this point so again thank you. No doubt speak again Monday just to confirm 100 per cent that touch wood I think we have got the result we wanted to in the best way.

"Have a great weekend. Catch up with you on Monday. Thanks very much goodbye."

284. That was the voicemail received at Burges Salmon. That was sent at 15.29 hours on Friday, 27 January 2012.

285. There are other documents which were sent, which are contemporary to the conversation which took place on the Friday, 27 January, which clearly evidence a state of mind, possessed by Mr Bartlett, that he thought he had got a conditional agreement.

286. At D4/933, at the same time, 15.29, is a letter or e-mail from Tracy McMurtrie, Head of Client Services at Cabfind Limited. She is reporting on a conversation which she had had with Mr Bartlett in the following terms:

"All,

"Kevin has advised that the National Taxi Association are in looking to discuss an agreement to buy permits now, as they have had confirmation that the land belongs to FGW. The NTA are meeting on Sunday to discuss and we will have a further update on Monday.

"It looks like the operation will be called off next week and the agreements may be:

"Permits live on 1st March 2012 but all applications and payments be received by 10th February 2012 to allow us time to process.

"Kevin has asked me to pass on thanks for all the work and dedication that has gone into this project."

287. At D4/936 on the Friday, at 1600 hours, is another e-mail from Kevin Bartlett headed, "BTM Taxi Permit Update", to a number of members of staff:

288. *"Dear all.*

"Following agreement today with the Bristol National Taxi Association (NTA) the go-live date for the introduction of taxi permits at BTM station will be postponed until 1 March 2012.

"On Sunday The NTA will be holding a meeting with the drivers. The meeting will acknowledge FGW's rights to the station (including Station Approach) and therefore our right as private landowners to apply a permit fee for taxis seeking to ply for hire. Whilst the meeting will no doubt be heated it is strongly expected drivers will agree to the NTA's recommendation to accept the permit introduction. Subject to this agreement the implementation date will be postponed until 1 March 2012..."

289. At CCB/101, at 16.28 on Friday, 27 January 2012, is an email Kevin Bartlett wrote to Dan Panes. This is now to do with press releases:

"Dear Dan/John.

"Following a provisional agreement with NTA to delay the introduction of permits at BTM suggest the following points to be used in a press release on Monday.

"Following acknowledgement by the NTA of FGW landowner rights under the Railway Byelaws we have agreed with FGW to delay the introduction of taxi permits at Temple Meads Station until 1 March 2012."

290. He was there sketching out what might have been going into a press release if everything had proceeded on the Sunday, as he had understood it would on the Friday evening.

291. All those communications, therefore, were on Friday, 27 January 2012. Whilst the emphasis shifts from document to document, the simple gist of what Mr Bartlett thought was going on is clear.

292. I turn now to Monday, 30 January 2012. Again, contemporaneous documents are quite important. At D4/945 is an e-mail from Mr Bartlett, timed at 13.39 hours, to Mr Lloyd:

"Further to our conversation on Friday 27 January 2012.

"I wonder if you are able to confirm that following the meeting on Sunday with your members that you now have acceptance in principle for the need for taxi permits in order to ply for hire at Temple Meads Station from 1 February 2012.

"Whilst we are content to delay the introduction of permits until 1 March 2012 this is conditional upon acceptance of your recommendation that those drivers who wish to ply for hire at the station will need to apply for permits in February and ideally by 10 February 2012 to ensure the processing of applications in time.

"It would be appreciated if you could confirm by 1700 hours today that the principle was agreed with the drivers. If I do not hear from you by 1800 hours today I take it that you are unable to provide that assurance and we will contact drivers with a revised plan for permit introduction.

"We have arranged a next meeting on Wednesday 1 February, however, please feel free to call me if there is anything you would like to discuss with me ahead of that meeting."

293. At D4/947 is the e-mail written by Mr Bartlett to Mr Lloyd after a telephone conversation which Mr Bartlett had with Mr Lloyd on Monday, 30th. The e-mail is timed, on 30, January 2012 at 17.43 hours:

294. *"Hi Tim.*

"Many thanks for the call confirming your recommendation to taxi drivers of the agreement to the FGW permit scheme. I am happy to confirm the postponement of any enforcement until 1 March 2012.

"I am pleased we have agreed a way forward and one I genuinely believe will benefit both our customers and the taxi drivers in the medium term.

"I attach some draft words for a joint press release (see below). Please feel free to amend as you feel and pass back to me. It would be good to get this issued as early as possible tomorrow so that all interested people can see that together we have reached agreement. If it helps to talk through any of the draft please feel free to call me.

"In the meantime I look forward to meeting you on Wednesday at Temple Meads Station at 1200."

295. There then followed the proposed text of a suggested press release, which was never issued, because neither Mr Lloyd nor the claimants ever returned any approved press release.

296. Mr Lloyd accepted, or did not dispute, that he received that e-mail, in the sense that it came into his inbox. His evidence is that he does not accept that he ever read it.

297. At this point it is important to know that that e-mail was sent out at 17.43. Five minutes later, at 17.48 hours, Mr Lloyd himself was writing an e-mail to Mr Kent, a councillor of BCC, and, therefore, must have been on line writing that e-mail. He was responding to an e-mail that Mr Kent had sent to him on Monday, 30 January at 16.24 hours, stating that he had heard that FGW was postponing the implementation of the permit scheme until 1 March. He also complained about some scurrilous comments that had been appearing on a web page adverse to BCC.

298. It is interesting to observe that, in his e-mail to Mr Lloyd, Mr Kent had offered to assist in discussing the details of the permit scheme with Mr Bartlett and to mediate between the parties. In his reply to him, at 5.48 pm, Mr Lloyd apologised for the scurrilous comments but explained that "feelings were running high" and the "trade was feeling beaten up again". The important point is not so much the content of the e-mail, but that Mr Lloyd was on line within five minutes of Mr Bartlett's sending him the e-mail set out above.

299. As I said, Mr Lloyd did not dispute that he had received that e-mail from Mr Bartlett, but did not accept that he had ever read it. I find that odd because of that five minute gap between it being sent and Mr Lloyd himself being on line writing his e-mail to Mr Kent.

300. I am afraid I do not accept Mr Lloyd's evidence that he did not read that e-mail. The title of the e-mail which was sent by Mr Bartlett to him was, "Implementation of FGW Taxi Permits at Temple Meads". If Mr Lloyd had read that e-mail sent at 17.43 on Monday, 30 January 2012, as I am satisfied he did, he would immediately have disputed its content with Mr Bartlett unless, of course, the contents were true. It was Mr Lloyd's evidence that his recommendation to the membership was never something which he would discuss or even trade with Mr Bartlett, yet the first line of Mr Bartlett's e-mail recorded that he had confirmed that he would recommend the permit agreement to taxi drivers.

301. I find that Mr Lloyd, on the balance of probabilities, did receive and read this e-mail. He did not dispute or contradict its content because, I am satisfied, it had accurately confirmed his telephone conversation with Mr Bartlett. This e-mail, written by Mr Bartlett so shortly after the relevant telephone conversation, does not speak in terms of a concluded

agreement but merely that he, Mr Bartlett, had secured Mr Lloyd's recommendation to the taxi drivers at a meeting yet to take place.

302. On 1 February 2012, FGW unilaterally released to BBC News an article that the claimant had dropped its opposition to the scheme. A brief narrative in the following terms was placed on the BBC News Bristol website:

"Taxi permit scheme at Bristol Temple Meads is postponed.

"A scheme designed to cut congestion at the taxi rank at Bristol Temple Meads railway station has been postponed to allow drivers more time to sign up.

"The permit system by First Great Western (FGW) means taxi drivers will have to pay £375 per year to use the railway station as a base.

"The National Taxi Association (NTA) in Bristol objected but dropped its opposition after taking legal advice.

"Now the dispute has been resolved, FGW has postponed the scheme until 1 March.

"FGW, which owns the land at the front of the station, said the scheme would ease congestion, and that charging for permits was normal at other stations.

"Part of the money raised from the permits will be used to improve the access and exit points on to the A4 from Station Approach."

303. The following day, 2 February, that same article appeared on the website of the National Taxi Association.

304. In my judgment, this material clearly showed that it was Mr Bartlett's genuine belief that the claimants' opposition to the introduction of the permit scheme had all but disappeared. Mr Bartlett is plainly a professional and intelligent man. I reject Mr Lloyd's suggestion that Mr Bartlett only heard what he wanted to hear or had misunderstood what he had been told by Mr Lloyd.

305. Whilst I fully accept that the successful introduction of a permit scheme was a matter of great importance to Mr Bartlett, since it was his job to get it through, it is, in my view, highly improbable that his enthusiasm for his own scheme caused him to get everything so fundamentally wrong in his recording of the conversations he had had with Mr Tim Lloyd.

306. From his own personal point of view, Mr Lloyd considered that the scheme would go through in any event. He was the Chair of the claimant Association. Yet, his evidence was that he had given no indication at all of any recommendation that he might make on 27 January 2012, nor that he had made any conditional agreement on that date, even though that conversation took place against a background of BCC having withdrawn its support on the previous day and an anticipated meeting of members on Sunday, 29 January 2012.

307. In his witness statement, Mr Lloyd's evidence had initially been that there had been no telephone conversation with Mr Bartlett on Monday, 30 January. Yet, he accepted in his evidence that he had had telephone conversations with Mr Bartlett on that date.

308. Again, he alleged that, on 30 January 2012, he gave no indication to Mr Bartlett that he would recommend acceptance of the scheme. He also confirmed that he had not conducted any straw poll or taken any soundings of members between 27 and 30 January before his call. However, Mr Bartlett's evidence was that the reason for the delay in making

the call on Monday, 30 January was because he had had to speak to a number of key members in the Association to get a consensus.

309. It was suggested that the reason why Mr Lloyd and Ms Jones had originally stated in their witness statements that the meeting with Mr Bartlett had taken place on 30 January was to show that Mr Bartlett could not have had any telephone conversation on that day with Mr Lloyd, so that there never could have been any compromise agreed by telephone.

310. I reject that conspiracy theory. The error in that evidence really came from the fact that Mr Lloyd had taken the date of the meeting from Ms Jones, and Ms Jones had wrongly inserted the date at the top date in the diary, Monday, 30 January, as opposed to the bottom of the page, Wednesday, 1 February.

311. Although I reject the conspiracy theory, I am not convinced that the diary entries made by Ms Jones were contemporary. This explains why the error over the date of the meeting was made. At least one entry related to what Mr Lloyd, not Ms Jones, had done.

312. For example, the entry for 27 January reads:

"Tim Lloyd contacted FGW to arrange meeting. Agreed delay of start date from 1 February to 1 March as nothing heard from Tim Kent."

313. That is merely a recording of what she had been told rather than a personal observation made by Ms Jones but of what she had been told.

314. So the diary is, to a certain extent, an aide memoire of significant or landmark dates.

315. That entry for Friday, 27 January in the diary is also interesting because the earliest that the deferment of the implementation of the scheme to 1 March 2012 could have been agreed was at 15.29 on 27 January. Yet, when on Monday, 30 January 2012 at 4.24 pm Mr Kent e-mailed Mr Lloyd, Mr Lloyd replied at 5.48 pm saying:

"We appreciate your offer of assistance with FGW and will call you if needed."

316. This is hardly supportive of the diary entry that the introduction of the scheme had been delayed a month because nothing had been heard from Mr Kent, because when Mr Kent did offer help it was not immediately accepted.

317. As far as the meeting of 1 February 2012 is concerned, the account of Mr Goldring and Mr Bartlett is far more consistent with Mr Bartlett's account of what had happened on 30 January 2012 than a mere silent fact-finding exercise conducted by Ms Jones and Mr Lloyd. The prevailing atmosphere at the meeting was one of resignation to the introduction of the scheme.

318. For those reasons, where the evidence of Mr Bartlett and Mr Goldring conflicts with the evidence of plaintiff Lloyd and Ms Jones, I prefer the evidence of Mr Bartlett and Mr Goldring.

319. In the end, however, nothing turns on that conflict of evidence, since no successful defence of compromise has been established.

320. I merely add, for the sake of completeness, that there had been an NTA meeting on 1 February 2012 (wrongly minuted at page 979 as 31 January 2012), at which reference was made to the earlier meeting which had taken place on 1 February 2012.

321. On 3 February 2012, a meeting took place of the Hackney Carriage and Private Hire Forum, attended by representatives of BCC and the taxi trade. It is interesting because of the comments ascribed to Mr Lloyd at 987:

"Nick Carter provided an update on the issue of permits at Temple Meads Railway Station. TL raised that because of additional cost of permits trade would seek a supplemental on tariff for every job coming out of Temple Meads."

322. This reads to me as if the permit scheme was already a fait accompli, and now the important issue was how the cost of the permit could be met by taxi drivers through an increase by BCC in the tariff for passengers taking a taxi at Temple Meads Station.

323. On 5 February 2012, Mr Bartlett wrote an amicable e-mail to Mr Lloyd and Ms Jones referring to their meeting on 1 February 2012, at page 1000, which contained no hint of any obstruction or any resistance to the implementation of the permit scheme.

324. A further meeting took place between Mr Lloyd, Ms Jones and Mr Bartlett on 9 February 2012.

325. The AGM of the taxi drivers finally took place on 13 February 2012.

BCC letter 22 February to 1 March 2012

326. As I have already indicated, on 22 February 2012, Mr Jonathan Martin, the Regulatory Compliance Unit Manager at BCC, wrote to Ms Jones indicating that BCC was not able to prevent FGW from reviewing the basis on which FGW permitted access to their land, which was essentially a matter between FGW and the affected drivers.

327. The permit scheme came into effect on 1 March 2012 and was policed initially by Cabfind and, latterly, by G4S. A substantial part of the time spent on site by Cabfind and G4S was really policing taxis to see whether they had the relevant permits. However, I am also satisfied that those organisations were genuinely policing taxi driver behaviour and taxi drivers' compliance with the relevant rules and regulations.

328. Again, this was not mere window dressing, although I accept that there was a much greater presence by these organisations at the initial stages of the introduction of the scheme than later on. The various records kept by those organisations and what they were doing indicate that they were doing more than merely checking whether the drivers had the necessary permits.

Issue of proceedings and injunction hearing

329. As a result of the instructions given by the members at the AGM, the High Court proceedings were issued. An application for a without notice injunction by the claimants was refused. At the inter parties hearing, the application was compromised by the undertakings pending trial, to which I have referred above.

330. Finally, at a meeting of the Hackney Carriage and Private Hire Forum on Friday, 11 May 2012, attended by representatives of BCC and the trade, Mr Carter, at D4/1080, referred to the fact that Hulin v Cook really had dealt with the legal position.

Status of Station Approach: private land or highway dedicated under section 31 of the Highways Act 1980

331. Pauline Powell of BCC's legal department had originally raised the question of whether the station approach road was a public highway, but then conceded that it could not have become so by virtue of prescription or user by the public over many years, because of section 57 of the British Transport Commission Act 1949.

332. However, Mr Fletcher has resurrected the argument, relying on the use of the public, both on foot and with vehicles, for 20 years between 1974 and 1994 by virtue of section 31 of the Highways Act 1980, which replaced the earlier Acts of 1932 and 1959.

333. BTM is not shown on the list of highways maintainable by BCC at public expense kept under the Highways Act 1980. Nor is BTM shown on the Definitive Map kept under the Wildlife and Countryside Act 1981.

334. In short, no official document records any public right of way over BTM, whether on foot or with a vehicle.

335. The starting point for this argument is, of course, 1974. At this time, at least up until April 1974, taxi drivers paid for the privilege of plying for hire from BTM. Their usage was, therefore, with the express permission of the freehold owner whom they paid for the privilege of access.

336. Between 1974 and 4 November 2011, I am satisfied that taxi drivers continued to use BTM with the permission of the railway owner, granted initially in that April 1974 document and not withdrawn until the letters to BCC and to the taxi drivers on 4 November 2011.

337. I have already held that this permission was not spent, when British Rail consented to the amendment to taxi Byelaw 16, effective 6 December 1974, to include the taxi stands at BTM.

338. Indeed, in its letter, dated 19 September 1985, to the principal solicitor at BCC, British Rail said that although the public had unfettered access to BTM for the purpose of railway business, *"it is not a public highway"*.

339. The end point is 1 May 2006, because of section 67 of the Natural Environment and Rural Communities Act 2006. Of course, the claimants' case is that BTM became a public vehicular highway long before the commencement of the 2006 Act. However, under the Act all existing public vehicular rights of way not shown on the Definitive Map or Statement were extinguished, unless one of the exceptions was established. The exemption relied on here is that set out in section 67(2)(a) of the 2006 Act, namely that:

"It is over a way whose main lawful use by the public during that period of five years ending with the commencement was use for mechanically propelled vehicles."

340. However, since it must have been a public highway before 2 May 2006 it must have been such no later than 1 May 2006. Yet, FGW only took over the franchise at BTM on 1 April 2006, and its lease of the premises began on 1 October 2009.

341. The claimants' case is based on section 31 of the Highways Act 1980.

"31. Dedication of way as highway presumed after public use for 20 years.

"(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway

unless there is sufficient evidence that there was no intention during that period to dedicate it.

"(1A) Subsection (1)-

"(a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

"(b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.

"(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

"(3) Where the owner of the land over which any such way as aforesaid passes-

"(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

"(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

"The notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

"(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so, however, that no injury is done thereby to the business or occupation of the tenant.

"(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.

"(6) An owner of land may at any time deposit with the appropriate council-

"(a) a map of the land on a scale of not less than 6 inches to 1 mile, and

"(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

"And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time-

"(i) within ten years from the date of the deposit, or

"(ii) within ten years from the date on which any previous declaration was last lodged under this section.

"To the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgment of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

"(7) For the purposes of the foregoing provisions of this section 'owner', in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above 'the appropriate council' means the council of the county, metropolitan district or London borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the way or land is situated in the City, the Common Council.

"(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

"(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

"(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.

"(9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.

"(10) Nothing in this section or section 32 below affects section 56(1) of the Wildlife and Countryside Act 1981 (which provides that a definitive map and statement are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement)...

"(10A) Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way.

"(11) For the purposes of this section 'land' includes land covered with water.

"(12) For the purposes of subsection (1A) 'mechanically propelled vehicle' does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle)."

342. The evidence in support of public use on foot or by vehicles as of right, as opposed to by taxi drivers, is very limited. The evidence suggests that the use of the approach road by

pedestrians or by vehicles was for railway purposes. Of course, there can be no dedication to the public as a highway by an owner who has given permission to the public to use the way.

343. In my judgment, all those who have accessed to BTM on foot or with vehicles have done so with the permission of the relevant owner, who has invited them on to the premises for railway purposes. Such users are using the approach to the station not as of right, but with permission. The supplementary witness statements of Mr Lloyd and Ms Jones dealing with this stated that such use was largely for depositing or collecting passengers or for accessing the parking areas.

344. In my view, taxi drivers specifically have used BTM with permission granted under the 1974 agreement until 4 November 2011. Those accessing the station on foot or with ordinary vehicles have done so either to visit the railway premises or to use the paid parking spaces within the concourse. The payment of a parking fee negates any user as of right.

345. Ms Jones drew my attention to members of the public who, as pedestrians, use the side entrance or the footpath on the main approach either as a short cut or to get to the taxi rank within the station. She also mentioned that members of the public driving cars would drive on to and around the station approach road, effectively making an enlarged U-turn to avoid travelling further and negotiating a rather difficult roundabout.

346. However, such persons or users have not been witnesses in this case; and this evidence generally falls far short of what one would expect or what is required to provide 20 years user as of right, as opposed to an implied permission, even in those cases. The claim in this case for public vehicular rights on a public highway is really based on vehicular use by taxi drivers, not by others.

347. The claimant Association has sought a declaration against this defendant, FGW, that the station approach is a public highway. Neither the Highway Authority, BCC, nor the Crown, is a defendant in these proceedings and would therefore not be bound by the outcome in any event.

348. Moreover, there are difficulties lying in the path of such a claim based on section 31 of the Highways Act 1980, in that this declaration is sought against the current lessee and not against the freeholder. Although the parties have reserved the right to argue this point, should the need arise, there is some suggestion (see Halsbury's Laws, volume 55, 2012, paragraph 117 and Sauvain's Highway Law, 3rd edition, paragraphs 2-32 and 2-33) to the effect that the lessee cannot dedicate a highway so as to bind the owner of the freehold reversion in the absence of consent, actual or inferred, of the owner and the freehold. This aspect of the case, namely the state of mind of the owner of the freehold, has not been examined in any great detail in any of the evidence.

Contrary intention to dedicate established or not?

349. Even if the claimants had been able to prove 20 years user by the public as of right, the presumed designation as the highway can be rebutted if there is sufficient evidence to establish that there was no intention during the relevant period to dedicate it.

350. In my judgment, a contrary intention has been established by the following:

351. (1) Up to 1976, there was a notice or plaque which stated 'Private Road No Thoroughfare'. Somebody removed that notice in 1976. This is based on the evidence of one of the claimants' witnesses, Mr Lines.

352. (2) In 1985 and 1991, British Rail was asserting that BTM was not a highway to BCC and was asserting private rights.

353. (3) Works were carried out to the station forecourt in July 1992, and the approach road was closed with the traffic diverted on to a parallel road. This is not perhaps the strongest of points. Mr Fletcher has drawn my attention to authorities (eg Fernlee Estates v City and County of Swansea and NAW [2001] EWHC 360 (Admin.) and Jones v Bates [1938] 2 All ER 237), which would suggest that that may not be sufficient. Nevertheless, there is no evidence that that closure was taking place under some notification under the Highways Act closing an existing public way. It is more consistent with a private landowner closing its own land and creating a diversion, because, after all, it was essential that traffic could get to the front of Bristol Temple Meads Railway Station. In reaching this conclusion, I have not overlooked the webpage document which Mr Fletcher handed to me, dated 23/8/2012, cfrom the web archive at the National Archives.

354. (4) The thrust of the evidence of John Pengelly of Network Rail. This evidence was effectively unchallenged, albeit it was subject to the criticism that it was largely expressions of opinion. It gave many reasons why it would be quite contrary to policy for any public right to be dedicated.

355. (5) Section 57 of the British Transport Commission Act 1949 demonstrated a contrary intention. I shall return to this.

356. In summary, I am satisfied that there has not been 20 years user as of right by the public for the purposes of section 31 of the Highways Act 1980. Even if such user had been established, I am satisfied that there was no intention by the owner to dedicate it to the public as a highway.

357. In the light of this finding, there was no public right of way in existence over the station before the commencement of the 2006 Act. It is therefore not necessary for me to consider whether the exception to the extinction of a public vehicular highway has been made out under the 2006 Act, because there was no antecedent public way.

Section 57 of the Transport Commission Act 1949

358. I have thus far dealt with the issue of the alleged existence of a public vehicular right on conventional principles. I now turn to a very important statutory provision, section 57 of the Transport Commission Act 1949.

"57. As from the passing of this Act no right of way as against the Commission shall be acquired by prescription or user over any road footpath thoroughfare or place now or hereafter the property of the Commission and forming an access or approach to any station goods-yard wharf garage or depot or any dock or harbour premises of the Commission."

359. This Act is both a public and local act. It is not a private Act (see section 3 of the Interpretation Act 1978). The observation in Freedman by Hoffmann J (as he then was), that the Act was a private one, must have been per incuriam. The relevant authorities had not been cited to him.

360. Section 57 of the 1949 Act is still in force, and through a combination of Transport Act 1962 and the Railways Act 1993 (Consequential Modifications) (No. 2) Order 1999. The references to the Transport Commission in the original statute are to be read as referring

initially to the British Railways Board and thereafter to any Train Operating Company, including FGW.

361. Mr Fletcher abandoned his contention that the 1949 Act was impliedly repealed by the Highways Act 1959. However, he argued that the 1949 Act did not apply where dedication was not incompatible with the statutory functions of the railway operator. He asked rhetorically: how could dedication in this case be incompatible when what was being dedicated was a public right to approach the railway itself? Such a right, he argued, must be highly compatible with the railway's functions, because people have to get to the station in the first place.

362. Mr Fletcher also argued that section 57 should be given a narrow construction and should be confined to private rights of way, not public ones. However, the draftsman plainly had in mind the difference between public and private rights of way. In section 28 of the same Act of 1949, he actually referred to private rights of way. Moreover, section 57, if it were confined to private rights of way would require a dominant tenement, for a private right of way, an easement, requires both a dominant tenement and a servient tenement. That requirement seems inconsistent with the content of section 57 which prevented the acquisition of any right over land forming an access or approach to any station. In my judgment, that speaks far more of a public right to get to the station than it does a private one.

363. In conclusion, I am of the view that section 57 of the 1949 Act is apt to cover both public and private rights of way. It is a freestanding section unaffected by section 31(8) of the Highways Act 1980 or by Westmorland [1958] AC 126 relied upon by Mr Fletcher which, in my judgment, has no application to the current situation.

Railway Byelaws and their interpretation

364. As a result of a change in the railway byelaws, the question has arisen whether there was any prohibition thereunder on taxis plying for hire within BTM.

365. In the original railway byelaws, promulgated by British Railways Board, Byelaw 22 was in the following terms:

"Noise, disturbance, sale of goods, touting, et cetera".

22(1):

"No person, while upon the railway shall, to the annoyance of any other person, sing, perform on any musical or other instrument or use any gramophone, record player, tape recorder or portable wireless apparatus.

"(2) No person while upon the railway, shall, except by permission of an authorised person:

"(a) display or exhibit any printed, written or pictorial matter or any article for the purpose of advertising or publicity, or distribute any book, leaflet or other printed matter or any sample or other article; or

"(b) sell or expose or offer for sale any article or goods whatsoever; or.

"(c) tout, ply for, or solicit alms, reward or custom or employment of any description."

366. Those byelaws were made on 6 August 1965 and came into operation on 1 September 1965. They were subsequently amended on 16 August 1980, 30 August 1981 and 1 August 1986. They were, it seems to me, the relevant byelaws in force until the new byelaws were made by the Strategic Rail Authority in 2005. These are the current byelaws.

367. It is apparent, when one looks and holds side by side the 2005 byelaws made by the Strategic Rail Authority and the old byelaws made by British Rail, that they do seek to cover the same material, because the mischief and the conduct which one would want to regulate is the same, of course, notwithstanding the passage of time.

368. It is clear that the essential content of the old byelaws has been recast and modernised. This is not simply a case of old byelaws between the same parties, that is the organisation and the public, being amended. Whilst the same topics have been revisited in the new byelaws, they have been expressed in more modern language. The byelaws have been entirely reorganised to reflect a more modern and user-friendly approach.

369. I read, therefore, the equivalent of the old byelaws 22, which is now contained in Byelaw 7:

"Music, sound, advertising and carrying on a trade

"(1) Except with written permission from an Operator no person on the railway shall, to the annoyance of any person:

"(i) sing; or

"(ii) use any instrument, article or equipment for the production or reproduction of sound."

370. Gone, therefore, are references to gramophones and the language of a technology long since disappeared.

"(2) Except with written permission from an Operator no person on a railway shall:

"(i) display anything for the purpose of advertising or publicity, or distribute anything;"

371. Gone are phrases such as "pictorial matter" in this modern byelaw.

"(ii) sell, expose or offer anything for sale;"

372. Again, that has been tidied up and modernised.

"(iii) tout for, or solicit money, reward, custom or employment of any kind".

373. I shall read, again, the old 22(2)(c):

"tout, ply for, or solicit alms, reward or custom or employment of any description."

374. The modern version is:

"tout for, or solicit money, reward, custom or employment of any kind".

375. Specifically, the words "ply for" have been removed from the modern byelaw; but also the word "alms" has been replaced by the word "money"; the word "description" replaced by the word "kind".

376. Mr Fletcher has therefore argued that control over taxis plying for hire has now been removed from the byelaws and, with that removal, any right by FGW to introduce a permit scheme based upon the powers within that byelaw, which formerly contained the words "ply for".

377. I was initially attracted to Mr Fletcher's argument of construction. But, these are new byelaws created by a new authority. Although based on the former British Rail Byelaws, they have obviously been refreshed and -- if I may use the vernacular -- revamped.

378. Comparisons with former byelaws are therefore of limited value, when a modernisation process has taken place. In my view, the removal of the words "ply for", just as the substitution of the word "money" for alms", is part of this modernisation, rather than a change of intention or meaning.

379. In my judgment, a taxi standing or plying for hire at BTM is still soliciting custom within the meaning of the Railway Byelaws 2005, despite the removal of the phrase "plying for hire". This a taxi driver cannot do at BTM without the consent of FGW.

380. Bugbugs [2003] EWHC 2865 (Admin) and the 1994 Act, with its need for a specific exclusion from the definition of soliciting of the display of a 'For Hire' sign, support this conclusion.

381. In any event, I am satisfied that the same result could have been achieved in the modern byelaws under the section headed, "Control of Premises" by Byelaws 13 and 14:

382. *"Unauthorised access and loitering*

"(1) No person shall enter or remain on any part of the railway where there is a notice:

"(i) prohibiting access; or

"(ii) indicating that it is reserved or provided for a specified category of person only, except where he belongs to that specified category."

"Traffic signs, causing obstructions and parking".

(1) No person in charge of any motor vehicle ...shall use it on any part of the railway in contravention of any traffic sign.

(2) No person in charge of any motor vehicle ...shall leave or place it on any part of the railway ... (ii) otherwise than in accordance with any instruction issued by or on behalf of an Operator or an authorised person.

383. Those byelaws would also cover the situation, in my judgment, In the end, I have not accepted Mr Fletcher's attractive argument based upon the textual analysis. It seems to me that to do so would be to ignore what had happened in 2005.

384. Words were changed, even though the basic structure and the subjects covered were the same. "Ply for" was no doubt correctly considered by the draftsman to be adequately covered within words of "touting" and "soliciting".

Why was the permit scheme introduced?

385. There were mixed motives for doing so. The dominant motive was to generate money, much of which was to fund an effective private policing system and the remodelling of BTM to provide a more efficient taxi service. The motives were mixed, but there was no sham. Income was necessary to improve the efficiency of traffic circulation, the increased flow of taxi traffic and, therefore, the income of taxi drivers.

Under what right or power was the permit scheme introduced or permission revoked?

386. In my judgment, it was introduced by FGW as landowner. This is the major thrust of what FGW argued to BCC and to the claimants, albeit backed up by the byelaws. Independently of the private rights as landowner, I am satisfied that the byelaws too, given my construction of them, also conferred power on FGW to restrict taxis soliciting custom without proper authorisation.

Ulterior motive or improper purpose

387. Mr Fletcher's argument here is that, since plying for hire was no longer prohibited by the Railway Byelaws 2005, the scheme was ultra vires. I reject this argument for two reasons. First, as landowner, FGW was entitled to impose conditions of entry on all those taxi drivers who sought to gain access to trade from FGW land. Secondly, as I have indicated, on a proper construction of the byelaws, there was no logical reason to exclude taxis and private hire vehicles from byelaw control at BTM. Why should the taxi trade be exempt from railway byelaw control? Is the answer because it is regulated by taxi byelaws? No. The taxi byelaws are only one dimension of the need for FGW, as a railway operator, to manage and control its land and the activities, commercial or otherwise, conducted there.

388. If the objection be that the byelaws are being used to raise revenue, not the purpose of the power granted by the byelaw, the answer is: why not? No one questions the power of the railway operator to charge WH Smith or other traders for the privilege of trading from railway premises for profit. In Hulin, it was not suggested that the permit scheme was ultra vires.

389. However, even if there were some limitation imposed on what FGW could introduce as a permit scheme under the byelaws, which I reject on the facts of this case, it had an unqualified right to do so as landowner.

Is the permit scheme invalid?

390. In my judgment, no. Even if the byelaws did not permit its introduction, and even if FGW had wrongly invoked byelaw powers, its position as private landowner, with power to control those who came on to its land, justified and rendered lawful the permit scheme. No possible prejudice was suffered by the claimants thereby, and the outcome would not have been different in any respect. The permit scheme would have been introduced, as FGW was resolved to introduce it from late 2010 onwards.

Human Rights Act

391. If the taxi drivers had accessed BTM to ply for hire before 1 March 2012 only with the permission of FGW, and not as of right under the taxi byelaws or as a public highway, then the claimants' case is that the withdrawal of this permission by FGW, a public authority for this function, violated the property rights of the taxi drivers under Article 1 of Protocol 1

of the European Convention of Human Rights and Fundamental Freedoms and the Human Rights Act 1998 in an unjustifiable way.

392. The Human Rights Act had also separately been advanced on the additional basis that FGW had no right to revoke permission and introduce the permit scheme and so had acted unlawfully. I have, of course, already rejected the premise of that aspect of that human rights claim for damages.

393. The current argument, still advanced by Mr Fletcher, is that the mere withdrawal of permission violated the human rights of taxi drivers. That, in turn, raised four subsidiary questions.

- (1) Is FGW a public authority, when controlling access by taxi drivers to its own land?
- (2) Is the permission to ply for hire at BTM free of charge a possession within the meaning of Article 1?
- (3) Has FGW interfered with or deprived them of it?

If the answer to any one of those three questions is in the negative, then the human rights claim fails. If all three of those questions are answered in the affirmative, then the human rights claim will succeed if:

- (4) On a fair balance, FGW cannot establish that the withdrawal of permission was justified and proportionate.

Is FGW a public authority, for the purposes of the Human Rights Act, when exercising its function of managing and controlling which taxi drivers can access its land or access to its land generally?

394. Mr Fletcher submitted that FGW was a public authority for these purposes because it was invoking its byelaw powers to introduce and enforce the permit scheme.

395. Mr Paton rejected this analysis, arguing that the byelaws were merely grafted on to the bedrock of rights and powers which FGW had as property owner, and that, in introducing the permit scheme, FGW was not acting as a public authority, but merely as a landowner regulating who, and on what terms, could access its land.

396. On this issue, I prefer Mr Paton's submissions (see paragraphs 51 to 56 of his skeleton, (set out in part below) to those of Mr Fletcher (see paragraph 5.3 on page 18 to 20 of Mr Fletcher's skeleton).

397. In my view, Mr Paton's submissions are much more consistent with the authorities. I do not propose to dwell, at great length, in a recitation of what those submissions are, but I must at least highlight what are the stepping stones. The stepping stones start with R v Great Western Trains Co, Ltd, ex parte Frederick, (QBD, Popplewell J, 19 May 1997), where it was held that a decision by Great Western Trains Company Limited, in relation to control of taxis and giving the contract to do so to one particular company, was merely ancillary to the provision of railway services and was not part of its body function and was not statutorily underpinned and contained no sufficient public law element to be amenable to judicial review.

398. While that case was considering the public/private distinction for the purposes of judicial review, a line of cases has set out clearer guidelines for this principle of what is or when is an organisation acting as a public authority,

"52. While that case [ex parte Frederick] was considering the public/private distinction for the purposes of judicial review, this is a similar (although not quite the same) issue as what constitutes a 'public authority' under section 6 HRA 1998. The latter issue has been carefully considered by the higher courts in recent years: see *YL v. Birmingham City Council* [2007] UKHL 27, *Aston Cantlow PCC v. Wallbank* [2004] 1 AC 546 and *R.v London and Quadrant Housing Trust, ex. p. Weaver* [2009] EWCA Civ 587 for a review and restatement of the tests applied on this point.

"53. Applying the factors and tests from those cases, any claim that the Defendant is carrying out a 'public function' when controlling access to its land at the station approach must fail. The Defendant is a private company limited by shares, and lessee of that land. Whatever arguments one might make about the running of trains and similar core functions of the railway industry being of a public nature, and therefore the Defendant being a 'hybrid' body with some 'public functions'; (but cf. the *Railtrack* case below), the control of vehicular access to private land consisting of a station approach is par excellence a private act and private aspect of the Defendant's operations.

399. Section 6(3) Human Rights Act 1988 states:

"(3) In this section 'public authority' includes-

"(a) a court or tribunal, and

"(b) any person certain of whose functions are functions of a public nature" ...

"(5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private."

400. So, one can be, for different purposes, both a public authority and not a public authority under the Human Rights Act legislation.

401. In my judgment, applying the factors and tests from those cases set out in Mr Paton's skeleton argument, it seems to me that any claim that the defendant is carrying out a public function, when controlling access to its land at the station approach, must fail.

402. The defendant is a private company, limited by shares, and lessee of that land. Whatever arguments one might make about the running of trains and similar core functions of the railway industry being of a public nature, and therefore the defendant being a hybrid body with some public functions, the control of a vehicular access to private land, consisting of a station approach, strikes me as a private act and private aspect of the defendant's operations, notwithstanding the existence of and any reliance on the railway byelaws by FGW, because FGW is fundamentally relying on its rights as a private landowner.

403. Despite Mr Fletcher's submissions to the contrary, I am not satisfied that any of the factors and tests for public functions of private bodies set out in the case law are met here. In this case, I am satisfied that it is a matter of the private relationship between, and the respective private rights of, the two parties.

404. The claimants frame their claim in terms of the loss of their livelihood and claim damages. The defendant claims the right to control access to the land *qua* private owner. In my judgment, it is a matter of private rights and title, as in the *Aston Cantlow PCC v Wallbank* [2004] 1 AC 546 and *YL v Birmingham City Council* [2007] UKHL 27 cases; it is

far removed from any public function, such as the provision of social housing, as in R v London and Quadrant Housing Trust, ex parte Weaver [2009] EWCA Civ 587.

405. I also consider that the reasoning in ex parte Frederick applies here too. This was an ancillary and private part of the defendant's operations, as are matters of licensing other vendors at the station. Their various licence agreements are in the documentary evidence.

406. FGW is not under any statutory duty or public duty to provide taxi services. Moreover, the position was reinforced, in my judgment, by the decision of Sir Michael Turner in Cameron v Network Rail Infrastructure Limited [2006] EWHC 1133 (QBD), where he held that even the former company Railtrack plc was not a public authority for the purposes of section 6 of the Human Rights Act 1988, even in a hybrid case in relation to track safety by virtue of its status as an infrastructure controller of the national railway network at the time of the Potters Bar crash. Therefore, a Human Rights Act 1988 claim for damages was struck out on that basis. Sir Michael Turner set out a list of eight factors, at paragraph 29 of his decision, which, in his judgment, militated against Railtrack being a public authority in the relevant aspect.

407. In my view, a private railway company which withdraws a gratuitous permission to access a station approach and its taxi stands was not exercising any public function in doing so, particularly given the outcomes and reasoning of the cases to which I have referred. FGW was under no statutory or public duty to provide a taxi service to the station. What it does with its station and who it lets on to its land are private matters for it.

408. Accordingly, I answer this question in the negative. That disposes of the Human Rights Act claim.

409. Nevertheless, I now go on to deal with the other human rights arguments, in respect of all of which I again prefer the submissions of Mr Paton, set out in his skeleton argument and in his closing speech.

Is the permission to access a possession?

410. In my judgment, it is not. A bare permission or licence to be on someone else's land is the lowest of the low in English land law, providing merely protection against trespass liability for as long as the permission subsists. To categorise such permissions as possessions under Article 1, Protocol 1 would negate the property right, clearly itself a possession, of the landowner himself.

411. If a bare permission or licence over land could not be freely revoked, it is the landowner who would have suffered an interference with the enjoyment of his possession.

412. R v Waltham Forest Primary Care Trust, ex parte Malik [2007] EWCA Civ 265, approving and following the reasoning of the Divisional Court in Countryside Alliance [2007] QB 305, also makes this point clear. In Malik the claimant GP's presence on the relevant NHS performers list was not held not to be an Article 1, Protocol 1 possession. Reviewing all the English and European case law, the court held that the mere personal right to practice through being on that list and so seek future income was not a possession. This was to be contrasted with a vested right, a marketable goodwill or enforceable right to future income, or some other distinct asset, such as a milk quota, with monetary value.

413. By contrast, a personal, non-transferable and non-marketable licence with no value in itself, save for the scope it gave to earn money in the future, is, in my judgment, not an asset or possession falling within the article.

414. My attention was also drawn to R v Wirral Metropolitan Borough Council, ex parte Roydon [2003] LGR 290, where it was argued that the de-restriction of the numbers of hackney carriages was itself an interference with an Article 1, Protocol 1 right of the taxi drivers. Whilst it was recognised that a taxi licence could be a possession, the case itself was unsuccessful in that the de-restriction of the numbers in licence was not a possession.

415. Further, in R v Security Industry Authority, ex parte Nicholds [2006] EWHC 1792 (Admin.), a new statutory licence regime for door supervisors excluded people who had certain criminal convictions. It was held that doormen's pre-existing permissions to work at various premises were not Article 1, Protocol 1 possessions interfered with by the new regime. Both those cases were cited and considered in ex parte Malik.

416. In my view, the general, gratuitous, pre-2011 permission in this case falls squarely into this category, and it is in no way analogous to a valuable quasi proprietary licence such as might arise in relation to milk quota, fisheries or the sale of liquor.

417. This was a bare permission to be on land for the purpose of earning more income. That point is clear from the way in which the claimants have formulated their claim, namely the effect of this on their livelihoods. In the re-amended reply they pleaded that their "right to make a livelihood by plying for hire at the Temple Meads taxi stands" was what had been lost. In my judgment, that is really indistinguishable from the basis of an Article 1, Protocol 1 claim which was specifically rejected in Countryside Alliance (at paragraph 114), and in Malik and in Nicholds.

418. Accordingly, I answer the second question in the negative too.

Has the possession been interfered with or deprived?

419. The essence of a bare permission is that it is revocable on reasonable notice. If no point is taken, as is the case here, on the adequacy of the notice, then I fail to understand how there could be any violation where, as here, that permission has been withdrawn on what I find was reasonable notice.

The balancing exercise

420. If, however, I were wrong in all those conclusions, and if FGW were a public authority for this function, if the withdrawal of the permission was a possession and if it had been interfered with, then I would have to go on and consider the balancing exercise.

421. As I already indicated, FGW has given reasons for its introduction of the paid permit scheme at Temple Meads Station in the evidence of Mr Bartlett and in the evidence of the monitoring by Cabfind and G4S. I reject the suggestion that this is window dressing or disingenuous conduct or a pack of lies concocted to conceal the sole aim of merely deriving revenue.

422. It is true that FGW did have mixed motives, but I am satisfied that the revenue generated by the permit scheme would be substantially reinvested in improving the station forecourt layout, improving traffic flow, controlling behaviour of taxi drivers, regulating how

they use or park their vehicles whilst at BTM, to the mutual benefit of FGW, taxi drivers and their passengers.

423. These are legitimate aims connected to the defendant's business and legal obligations as occupiers of land and employer under safety law, which is also in the public interest, as is the better and more effective management and provision of taxi services at the station.

424. The suggestion that the effect of the permit scheme has been to increase queues is, in my judgment, not made out. There is conflicting evidence on it and, indeed, the matter has not been the subject of any detailed survey.

425. The scheme introduced is, in my judgment, necessary and proportionate to the aim pursued. The claimants are not being denied access to BTM. They are being asked to sign up to terms and conditions of appropriate behaviour and asked to pay, currently, some £400 for the privilege of earning up to £24,500 on that land, on the claimants' own calculations. The defendant is not simply pocketing the money. The significant costs of implementing and policing the scheme and monitoring and policing the ranks were referred to in the evidence as, indeed, have been the intentions to improve the layout, the facilities and to alleviate the congestion, all ultimately, in my judgment, to the benefit of taxi drivers, as well as others.

426. In my judgment, this strikes a fair balance between the needs of the defendant, as owner of the station, and those who wish to conduct taxi business there. No taxi driver will be arbitrarily excluded from conducting their trade there, if they are licensed, sign up to the defendant's permit scheme rules and obey them.

427. Even in times of economic austerity. Even when, as I know, Bristol taxi drivers have already been required to invest heavily in improving their taxi fleet, it is still a relatively modest price to pay for such a benefit to trade on someone else's land, by conveying passengers, brought to the door of their taxis by FGW.

428. It is a permit scheme of already widespread application regionally, if not nationally.

429. In my judgment, the permit scheme is justified and proportionate on the fair balance test, even in the knowledge that the permit fee will eventually rise to at least £700 per annum from its current rate. BTM is FGW's station with the highest footfall in the region and £600 to £700 is currently charged at FGW stations with a much smaller footfall.

Conclusions

430. The claim therefore fails on all grounds. The permit scheme is lawful and justified. It is enforceable by injunction.

431. It is therefore not necessarily for me to consider the taxi drivers' claim for compensation for the period, in respect of which those who had no permit were denied access to BTM, until the undertakings were given to the court to pay into court an equivalent fee, if they wished to trade from BTM. At the outset of the trial, the parties had agreed that the assessment of any damages would be referred to a District Judge. That will not happen as the claimants' claims are dismissed.

Post Judgment discussion

That is the end of the judgment.

I'm sorry for the length [of time] it has taken to deliver it.

MR PATON: My Lord, it is now a quarter to 4. I came prepared today to argue about the order and about costs. My learned friend may wish to say that he wishes to adjourn that to a further date. I think we're in your Lordship's hands as to --

MR FLETCHER: My Lord, before we get to the matter of costs, there is the matter of permission to appeal, my Lord, that I would like to raise. Perhaps it would be convenient if I raised that now.

JUDGE McCAHILL: Yes.

MR FLETCHER: And then, as far as costs are concerned, it seems to me that is quite a substantial matter and I'm not sure we can deal with it here and now.

JUDGE McCAHILL: I don't think we could do justice to that today --

MR FLETCHER: No.

JUDGE McCAHILL: -- when you've all been so patient.

MR FLETCHER: I don't think so, my Lord. I haven't seen a schedule of costs so I don't know exactly what is being asked for.

As far as permission to appeal is concerned, my Lord, I'm not going to reiterate the arguments that you've just so carefully considered.

JUDGE McCAHILL: No.

MR FLETCHER: But my application for permission to appeal is limited to two specific issues. First and foremost, I seek permission to appeal in relation to the question of interpretation of the legislation relating to taxi licensing and the byelaws.

JUDGE McCAHILL: Do you mean the Hulin v Cook point?

MR FLETCHER: If we, just for shorthand, call it the Hulin v Cook point. My Lord, in brief, it is a point that hasn't been considered at the Court of Appeal level. It is an important point of general importance. It is important that it be clarified for everybody, for the taxi trade, and not least for these parties. And it merits being considered, in my submission, by the Court of Appeal.

This is ancient and obscure legislation on which, so far, this is only the second ever reported case that I'm aware of. So that's the first point.

The second point on which I seek permission to appeal is the question of the interpretation of the railway byelaws and the question of ultra vires, because I would wish to take further the proposition that "ply for hire" is not the same thing as "touting" and "soliciting". And, secondly, that there has been an improper use of the railway byelaw powers to support a revenue raising scheme -- the point you have just dealt with.

So far as that second point is concerned, it does obviously have certain consequences of human rights argument. But I just keep it simple. Those are the two points on which I seek permission.

JUDGE McCAHILL: Thank you very much. Mr Paton.

MR PATON: My Lord, on the first point, it is not sufficient to say just that the point is interesting and it hasn't been to the Court of Appeal yet.

The point I draw from your Lordship's judgment is that -- well, first of, all *Hulin v Cook* was, in itself, an appellate decision and a carefully reasoned one. It isn't the case that your Lordship has said that you are following it simply because you feel bound by it or obliged to follow it. You've separately reviewed the reasoning and the principles and come to your own view.

In my submission, it would be inconsistent for your Lordship then now to say that there's a real prospect that it was wrong and you were separately wrong as well. If this had been a case where you had felt constrained to follow it, and for that reason alone you made your decision, that's one thing. But where the reasoning has been fully considered by the Divisional Court, and a very strong Divisional Court, the mere fact that a higher court hasn't dealt with it isn't sufficient to give permission at this level. My learned friend should ask the Court of Appeal if they wish to consider it themselves.

JUDGE McCAHILL: But there are two limbs to granting permission to appeal. One is real prospect of success at an appeal. The second is some other reason why the appeal should be heard. It may be said that the *Hulin v Cook* point falls as much into the reason why an appeal should be heard as it does into real prospect of success.

MR PATON: My Lord, if that were true then, unfortunately, every point of law where there was a case that had been followed and cited -- including this case by the Law Commission in their report -- if in every case the criterion was that a case hadn't been to the Court of Appeal then permission would follow virtually every week. There has to be more to it than that.

In my submission, the case is clear, always has been; and is sufficiently clear, as I say, for even the Law Commission to summarise the law in their current report with citation of that case.

So it is really for the Court of Appeal to decide whether this is sufficiently important or different to raise some question that they must consider, rather than this court just saying: well, it's an interesting point, but, in this case, one where there is a clear decision on the point and which your Lordship has independently followed and for the reasons given.

JUDGE McCAHILL: It certainly took me a long time to do it.

MR PATON: Indeed. But your Lordship has given reasons for it.

As I say, if it had simply been that you had felt constrained to follow it, that's one thing. But your Lordship has explained and given reasons why you would have reached the same view for the same historical reasons and reasons of statutory analysis. So, in my submission, your Lordship, at this level, should refuse permission to appeal on both of those limbs.

JUDGE McCAHILL: What about the two limbs of the ultra vires point?

MR PATON: My Lord, it's not clear where this would take my learned friend, because the thrust of the decision, as I understand it, is that my clients acted by a combination of powers at most. And so even if a point was taken about the reliance on the railway byelaws and the question of plying, it could still do what it did and would still have done so. That's the finding of both law and fact in this case.

So it's not clear where an appeal on the question of plying and ultra vires actually takes my learned friend. So, in my submission, an appeal on that point, while it may be of academic interest, is ultimately futile given the reasoning elsewhere; and permission should be refused on that ground as well.

JUDGE McCAHILL: There is the second string to the second point, which is ultra vires because of the infection of the exercise -- sorry, I will start again. The scheme was infected by its introduction on the back of byelaw powers which it didn't have. That's the first strand. The second is: even if it did have those powers, it was using those powers for an ulterior and improper purpose: to raise revenue not regulation or control. That's the point.

MR FLETCHER: That is correct, my Lord.

MR PATON: On both those limbs, my Lord, the practical answer is the finding of fact. Well, first of all, a finding of law that my client acted under private title in right as well. And, secondly, the finding of fact that it would have brought this scheme in regardless, even just in reliance on that one private basis.

So any argument that any statutory element of its decision making vitiates the whole thing or would give rise to a real prospect that it would reconsider and act differently is fanciful, because on the clear evidence and findings of fact it was going to implement this scheme. Whether did so on a purely private or mixed basis the result would be the same.

So a fine-combed appeal on whether byelaw 7 prohibits plying for hire takes the point no further. And there isn't sufficient prospect on the facts of the whole decision being vitiated and falling, whether by infection of the public point or -- by that public point or on the ground that some ulterior purpose within the statutory part of it infects the private side as well. Because if the private right is always there and First Greater Western can rely on that, then, in a sense, picking holes in the reasoning behind the public aspect of it doesn't take things any further so, in the end, the whole thing is futile.

JUDGE McCAHILL: Thank you.

MR FLETCHER: My Lord, strictly speaking, this is an ex parte application. Secondly, I didn't put extensive argument before you because --

JUDGE McCAHILL: It is my practice to ask and call upon, so I invited him to do so.

MR FLETCHER: Absolutely. And, my Lord, my learned friend has made his submissions. My Lord, I'm not going to repeat all the submissions I made in the main case.

As far as the Hulin v Cook point is concerned, may I just remind you of the remarks made by Lord Widgery at the conclusion of his judgment that he found this to be an extremely difficult issue. I think he said a little bit more than that.

My submission is that it is a difficult issue. It was clearly considered to be so in Hulin v Cook. This has occupied a great deal of argument here. It is not a simple or straightforward issue and it does merit being considered at a higher judicial level in order to achieve certainty as to the legal position.

But, in any case, my learned friend has conflated the two tests, as your Lordship has pointed out. And I am entitled to rely upon them in the alternative. In other words, it is a point that merits consideration from the point of view of the general law.

My Lord, so far as the ultra vires point is concerned, well, of course, you have my submissions already, as made in the course of the day, that I don't accept the proposition that because FGW could fall back upon their private landowner's rights that means that relying upon their statutory powers is a kind of irrelevance that they can just -- I say what they did -- as your Lordship has just put it, what they did was infected, first of all, by a misinterpretation of their byelaw; and, secondly, by their using it for a purpose that had nothing to do with the proper purposes of order at the railway station.

My Lord, I don't want to go any further because it would be invidious for me to repeat the submissions that you've just rejected.

JUDGE McCAHILL: Thank you very much indeed. I'm going to refuse permission to appeal in this case. That does not stop anybody asking the Court of Appeal itself to grant permission.

As far as the first point is concerned - namely the need or the desirability of a higher court, looking again at that legislation and the decision of *Hulin v Cook* -, I am not persuaded that there is any real prospect of success in that decision being [overturned]. It has stood the test of time and has been referred to by the Law Commission.

Any point of law which is interesting, of course, might be something which might be of interest to the Court of Appeal. But I do not, in this case, regard the attack on *Hulin v Cook* as having any real prospect of success. Nor, because of the nature of the legislation involved, does it represent, in my judgment, a reason why an appeal should otherwise be heard.

As far as the two strands of the ultra vires test are concerned, it seems to me that the first, namely the question of construction, I have dealt with head on, in that I have found that byelaw 7 did cover soliciting but, in any event, it was covered by byelaws 13 and 14. In any event, it seems to me, as I have indicated, that the position is wholly unaffected by any attack on the byelaws, because of the fundamental right of the landowner to do what it did. So, I regret to say I see no prospect of success on attacking the decision on the basis of ultra vires in either strand which Mr Fletcher has identified. The bottom line is that this scheme was going to be introduced if the defendant, FGW, had any right to do so. It did, as a landowner.

That's not to say that Mr Fletcher will not be able to persuade the Court of Appeal of a different view. But, it seems to me that these are classically matters where the Court of Appeal should decide whether it wants to entertain an appeal, rather than for me to give permission at this stage.

MR FLETCHER: My Lord, I'm obliged.

I think, in the usual way, we require some piece of paper from the court recording that.

JUDGE McCAHILL: Yes. It will be on the transcript, of course.

MR FLETCHER: Yes. I think there is a specific form, a particular form.

JUDGE McCAHILL: There is one. I know one, yes.

MR FLETCHER: Yes.

JUDGE McCAHILL: Right. That raises the question of when is costs going to be argued?

MR PATON: My Lord, there's also the framing of the order, which I can put in hand this afternoon and file one tomorrow.

One ancillary point that arises from the decision at first instance is the question of the funds that are currently in court paid by the claimants in lieu of permit fees for this year. It's up to your Lordship whether your Lordship wants to deal with that aspect now or as part of the order.

JUDGE McCAHILL: What I would say is I would say that I give permission for those to be paid out to the defendant on the following terms.

1. That they not be paid out for at least 21 days. And if, within 21 days, an application for permission to appeal is made then they shall not be paid out until that permission application has been disposed of, and, if granted, until the final disposal of any appeal. So that links in payment out to the fortunes of an application for permission to appeal.

MR FLETCHER: Yes. May I just address that for a moment. The problem is, my Lord, that we don't, as yet, have a judgment. Of course it will take a little while for that to emerge.

JUDGE McCAHILL: You know, pretty clearly, what I've said.

MR FLETCHER: Yes. That's true, but I wonder whether you would just extend the 21 days to 21 days from receipt of the judgment.

JUDGE McCAHILL: The trouble about the receipt of the judgment is I don't know who is paying for its commissioning. I have observed that, faithful to my request, you haven't had the monitors in front of you, for me to be embarrassed by my erms and ahs as I was delivering judgment; and also because I do actually want to look again [at it], when I have a typed version in front of me.

MR FLETCHER: It raises a secondary question, my Lord. The secondary question is when does the time for appeal run from, because it runs from the date of delivery of the judgment.

JUDGE McCAHILL: The date of order. I think it runs from today. I think it runs from today, but I take your point that surely you should be given some time to reflect upon the final words. Although, if this was a personal injury accident, you would get the result today, wouldn't you?

MR FLETCHER: Yes.

JUDGE McCAHILL: What do you say, Mr Paton? I'm quite happy to -- I can see that -- but, you see, you can't assume -- no one can assume that, given the amount of time I've already, I hope obviously, spent on this case, that I am going to be able to put aside aeons of time to trawl through the product of the stenographer's efforts.

MR FLETCHER: My Lord, I do fully understand that. I'm simply seeking certainty as to when the time is, in the usual way, so that we know. If we have to launch it within three weeks of today, so be it; but it would be helpful to have more time.

JUDGE McCAHILL: You and I have been in this position once before, Mr Fletcher.

MR FLETCHER: Yes. Yes.

JUDGE McCAHILL: Where I have, on very tight conditions, let you have something, which was my notes, to enable you to formulate grounds of appeal, on the basis that that had no authority whatsoever and you'd have the opportunity to correct your grounds in the light of the approved judgment.

Plainly, the stenographer is going to be typing up what I've been delivering all today, but that's being paid for entirely by the other side of the room.

MR FLETCHER: I think there's joint funding.

JUDGE McCAHILL: Shared for today. Thank you. That's what I asked for. Thank you very much indeed.

I have no objection -- but I will hear what is said -- to you getting the raw data that comes out today, in its unedited and unapproved form, to give you the necessary steer to wherever you want to go, in the knowledge that it has no authority, and only a final approved judgment has that imprimatur.

MR FLETCHER: Yes, my Lord. That would be very helpful.

JUDGE McCAHILL: And on the basis that that unapproved draft is not released to anybody apart from counsel and solicitors.

MR PATON: Yes.

MR FLETCHER: Yes.

JUDGE McCAHILL: So it does not get into any wider circulation, because I have emphasised that I have expressly reserved the right to make changes to it.

MR FLETCHER: Yes.

JUDGE McCAHILL: And to add or take away things that I have said.

MR FLETCHER: My Lord, that would be very helpful.

May I just say that it's not an easy case. Some extension of the normal appeal time would be helpful, in any event. The normal time would be 21 days from today. If you could make that four weeks or five weeks, that would be helpful.

JUDGE McCAHILL: I think you will have the judgment in its unapproved version by tomorrow. I think it is fair to let the dust settle. I am prepared to say -- my inclination is 35 days from today.

MR FLETCHER: Yes.

MR PATON: My Lord, I would suggest that perhaps it could be tied to the receipt of, as it were, a sort of unperfected version of the transcript, so 21 days from that being provided to --

JUDGE McCAHILL: Of course you would know that.

It has been a very long judgment. And I know everybody wants certainty, but I am going to allow time beyond the normal to reflect on how any appeal is going to be put. So I will extend to 35 days from today.

MR FLETCHER: I'm obliged, my Lord.

JUDGE McCAHILL: But I make it plain - that takes up all slack that would otherwise be inherent in that time.

MR FLETCHER: Oh yes. Yes. So, my Lord, does that operate as an extension of the time for an application for permission to appeal?

JUDGE McCAHILL: I extend the time for the filing of an appellant's notice, if so advised, to -- it's going to be seven weeks from tomorrow. Tomorrow is 26 April. So six weeks thereafter. I will extend it to 3 pm six weeks tomorrow.

MR FLETCHER: Yes.

My Lord, as far as the position with regard to the money in court is concerned, it's the same period, presumably.

JUDGE McCAHILL: Yes. I will dovetail both of those.

MR FLETCHER: Yes. I'm obliged.

JUDGE McCAHILL: I think that makes it 3 pm on Friday, 7 June Will you check that is right. I hope it is right?

MR PATON: No further applications.

JUDGE McCAHILL: Thank you very much indeed.

MR FLETCHER: My Lord, I'm afraid I make that 31 May, but ...

JUDGE McCAHILL: Do you? Ah, let me have a look.

MR FLETCHER: 35 days. You've given me 35 days.

JUDGE McCAHILL: I have. Tomorrow is Friday 26 April, isn't it?

MR FLETCHER: Yes.

JUDGE McCAHILL: Then you have Friday 3, 10, 17, 24, 31 May. That's five. It is 31 May, you are right. 3 pm on 31 May.

MR FLETCHER: Yes, I believe that's the right date.

JUDGE McCAHILL: Can I finally leave the case by expressing my gratitude to, and paying tribute to the admirable and eloquent arguments of, counsel which have been of great assistance to me. Unfortunately, one side wins and one side loses, subject to what the Court of Appeal says.

Thank you very much indeed.

(4.05 pm)

(Hearing Concluded)

APPENDIX B

From: @amey.co.uk]
Sent: 28 October 2013 12:41
To:
Cc: Lorraine Neale
Subject: RE: Maidstone Borough Council - Unmet demand survey

Lorraine

Further to your email below, I can confirm that whether the rank has been appointed or not makes no difference whatsoever to the survey methodology we apply.

We always take our steer from the licensing authority on which ranks in an area are active and these are the ranks we subsequently survey. The survey identifies the activity at each rank and combines the results across all, within a tried and tested model, to come to a conclusion on whether unmet demand exists or not in the rank based market. We then consider this alongside the evidence obtained from other research undertaken to come to an overall conclusion about unmet demand.

At no point in this process is the issue of whether a rank has been appointed or not a relevant factor in our calculations or analysis and neither is this required in the guidance for unmet demand surveys issued by DfT.

Regards

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Amey | Service is our passion. People, our strength



Help Amey to save paper, only print this message if necessary

From:
Sent: 25 October 2013 14:10
To:
Subject: FW: Maidstone Borough Council - Unmet demand survey

Please can you have a look at this. I am on leave next week.

Thanks

| Transport Planning | Consulting, Rail and Strategic Highways
Amey

t: 0121 212 5102 | **m:** 07843 368874 | **e:** [@amey.co.uk](mailto:amey@amey.co.uk)
International Design Hub | Colmore Plaza | 20 Colmore Circus | Birmingham | B4 6AT



Transportation Planning (International), Reg No 3232614, The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ

Should you have any enquiries about this please send them to: legal@amey.co.uk

From: Lorraine Neale [<mailto:LorraineNeale@maidstone.gov.uk>]
Sent: 25 October 2013 12:41
To: @amey.co.uk]
Cc: John Littlemore
Subject: RE: Maidstone Borough Council - Unmet demand survey

Good Afternoon

We have a further query in respect of the Unmet Demand Survey and hopefully it will be the final question we ask you.

Could you confirm what effect it would have had on the outcome of your survey, if any, in the situation that MBC cannot currently produce evidence of the appointment of any ranks. We have been requested by a representative for a PH operator to provide this as they believe that it will affect the survey. We believe the ranks that Amey were advised of are appointed and they are certainly those that were in use at the time of the survey by the trade and unchallenged historically. I look forward to your response

Kind Regards

Lorraine Neale

Senior Licensing Officer

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MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

14 NOVEMBER 2013

REPORT OF DIRECTOR OF REGENERATION AND COMMUNITIES

Report prepared by Neil Harris

1. HACKNEY CARRIAGE LICENCE - UNMET DEMAND SURVEY

1.1 Issue for Decision

To consider the results of the Unmet Demand Survey carried out by Amey, which is attached at Appendix A, in respect of the numbers of Hackney Carriage licences in Maidstone .

1.2 Recommendation of Director of Regeneration and Communities

1.2.1 That Members consider the report submitted by Amey, indicating an absence of any significant unmet demand, and consider the following options:-

- Agree to maintain the current level of Hackney Carriage licences on the basis that there is no significant unmet demand for Hackney Carriages locally.
- To pursue the option to exercise discretion to issue a number of additional Hackney Carriage licences (in one or in stages), and that a report be submitted to the committee on the advantages and disadvantages of such an approach including the potential additional numbers, method of allocation and if felt appropriate the method of consultation on this proposal.
- To pursue the option of removing the current limit on Hackney Carriages (de-limitation) by commencing a period of public consultation including Hackney Carriage Operators and Drivers, and other interested parties over a six week period and that the results of the consultation be reported back to the committee for a final decision to be taken.

1.2.2 That the Officers report back on the other recommendations within the survey to the next meeting of the committee.

1.3 Reasons for Recommendation

- 1.3.1 The Transport Act 1985 (Section 16) requires the Licensing Authority to grant a Hackney Carriage licence to any valid applicant unless it is satisfied that there is no significant unmet demand for Hackney Carriages in its area.
- 1.3.2 The Council currently restricts the number of Hackney Carriage licences to 48. The last unmet demand survey was undertaken in 2008/9 and recommended that no new licences be issued. In 2005 a previous survey recommended that a further 9 new licences be issued over a 3 year period which was implemented.
- 1.3.3 The Department for Transport asks that all Licensing Authorities that operate a numerical restriction, review their policy on a regular basis, approximately every three years.
- 1.3.4 The Government believes restrictions should only be retained where it is shown to be a clear benefit to the consumer. The Council should justify their reasons for any retention of restrictions. The Government makes it clear that Local Authorities remain best placed to determine their local transport needs and to make decisions about them in the light of local circumstances.
- 1.3.5 The Law Commission, in their interim statement, have indicated that they will not be recommending the abolition of quantity controls but that they will want the Secretary of State to review the position of the transfer of these licences where authorities have quantity controls.
- 1.3.6 The survey prepared by Amey has found that there was no evidence to support the need to increase the number of Hackney Carriage licences and that the existing number could be retained. It also indicated that it was still open to the Council to increase the number of licences issued if it wished and to even remove all restrictions on quantity controls. The advantages and disadvantages are set out in Table 14 in the survey report.
- 1.3.7 The survey report also highlighted a number of recommendations relating to associated issues. It has not been possible to look into the detail of all of these and it is suggested that a report on these is submitted to the next meeting of the committee.

1.4 Alternative Action and why not Recommended

- 1.4.1 The Government Best Practice guidance requires local Authorities to regularly review their policy on this matter. Therefore it is necessary

to undertake this exercise, not to do this would be in breach of guidance and leave the Council open to challenge.

1.5 Impact on Corporate Objectives

1.5.1 Retaining a vibrant Hackney Carriage Service helps meet the Council priorities of having a growing economy and being a decent place to live.

1.6 Risk Management

1.6.1 It is necessary that the Council reviews its number limitation policy by considering whether there is any significant unmet demand and therefore completing this exercise meets Government guidance. Not to do so would leave the Council open to challenge.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	
3.	Legal	X
4.	Equality Impact Needs Assessment	X
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

1.7.2 Financial – the cost of undertaking the unmet demand survey has been met from within existing budgets.

1.7.3 Legal – The legal implications are contained within the body of the report and include Section 37 of the Town Police Clauses Act 1847 as amended by Sections 15 and 16 of the Transport Act 1985 as well as the Department for Transport’s Best Practice Guidance.

1.7.4 EINA– All Taxis in Maidstone are the London style black cab and meet the requirements to carry wheelchairs. If Members are minded to issue additional licences then the new vehicles should also meet this requirement.

1.8 Relevant Documents

1.8.1 Appendices

1.8.2 Appendix A – Unmet Demand Survey.

1.8.3 Background Documents

1.8.4 None

<u>IS THIS A KEY DECISION REPORT?</u>		<u>THIS BOX MUST BE COMPLETED</u>	
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, this is a Key Decision because:			
.....			
Wards/Parishes affected:			
.....			

Maidstone Borough Council Taxi Study

Taxi Unmet Demand Study

Document reference: 1

Revision: 1

Issued: 22/05/2013



Document Control Sheet

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Project Number:	CO030224xx
Document / Report Title:	Taxi Unmet Demand Study
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Issue 2	Name: Signature: Date:	Name: Signature: Date:	Name: Signature: Date:
(Enter Details of Amendment)	Name: (print) Signature: Date:	Name: (print) Signature: Date:	Name: (print) Signature: Date:



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DfT Guidance 2010

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Ergonomic Requirements DfT



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1. Context of the Study

1.1. The Licensing Framework

Hackney Carriages (Taxis)

- 1.1.1. Hackney Carriages can ply for hire in the street, at ranks or stands and may take bookings over the telephone. Private Hire Vehicles (PHVs) must be pre-booked through a private hire operator and cannot be hailed in the street or from a rank. The phrase cab, where used in this report, refers to both Hackney Carriage and Private Hire Vehicles. In some places the term taxi is substituted for Hackney Carriage.
- 1.1.2. Cab operating structures can often include:
- Independent (often sole trader) owner drivers who only operate for between 8 and 12 hours a day, at times and on days of their choosing;
 - 'Independents' who share their vehicle with one or occasionally more other licensed drivers, who do not have a vehicle of their own, meaning the one vehicle can be available up to 24 hours a day, 7 days a week;
 - Radio circuits, taking bookings up to 24 hours a day, which they pass on to self-employed drivers that sign up to the circuit or sometimes drivers that join as a shareholder, where the circuit operates as a co-operative. The times drivers operate relate to the demands on the circuit. It's also possible that some drivers are members of more than 1 radio circuit;
 - Limited companies operating either Hackney Carriage, PHV based services or both using their own vehicles and employing drivers to operate them on their behalf, for between 16 and 24 hours a day.
- 1.1.3. Maidstone Borough Council is the licensing authority for Hackney Carriage and private hire operators, drivers and vehicles within their area. They are able to specify the standards they require (over and above the legal minimum) for operators, drivers and vehicles, set Hackney carriage fares and in certain circumstances, can choose to regulate the number of Hackney Carriage licences they issue. There are just over two thirds of licensing authorities in England that do not regulate Hackney licences and just under a third that do. Maidstone Borough Council is currently one of the authorities that choose to limit the Hackney licences they make available.

- 1.1.4. Current guidance to licensing authorities was issued by the Department for Transport (DfT) in May 2010 (see Appendix 1). This highlights that DfT regard not imposing quantity restrictions on licences as good practice. However, it also states that the grant of a taxi licence may be refused, for the purpose of limiting the number of licensed Hackneys available if the 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. The DfT's position was first outlined in guidance issued in 2004 following a report in 2003 by the Office of Fair Trading (OFT) that looked at the impacts of the regulatory framework on Hackney Carriage and PHV services in the UK and recommended deregulation of the Hackney sector for its consumer benefits.
- 1.1.5. The current DfT guidance does not seek to cover the whole range of possible licensing requirements. Instead it concentrates on those issues that have caused difficulty in the past or that are considered of particular significance. In relation to unmet demand it specifies the need for both quantitative and qualitative analysis to be undertaken, ahead of considering any significant change in licensing rules.
- 1.1.6. The most recent guidance follows a further OFT report, published in 2007, that looked at the impact of their 2003 study and suggested that it had led to an increase in those authorities that had deregulated. It noted that in these circumstances additional Hackneys normally arise from PHV operators/drivers transferring to Hackney operation, meaning the overall size of the cab fleet often remains the same. It also found that where fare controls are maintained, alongside deregulation, costs to the passenger also increase. To address this and any excess entry that results from deregulation, OFT suggested fares should be set as a maximum, rather than a fixed rate and passengers should be encouraged to negotiate.
- 1.1.7. In July 2011 the DfT asked the Law Commission to undertake a law reform project on the law for taxis and PHVs. As part of this project in May 2012 the Law Commission issued a consultation document outlining its provisional proposals for reform and seeking comments on these. The consultation ran until 10th August 2012. Following this the Commission aim to produce their final report containing their proposals and a draft bill by November 2013.
- 1.1.8. The provisional proposals do not suggest there should be any change to the distinction made between hackneys and PHV's and therefore the current two tier system should be retained. However, they do include proposals:
- That all vehicles should be subject to national minimum safety standards and, for private hire vehicles, these should replace more than 340 sets of local regulations.
 - That taxi numbers should no longer be restricted by local authorities.
 - That private hire operators should be able to take bookings outside their own local area.
 - That Licensing could be extended to limousines, motorcycle "taxis" and bicycle rickshaws (or "pedicabs").

- That greater legal clarity should be provided to ensure that volunteers who give up their time to drive elderly people or child-minders who collect children as part of their work, etc. are not required to be licensed.
- That all new taxi and private hire drivers should have disability awareness training.
- That where drivers or operators break the rules improved enforcement powers should be available, including impounding vehicles.
- The consultation asks if a 'peak period' licence should be available for use only at times specified by the licensing authority.
- The consultation also asks whether there should be a specific licence for accessible vehicles.

Taxibuses

- 1.1.9. A taxibus service is a regular public bus service operated by a taxi or private hire vehicle. Just like a regular bus the service operates a defined route (fixed or flexible) and runs to a timetable. Passengers can just turn up at designated stopping places (fixed or semi-fixed route) or pre-book (flexible route) and pay a fare similar to a regular bus fare or use their concessionary pass, where eligible.
- 1.1.10. Taxibus operations for hackneys are permitted under Section 12 of the 1985 Transport Act and for PHVs under Section 53 of the Local Transport Act 2008. A holder of a hackney or PHV vehicle (not operator) license may apply for a restricted PSV Licence (cost £61) which enables them to operate their cab as a local bus service, charging separate fares along a registered route to a published timetable. Applications must be made to the Traffic Commissioner for the area in which the vehicle is licensed. There are no special checks undertaken by the Traffic Commissioner in relation to the grant of a special licence. They will rely on the fact that the local authority has carried out suitability checks for hackney and PHV licensing purposes.
- 1.1.11. The licence is provided in perpetuity for all taxis or PHVs for which licences are held, as long the relevant fee to keep the vehicle licence/s in force is paid. While the number of vehicles owned may change during this time there is no need to change the special licence. Any vehicle owned which is licensed as a taxi or PHV may be used to provide the taxibus service.
- 1.1.12. Local bus services (other than excursions and tours) are the only type of PSV operation that can be undertaken. It is not possible to run any other type of PSV service with taxis or PHVs (e.g. an express service with stopping places more than 15 miles apart). The taxibus license holder must apply to the Traffic Commissioner to register a local service (cost £60). This must normally be at least 63 days before the service is due to start. Similarly if the service is to be withdrawn 63 days' notice must be given to the Traffic Commissioner. One stopping place must be in the district for which the taxi or PHV licence is held, but the route can then go beyond the boundary of the district.

- 1.1.13. Details required include a description of the actual route, the days it will run, a timetable for the service, whether it will use existing bus stops, whether there will be any “hail and ride” or pre-booked element etc. A fare table must be displayed in the vehicle so that passengers can check the fare for any journey, or how the fare is worked out. A BUS sign must also be displayed, clearly legible to the front of the vehicle using letters at least 60mm high indicating the destination of the vehicle and its route, or the nature of the service being provided. The law also allows certain rules which normally apply to conventional taxis or PHV work to be disregarded when providing a local bus service; ie for PHVs the operator does not have to be involved in hiring’s and any requirement to display a “prebooked only” sign will not apply. If the local service provided meets the criteria Bus Service Operators Grant (BSOG) will be available. Use of bus lanes will be at the discretion of the local authority.
- 1.1.14. Typically, a taxibus service is provided where it is uneconomic to run a bus service. It might run as little as once per week, or offer multiple daily journeys. A taxibus (rather than a taxishare) is suitable when every timetabled journey is likely to be carrying passengers. The service must always run to any stops advertised regardless of whether anyone wishes to travel. It is also preferred if users do not want to or are unable to plan their journey and book their transport at least the day before they travel. Some examples of taxibus services are provided below. The most successful examples are commonly found in rural or semi rural areas where there is a dispersed population. Few examples of licensed taxibus services exist in more urban areas as the population is usually dense enough to generate demand for a normal bus. However, there are some examples that operate at the periphery of the bus network such as at the edges of the urban area or as late night or Sunday services. There are also some examples of services called taxibus services that are not licensed as such. These are often restricted services not available to the general public, such as dial a ride or taxicard, which are targeted at defined groups in the population such as disabled and/or elderly people or a particular community such as a village not served at all by a bus service.
- 1.1.15. Examples include:
- 1.1.16. *Bicester Urban Taxibus* - Provides a regular, reliable Rail link service designed to be easier and cheaper than driving to Bicester North Station. It runs Monday to Friday in peak times following a set route between Bure Park, Greenwood and Langford Village to meet key trains to London Marylebone. Prospective passengers can ‘hail and ride’ the service along its route as long as this is done in a safe place for it to stop. In the evening peak the Taxibus meets key trains arriving from London Marylebone to take passengers home again.
- 1.1.17. *Fife, Go-Flexi* - Provides services for North and East Fife. It serves large, rural areas (FlexiZones) and generally covers the part of Fife between the East Neuk (around Anstruther) and the Tay Coast. Travel is permitted anywhere within a FlexiZone and to some designated points outwith the zones. Passenger must book journeys in advance, from 1 hour to 1 week before travel.

- 1.1.18. *Highland Council Taxi Feeder Services* - The Highland Council (THC) commission four "taxi feeder" DRT services in remote areas of the region (Portree, Glenelg, Kinlochbervie and Assynt). All services provide trips on a pence per mile basis, with the difference subsidised by THC to the taxi operators. Taxi operators were chosen mainly because they had the flexibility and despatch centres in existence to operate the services, in addition to existent radio links to vehicles. Services are designed to link passengers into the conventional bus network.
- 1.1.19. *Wrexham, Taxibus* - The Wrexham County Borough Council rural TaxiBus scheme is designed to provide flexible public transport connections for the more isolated communities, that are not located along conventional public transport routes. Prospective passengers need to pre-book their journey, no less than one hour before they wish to travel. Return bookings and repeat block bookings can be made at the time of booking. A single journey costs £1.80 and a return journey £3.50. Concessionary travel pass holders, travel free of charge.
- 1.1.20. *Meriden, Taxibus* - The Taxibus service operates in the rural area to the east of Solihull and provides a door-to-door demand responsive local bus service. The service can be used to travel within this area and/or to the nearby centres of Solihull, the National Exhibition Centre, Birmingham Airport, Birmingham International Rail Station, Shirley and Coventry from where links to other parts of the West Midlands by bus or rail can be made. Passengers must register to use the service and fares charged are calculated on a mileage basis and advised to the passenger when a booking is made. All West Midlands concessionary passes, Centrocards and Busmaster tickets are accepted.
- 1.1.21. *Devon, FareCar* - Fare Car was established by Devon County Council in September 2002 using Rural Bus Challenge funding. At the end of Rural Bus Challenge, Devon County Council decided to continue to fund and expand the scheme. Fare Car is demand responsive transport (DRT) provided by local taxi firms. It is semi-flexible, with arrival times and departures from towns being at fixed times, and journeys only taking place when passengers request. Pick-up locations and times within the defined rural areas are flexible. However drop-off points in towns are defined. Where possible drop-off points will link to other public transport services, for example, train stations. However, services that were introduced as feeders to buses were virtually unused so were stopped.
- 1.1.22. *Stagecoach, Yellow Taxibus* – Stagecoach operated the Yellow Taxibus service to/from Dunfermline and Edinburgh between 2000 and 2005. It operated on a flexible route in Dunfermline covering around 80% of the urban centre but from the Carnegie Campus stop at the south eastern edge of Dunfermline followed a fixed route to Edinburgh via the Ferrytoll Park and Ride. Within Edinburgh a series of fixed stops were served. Pre-booking was required from the flexible route area, but walk up passengers were able to board in Dunfermline town centre or at the stops in Edinburgh. Fares were £5 single from Dunfermline to Edinburgh, with a return for £8. Late evening fares between Dunfermline and Edinburgh were £10. Stagecoach ceased its operation in 2005 as it was not considered commercially viable.

Taxisharing

- 1.1.23. Section 10 (1) of the Transport Act 1985 provides for a licensed taxi to be hired for use for the carriage of passengers for hire or reward at separate fares without it becoming a public service vehicle or ceasing to be subject to the taxi code in the following circumstances:
- The taxi is hired in an area where a scheme made under this section is in operation;
 - The taxi is licensed by the licensing authority for that area; and
 - The hiring falls within the terms of the scheme.
- 1.1.24. The technology now exists for taxi meters to operate on two different tariffs. This has made the setting up of such taxi sharing schemes where differing tariffs apply, a feasible proposition. Section 10 (4) of the Transport Act 1985 states that a licensing authority may make a scheme for its area and shall make a scheme for its area if at least 10% of the holders of current taxi licences issued by the authority request the authority, in writing, to do so. The authority must obtain the consent of the highway authority and/or of the landowner in respect of any place that is not on the highway. The authority is also required to consult the chief constable, the county council and local taxi owners, drivers and/or their representatives. It is then required to publish the proposed scheme and invite representations; considering such representations as may be appropriate before implementation.
- 1.1.25. In accordance with Department for Transport guidance, any scheme for shared fares should offer an incentive both to the taxi proprietor and passengers. Such a scheme should ensure that the driver receives more in fares than for an exclusive hire and that each passenger pays less. They are best suited to urban areas where people tend to travel to the same destination - or destinations close to each other - but do not normally travel together. An example of this could be people travelling to and from work each day, from a train or bus station to a group of office buildings on the other side of town. Passengers pay separately, and should be picked up from a designated pick-up point.
- 1.1.26. The principal conditions for a taxi sharing scheme are that:
- Passengers board the vehicle at a designated place, usually a taxi rank .
 - The boarding place is authorised by the local taxi licensing authority.
 - The hiring's meet other taxi licensing authority requirements.
 - The maximum fare per passenger must be lower than the exclusive fare, ie that which would apply if they were not paying separate fares.
- 1.1.27. If the rank is also in use as a regular taxi service, passengers can choose whether to hire the vehicle as a whole or share the journey and pay separate fares.
- 1.1.28. The council is responsible for establishing operating conditions, such as:
- Special signs.

- Maximum number of passengers.
- Maximum fares.

1.1.29. The benefits of a taxi sharing scheme include:

- A shared taxi will reduce the number of single person journeys undertaken.
- The travelling public will get a taxi journey at a reduced rate whilst the taxi driver should earn more money.
- There could be less pollution due to fewer taxis running.
- More taxis would be available for hire thereby reducing waiting times for passengers.
- The Borough centre should be cleared earlier.
- There may be less congestion at the rank.
- The scheme is self-financing and, if successful, could become a viable alternative to buses which may lead to a reduction in subsidies having to be paid.

1.1.30. Disadvantages may include:

- There is no culture of taxisharing in the UK and in general the public are not inclined to participate in taxi sharing without this being managed/encouraged by a Taxi Marshal or Administrator
- There may be a rise in incidents of anti-social behaviour caused by potential or perceived queue jumping
- The potential for assaults to take place in taxis is increased when passengers do not know one another.
- The opportunity to refuse to pay the fare is raised as the door lock has to be released to let the first passenger out and this would give other passengers an opportunity to exit the vehicle without payment.
- There is a potential for increased complaints against taxi drivers with consequent impact on the Licensing Section
- Passengers may complain that the route taken was not the quickest in spite of the conditions for the operation of the scheme set out
- There is the potential for complaints from bus companies
- Drivers who do not join the scheme may see it as an attempt to deprive them of their livelihood and this could result in friction on the rank.
- Drivers operating under the scheme may not wait on the rank if they are waiting for another passenger to share the taxi
- There will be a cost to the Council in checking the different rates on the meters for accuracy and providing two tariff cards.

- There will be a cost to the driver in providing a new meter or in having the new technology installed.
- 1.1.31. People have informally shared hackney carriages for decades but there are only a few successful formal taxi-sharing schemes that have sustained in the UK, although a number of areas have tried to establish a scheme. Shared cabs run at London's Paddington and Euston stations but only for two hours each at morning rush hour. The only other organised schemes in London are a night service in the Paddington area, a scheme at the Wimbledon tennis championships and after royal garden parties at Buckingham Palace. Blackpool runs a service from its promenade, parts of Bristol are covered if journeys are booked in advance and a taxi sharing scheme has recently replaced two of the Night Bus services in the Borough. The Fordingbridge area of New Forest in Hampshire has a scheme. There are also schemes running out of several airports, including Heathrow, Belfast and Inverness and in Farnborough a scheme is organised to provide a link from the Airshow to rail services.

1.2. Accessibility

- 1.2.1. The Disability Discrimination Act (DDA) 2005 amended the DDA 1995 to enable the Government to lift the exemption for public transport services, including taxis and PHVs. The regulations came into force on 4 December 2006 and since then licensing authorities and cab operators are required to review any practices, policies and procedures that make it impossible or unreasonably difficult for a disabled person to use their services. However, the amendment allowed for the exemption on vehicles to be lifted for different services, at different times and to different extents. The DDA 2005 has subsequently been incorporated into the Single Equalities Bill 2010. The first wave of the Equality Act was implemented on 1 October 2010. However, this does not include the provisions for vehicle (hackney) accessibility contained in section 12 of the Bill. Government at the time said Ministers were considering how to implement this provision in the best way for business and for others with rights and responsibilities under the Act and would announce their proposals in due course. Following this the current Government has passed the issue of vehicle accessibility to the Law Commission for consideration as part of its licensing review.
- 1.2.2. Within the consultation document issued by the Law Commission equality and accessibility is recognised as a priority for the review. However, the Commission also make it clear that how this can be achieved is a very difficult question and propose using the consultation to survey and explore alternatives to the existing means of tackling the issue. In particular they suggest that drawing up an acceptable specification for an accessible taxi has proved very complex, not least because it is difficult to identify a design which would work for different people with different disabilities. They also highlight that in May 2011, transport minister Norman Baker MP announced that the government had no intention of using the powers available within the Single Equalities Act to introduce vehicle regulations.

- 1.2.3. In considering equality and accessibility the Law Commission state their main focus is hackneys as they believe the good working of market forces make it less of an issue in relation to PHV's. They reject the notion that quotas should be introduced for the number of wheelchair accessible vehicles available, instead suggesting they are inclined towards provision of a range of vehicles, including consideration of a specific accessible taxi license, the holders of which would be required to prioritise bookings from passengers in a wheelchair. Alongside this they suggest there could be requirements to provide specially designated ranks for accessible taxi license holders with authorities required to incentivise these, lower license fees for such licenses and options for vehicle specifications beyond wheelchair accessibility to accommodate different disabilities. They are also inclined to require all taxi drivers to undertake disability awareness training.

Equalities Act – Access to Services

- 1.2.4. The Equalities Act places a legal duty on all service providers in Britain to make 'reasonable adjustments' to ensure that people are not prevented from using their services because they have a disability. It does not matter whether the services in question are being provided by a sole operator, firm, company or other organisation, or whether the person involved in providing the services is self-employed or an employee, volunteer, contractor or agent. When deciding whether an adjustment is reasonable, service providers can consider issues such as the cost of the adjustment, the practicality of making it, health and safety factors, the size of the organisation, and whether it will achieve the desired effect. All transport providers and authorities have duties, for example, in relation to timetables, websites and infrastructure. Operators are obliged to make reasonable adjustments in the way they deliver their services to remove any barriers for disabled passengers, depending on the type of vehicles and the services they offer to the public. Public authorities have an additional duty to actively promote equality (rather than simply avoid discrimination).
- 1.2.5. The duty is 'anticipatory'; i.e. transport providers should expect that people with accessibility problems, such as disabled people, will be using their vehicles. They should consider what adjustments might be needed and put the necessary arrangements in place without waiting to be asked. However, they are not required to take any steps which would fundamentally alter the nature of their service, operation, trade, profession or business or where a change may compromise someone's health or safety. The Act requires transport providers to take reasonable steps to:
- 1.2.6. Change a policy, practice or procedure which makes it impossible or very difficult for a disabled person to get on or off a vehicle, or to use any services on the vehicle (for example, a buffet car),
- 1.2.7. Provide extra help or information to a disabled person so that they can get on, travel on and get off a vehicle or use any services on the vehicle.

Guide Dogs

1.2.8. In addition, since 31 March 2001 licensed taxi drivers in England and Wales have had a duty under s.37 of the Disability Discrimination Act 1995 to carry guide, hearing and other prescribed assistance dogs in their taxi, without additional charge. Drivers who have a medical condition that is aggravated by exposure to dogs may apply to their licensing authority for exemption from the duty on medical grounds. Any other driver who fails to comply with the duty is guilty of a criminal offence and liable, on summary conviction, to a fine of up to £1,000. Similar duties covering PHV operators and drivers came into force on the 31st March 2004. Enforcement of the duties is the responsibility of local licensing authorities.

Guidance and Training

1.2.9. The Equality and Human Rights Commission (formerly the Disability Rights Commission) has produced a Code of Practice to explain the duties for the transport industry in detail. The duties demand new skills and the government have worked with GoSkills to develop NVQ training for the taxi and PHV industries. There is also the Taxi Driver licence available as developed by the Driving Standards Agency and some licensing authorities have encouraged drivers to undertake Passenger Assistance Training Scheme (PATS), developed by the Community Transport Association.

1.3. The Cab Market

1.3.1. The OfT research shows that on average in England and Wales people make 12 trips by cab per year, and that this is one of the fastest growing transport sectors in UK in recent years. Considerable research has been done both at the local and national level, and it is understood that the level of Hackney Carriage and PHV use is inversely related to income with those on low income making most trips. For example, the disabled make 67% more trips than average and households without a car make on average 30 cab trips p.a. compared to only 9 trips for those with a car.

1.3.2. Use of cabs is concentrated around the morning peak and late evenings, with 21% of all trips being made on Saturdays. Nationally, almost a third of cab trips are made from a rank, the majority are pre booked.

1.3.3. Markets typically targeted by Hackneys include:

- Public, private and unofficial ranks;
- Flag down/on-street;
- Contract work for statutory authorities such as for education authorities or social services;
- Commercial contract work;
- One off/occasional private hire for individuals or organisations;
- Evening leisure;

- Daytime shopping/social/business;
 - Tourism;
 - Various combinations of the above that 'fit together' in time
- 1.3.4. In some areas almost all of the trade may focus on one particular aspect of the market at the same time (i.e. school contracts) causing there to be unmet demands in other parts of the market at that time.
- 1.3.5. The market for cabs – both Private Hire Vehicles and Hackneys is therefore influenced by many factors – both on the demand and the supply side. Demand for example is influenced by the overall population, the extent of car ownership, availability of other transport including public, community and private transport, levels of mobility impairment and disability. Seasonality, the extent and hours of the night time economy will affect demand. The market will also be influenced by the supply of Hackney and PHVs, in terms of the quality, affordability and quantity of provision – both perceived and actual.
- 1.3.6. It is therefore essential that any unmet demand, identified by surveys and consultation, is considered in the light of the capacity of both Hackney and PHV provision for the area. While it should not be the focus of the study, there is also a need to consider unmet demand in the wider context of demand for passenger transport in general and the optimum mix of all modes (bus, rail, community transport, etc. and Hackney/PHV) required to respond to this. Vehicle counts alone are not adequate as there is a need to recognise that operations are structured in different ways and this has an impact on the times vehicles are available and which aspects of the market they are targeted towards.

1.4. Significant Unmet Demand for Hackneys

- 1.4.1. Over the last twenty years the need to monitor demand conditions has led to the commissioning of research into the performance of markets by many authorities. Where authorities choose to restrict the number of Hackney licences they issue as a result of this research they are required to publish and justify their reasons for restricting the number of licences issued. Each authority maintaining quantity restrictions is also expected to review their local case for such restrictions at least every three years.
- 1.4.2. In effect, restrictions should only be put in place where there are particular local conditions thought to warrant this, there is demonstrably clear benefit for the consumer, and councils can publicly justify their reasons for the restriction and how decisions on numbers have been reached. Based on their research Councils can therefore choose to:
- Issue a licence to any applicant meeting their local application criteria;
 - Grant at least such number of licences as they consider necessary to ensure there is no significant unmet demand; or
 - Refuse to grant additional licences; provided they are satisfied there is no significant unmet demand.

- 1.4.3. The Court of Appeal has provided an indication of the way in which an authority should interpret whether there is unmet demand. In the case of R v Transport Committee Great Yarmouth Borough Council ex parte Sawyer ILR 14.01.87 it was determined that an authority is entitled to consider the situation in relation to the authority as a whole and also from a temporal view as a whole – so that it does not have to take into detailed consideration what may be the position regarding unmet demand at each particular time of the day. In effect, this accepts there will be some peaks in demand at certain ranks but that the authority can consider the situation taken as a whole throughout the day and across its area.
- 1.4.4. Reflecting changing guidance, the term unmet is assumed to have a wider application than simply representing those passengers who seek a Hackney on street and are unsuccessful. This requires the application of a number of measures for identifying unmet demand including not only the waiting times of those passengers actually served, but also the absence of a Hackney in the street, or the absence of one at a rank when a passenger arrives. In addition, to determine whether this is significant unmet demand, DfT’s current guidance requires local authorities to consult with the general public, those working in the market, consumer and passenger (including disabled) groups, groups which represent passengers with special needs, the police, transport stakeholders (e.g. rail/bus/coach providers, traffic managers, etc.), the commercial sector and other stakeholders.

1.5. Objectives and Methodology for this Study

- 1.5.1. Maidstone Borough Council seek a taxi unmet demand study, in line with DfT guidance. The study is required to assess current demand and any significant unmet demand (including latent demand) in order to inform the Councils consideration of its approach to Hackney licensing in Maidstone. In addition the study is required to inform the Council of the implications of the licensing choices available to it for addressing the demand that exists, in the context of the demand for cabs as a whole.
- 1.5.2. Amey understands the main objectives of the study are:
- Assess the nature and volume of the patent demand for and supply of hackney services during all times of day and night
 - Specifically establish any Significant Unmet Demand (SUD) for hackney services in the Borough.
 - If SUD does exist, provide recommendations regarding the provision and numbers of hackney carriages required to meet this.
 - Assess and make recommendations on the provision of taxi ranks
- 1.5.3. The study has used a range of research to establish whether there is unmet demand for taxi provision within Maidstone, including:

- **Review of relevant policies, standards etc.:** to understand the authority's aspirations for meeting travel needs and social inclusion and provide context to determining overall demand for travel and how this should be met;
- **Extensive rank observations and audits:** examination of all the ranks in the Authority, including monitoring passengers' waiting time, any illegal plying for hire, use of Hackney Carriages by wheelchair users and rank audits;
- **On street interviews:** a survey of a number of people on street to obtain information about their understanding of the sector, their last cab journey, their overall levels of taxi use, about quality and barriers to use.
- **Consultation:** including consultation with all relevant stakeholders and use of mystery passengers
- **Benchmarking against other authorities:** to provide a useful comparison as to the quantity and quality criteria used for taxis.

2. Background

2.1. Introduction

- 2.1.1. Maidstone Borough covers an area generally to the east and south of the town of Maidstone in the county of Kent: as far north as the M2 motorway; east down the M20 to Leaham; south to a line including Staplehurst and Headcorn; and west towards Tonbridge. Generally speaking, it lies between the North Downs and Weald, and covers the central part of the country.
- 2.1.2. With a population of 155,143 living in 63,447 households, 98.3% of the population are household residents and 1.7% resides in communal establishments. The Borough is home to 9.0 per cent of the Kent and Medway population (2011 Census) and borders Swale, Ashford, Tunbridge Wells, Tonbridge and Malling Boroughs and Medway Unitary Authority. The population of Kent has increased as a whole over the past ten years; similarly Maidstone's population has followed in the same trend, growing 11.7% from 2001.
- 2.1.3. The population of Maidstone is also becoming increasingly diverse. Black and Ethnic Minority Communities account for 5.9% of the total population and this has more than doubled since 2001, with 5,461 additional Black or Ethnic Minority residents residing in Maidstone. Over 9% of Maidstone residents were born outside the UK and over 45% have been in the UK for 10 years or more.

2.2. The Taxi Trade in Maidstone

- 2.2.1. The Authority currently licences 48 Hackney Carriages most of which are London style black cabs and all are wheelchair accessible vehicles. The most recent previous unmet demand study was undertaken in 2009 by Mouchel and this identified no unmet demand at that time.
- 2.2.2. There is currently a substantial waiting list of drivers seeking a hackney vehicle license. Also the resale value of hackney plates in the Borough is considered relatively high at approximately £20k. A taxi policy for the Borough has recently been finalised. This requires that no vehicle is over three years old when licensed as a hackney carriage and any vehicle over fifteen years old will not be relicensed. The tariff for taxi fares was most recently reviewed in December 2012.
- 2.2.3. Alongside the hackney fleet there is a relatively large PHV fleet licensed consisting of in the region of 300 vehicles. While most hackney operators are independents, many of the PHVs are operated under the umbrella of 4 main operating companies. Overall there are around 400 cab drivers licensed, most as PHV drivers, 46 as Hackney drivers and 35 with dual licenses.

2.3. Transport Policy

- 2.3.1. The following passage is taken from Kent’s Local Transport Plan 2011 – 2016 and identifies the role they believe both Hackney cabs and Private Hire Vehicles (PHV’s) can play in their jurisdiction, within their current transportation plan.
- 2.3.2. “Taxis and Private Hire Vehicles (PHVs) can (also) play an important role in providing access to services for rural residents and those who are unable to use conventional bus services. They assist in reducing congestion and encourage sustainable travel by reducing the need for car ownership. KCC will therefore seek to enhance integration between taxis and sustainable modes and explore the possibility of taxis and PHVs playing a larger role in providing transport to and from rural areas to support independent living. This will be progressed through the Comprehensive Community Transport Network project.”

2.4. Hackney Ranks

- 2.4.1. Table 1 summarises details of the official Ranks for Hackney Carriages in Maidstone.

Table 1: Official Ranks for Hackney Carriages		
Rank Number	Maidstone Borough	Spaces
1	Maidstone East Station	5
2	Maidstone West Station	5
3	King Street / High Street	10
4	Earl Street	2
5	High Street West (Lower part of High Street)	3
6	Lock Meadow	1

Source: Maidstone Borough Council

3. Rank Observations

3.1. Rank Observation Survey

- 3.1.1. The rank observation programme covered a period of 132 hours spread across 5 official Hackney carriage ranks considered by the Council to be those actively used by the trade. The observations were conducted between November 2012 and April 2013. The timing of the rank observations was chosen to ensure that they were undertaken during the school term, to provide a mix of weekend and weekday observations and to be representative of a typical week.
- 3.1.2. Observations were carried out as detailed in Table 2. The hours allocated to each rank were based upon a detailed site visit and discussions between Amey staff and the Client.

Table 2: Allocation of Formal Rank Observations	
Rank Location	Hours Observed
Maidstone East Station	36
Maidstone West Station	24
King Street / High Street	36
Earl Street	12
High Street West	24
Total	132

- 3.1.3. Rank observations were undertaken at all the above ranks and for every five minute period, the number of Hackneys departing and the number of passengers departing was observed and recorded. At the end of each five minute period, the queue lengths of Hackneys and passengers were also recorded. For each hour the mean delay can then be estimated as being the queue length divided by the throughput per five minute period, multiplied by five minutes. Thus:

$$MeanDelay = \frac{QueueLength}{Throughput} \times RecordingPeriod$$

- 3.1.4. This method relies on compiling "representative weeks" of activity at each major rank and then using these to estimate overall passenger and Hackney delays and loading. The method has been tried and tested in many previous studies and provides consistent estimates within the bounds expected for passenger delay. In cases where long Hackney queues coincide with small levels of Hackney throughput the method tends to overestimate delays.

3.1.5. In constructing a representative profile of demand at a rank over the period of a week, a number of assumptions are made. Firstly, 'daytime' observations refer to observations made between 0700 and 1800 hours and 'night-time' observations refer to the remaining period of the day. Secondly, observations conducted between Monday and Friday daytime and Monday to Thursday night-time are regarded as similar and therefore referred to as typical weekday observations. Observations conducted on Friday and Saturday night-times and Saturday daytimes are all likewise similar and referred to as typical weekend observations. Additional observations were conducted at the busiest ranks on Sundays over a four hour slot at each rank.

3.1.6. The results presented in this section set out:

- **The Balance of Supply and Demand.** This indicates the proportion of the time that the market exhibits excess demand, equilibrium and excess supply;
- **Average Delays and Total Demand.** This indicates the overall level of passenger and Hackney delay and provides estimates of total demand;
- **The Demand Profile.** This provides the key information required to determine the pattern of demand; and
- **The Effective Supply of Vehicles.** This indicates the proportion of the fleet that was off/on the road during the survey.

3.2. The Balance of Supply and Demand

3.2.1. The first indicator of the performance of the Hackney trade can be gauged from a general assessment of the market conditions. This is assessed in terms of three broad areas: excess demand, equilibrium and excess supply. If the minimum Hackney queue occurring during one hour was greater than two vehicles the market is considered to be in excess supply in that hour, that is, there were always sufficient Hackneys to meet the observed level of demand. If the maximum passenger queue exceeded two in an hour then the market is considered to be exhibiting excess demand in that hour, that is, there was at least one occasion during that hour in which the observed level of demand could not be met without passenger delay occurring. If the maximum passenger queue is below three and/or the minimum Hackney queue is less than three then the market is considered to be in equilibrium in that hour, that is, there was broadly speaking just sufficient supply to meet the observed level of demand. The results of the analysis are presented in Table 3.

Table 3: The Balance of Supply and Demand in the Maidstone Rank-Based Hackney Carriage Market (Rows Sum to 100%)				
Period		Excess Demand (%)	Equilibrium (%)	Excess Supply (%)
Weekday	Day	0	92.9	7.1
	Night	9.1	75.8	15.2
Weekend	Day	0	87.1	12.9
	Night	6.9	93.1	0.0
ALL		4.3	89.7	9.4

Source: Amey

Excess Demand – If maximum passenger queue exceeds 2 passengers in any 1 hour

Excess Supply – If minimum Hackney Carriage queue exceeds 2 cabs in any 1 hour

Equilibrium - If the maximum passenger queue is below three and/or the minimum Hackney Carriage queue is less than three then the market is considered to be in equilibrium in that hour

- 3.2.2. Table 3 shows that, overall, the market exhibits equilibrium conditions in almost 89.7% of hours, the predominant market state. Excess Demand is observed in 4.3% of hours while excess supply is experienced in 9.4% of hours.
- 3.2.3. Conditions are worst for the market during both weekday and weekend nights, and at their best in the daytime. For operators conditions are at their worst on weekday nights and weekend days.
- 3.2.4. During weekday daytimes the proportion of hours exhibiting excess demand is 0.0%. This is an important element in the consideration of significant unmet demand.

3.3. Average Delays and Total Demand

- 3.3.1. The rank observation programme was designed to allow estimates of a week’s activity at each rank. To observe each rank for a complete week would have been costly and unnecessary. Instead the week was divided up into periods and observations designed to sample from these. The periods are "daytime" i.e. 0700-1800, "Night-time" i.e. 1800-0200, "Weekday" (i.e. Monday to Friday ‘daytime’ and Monday to Thursday ‘night-time’) and "Weekend" (i.e. Friday ‘night-time’ and Saturday).
- 3.3.2. Using this method the following estimates of average delays and throughput were produced for each of the main ranks in the licensing area as shown in Table 4.

Table 4: Total Demand and Average Delays in minutes (estimates per week)				
Rank	Passenger Departures	Hackney Departures	Average Passenger Delay (Mins)	Average Hackney Delay (Mins)
Maidstone East Station	789	665	0.32	24.16
Maidstone West Station	347	221	0.19	16.33
King Street/High Street	2008	1359	0.17	10.16
Earl Street	301	216	0.71	9.57
High Street West	487	483	1.37	14.54
Overall Total	3932	2945	0.39	14.46

Source: Amey

- 3.3.3. Table 4 shows the busiest rank with respect to passenger and Hackney departures was King Street/High Street. Maidstone East Station and High Street West are the second and third busiest ranks, respectively, both for passenger and Hackney departures. Whilst Maidstone West Station and Earl Street are the least used taxi ranks in Maidstone. The hackney delay at Maidstone East Station is notably greater than for any other rank, experiencing just over 24 minutes of delay on average. Maidstone West Station and High Street West also display a relatively high cab delay of 16 minutes and 14.5 minutes respectively.
- 3.3.4. Passenger delay is worst at High Street West (1 minute 22 seconds or 82 seconds) with rank observations suggesting that this incidence of passenger delay was experienced primarily during weekend nights.
- 3.3.5. The average delays and total demands in the above table are calculated as follows, using King Street / High Street as an example.

Rank	King Street/High	Date	09/11/2012	Time	1000 - 1800	WEEKDAY DAY										
Hourly Time Period	Passenger & Cab Rank Throughput		Hourly Queue Totals		Service Performance Indicator		Max ^m & Min ^m Queues		Balance of Supply & Demand			>0	> or = 1 Min	> or = 5 Min		
	Passenger Throughput	Cab Throughput	Passenger Queue	Cab Queue	Average Passenger Delay	Average Cab Delay	Maximum Passenger Queue	Minimum Cab Queue	Excess Demand	Equilibrium	Excess Supply					
1000	24	15	0	22	0.00	7.33	0	1	0	1	0	FALSE	FALSE	FALSE		
1100	22	18	0	18	0.00	5.00	0	1	0	1	0	FALSE	FALSE	FALSE		
1200	25	19	0	20	0.00	5.26	0	1	0	1	0	FALSE	FALSE	FALSE		
1300	28	18	2	14	0.36	3.89	2	0	0	1	0	28	FALSE	FALSE		
1400	23	18	0	19	0.00	5.28	0	1	0	1	0	FALSE	FALSE	FALSE		
1500	26	16	0	18	0.00	5.63	0	0	0	1	0	FALSE	FALSE	FALSE		
1600	13	8	0	20	0.00	12.50	0	0	0	1	0	FALSE	FALSE	FALSE		
1700	19	18	0	23	0.00	6.39	0	1	0	1	0	FALSE	FALSE	FALSE		
Total	180	130	2	154	0.06	5.92	2	5	0	8	0	28	0	0		

Rank	King Street/High	Date	14/11/2012	Time	1800 - 0200	WEEKDAY NIGHT										
Hourly Time Period	Passenger & Cab Rank Throughput		Hourly Queue		Service Performance		Max ^m & Min ^m Queues		Balance of Supply & Demand			>0	> or = 1 Min	> or = 5 Min		
	Passenger Throughput	Cab Throughput	Passenger Queue	Cab Queue	Average Passenger Delay	Average Cab Delay	Maximum Passenger Queue	Minimum Cab Queue	Excess Demand	Equilibrium	Excess Supply					
1800	12	10	11	15	4.58	7.50	4	0	1	0	0	12	12	FALSE		
1900	13	9	2	20	0.77	11.11	1	0	0	1	0	13	FALSE	FALSE		
2000	14	12	0	23	0.00	9.58	0	1	0	1	0	FALSE	FALSE	FALSE		
2100	12	7	0	24	0.00	17.14	0	2	0	1	0	FALSE	FALSE	FALSE		
2200	11	9	0	24	0.00	13.33	0	2	0	1	0	FALSE	FALSE	FALSE		
2300	15	9	0	57	0.00	31.67	0	9	0	0	1	FALSE	FALSE	FALSE		
2400	21	14	0	48	0.00	17.14	0	7	0	0	1	FALSE	FALSE	FALSE		
0100	16	10	0	51	0.00	25.50	0	7	0	0	1	FALSE	FALSE	FALSE		
Total	114	80	13	262	0.57	16.38	5	28	1	4	3	25	12	0		

Rank	King Street/High	Date	15/12/2012	Time	1000 - 1800	SATURDAY DAY										
Hourly Time Period	Passenger & Cab Rank Throughput		Hourly Queue		Service Performance		Max ^m & Min ^m Queues		Balance of Supply & Demand			>0	> or = 1 Min	> or = 5 Min		
	Passenger Throughput	Cab Throughput	Passenger Queue	Cab Queue	Average Passenger Delay	Average Cab Delay	Maximum Passenger Queue	Minimum Cab Queue	Excess Demand	Equilibrium	Excess Supply					
1000	12	7	1	11	0.42	7.86	1	0	0	1	0	12	FALSE	FALSE		
1100	10	6	2	6	1.00	5.00	1	0	0	1	0	10	FALSE	FALSE		
1200	12	6	0	8	0.00	6.67	0	0	0	1	0	FALSE	FALSE	FALSE		
1300	8	4	2	10	1.25	12.50	1	0	0	1	0	8	FALSE	FALSE		
1400	8	5	1	10	0.63	10.00	1	0	0	1	0	8	FALSE	FALSE		
1500	8	6	0	17	0.00	14.17	0	0	0	1	0	FALSE	FALSE	FALSE		
1600	8	5	0	12	0.00	12.00	0	0	0	1	0	FALSE	FALSE	FALSE		
1700	10	6	2	10	1.00	8.33	1	0	0	1	0	10	FALSE	FALSE		
Total	76	45	8	84	0.53	9.33	5	0	0	8	0	48	28	0		

Rank	King Street/High	Date	16/11/2012	Time	1800-0200	WEEKEND NIGHT										
Hourly Time Period	Passenger & Cab Rank Throughput		Hourly Queue		Service Performance		Max ^m & Min ^m Queues		Balance of Supply & Demand			>0	> or = 1 Min	> or = 5 Min		
	Passenger Throughput	Cab Throughput	Passenger Queue	Cab Queue	Average Passenger Delay	Average Cab Delay	Maximum Passenger Queue	Minimum Cab Queue	Excess Demand	Equilibrium	Excess Supply					
1800	12	6	0	24	0.00	20.00	0	2	0	1	0	FALSE	FALSE	FALSE		
1900	10	6	0	24	0.00	20.00	0	2	0	1	0	FALSE	FALSE	FALSE		
2000	10	6	0	24	0.00	20.00	0	2	0	1	0	FALSE	FALSE	FALSE		
2100	8	4	0	24	0.00	30.00	0	2	0	1	0	FALSE	FALSE	FALSE		
2200	45	24	0	21	0.00	4.38	0	1	0	1	0	FALSE	FALSE	FALSE		
2300	38	25	0	46	0.00	9.20	0	2	0	1	0	FALSE	FALSE	FALSE		
2400	48	32	0	145	0.00	22.66	0	5	0	0	1	FALSE	FALSE	FALSE		
0100	75	40	0	122	0.00	15.25	0	4	0	0	1	FALSE	FALSE	FALSE		
Total	246	143	0	430	0.00	15.03	0	20	0	6	2	0	0	0		

Rank	King Street/High	Date	11/11/2012	Time	1200-1600	SUNDAY										
Hourly Time Period	Passenger & Cab Rank Throughput		Hourly Queue		Service Performance		Max ^m & Min ^m Queues		Balance of Supply & Demand			>0	> or = 1 Min	> or = 5 Min		
	Passenger Throughput	Cab Throughput	Passenger Queue	Cab Queue	Average Passenger Delay	Average Cab Delay	Maximum Passenger Queue	Minimum Cab Queue	Excess Demand	Equilibrium	Excess Supply					
1200	5	4	0	24	0.00	30.00	0	2	0	1	0	FALSE	FALSE	FALSE		
1300	6	5	0	22	0.00	22.00	0	1	0	1	0	FALSE	FALSE	FALSE		
1400	11	7	0	24	0.00	17.14	0	2	0	1	0	FALSE	FALSE	FALSE		
1500	20	13	0	23	0.00	8.85	0	1	0	1	0	FALSE	FALSE	FALSE		
Total	42	29	0	93	0.00	16.03	0	6	0	4	0	0	0	0		

Figure 1: Rank Observations undertaken at King Street / High Street - Amey

3.3.6. The totals for each survey above can be summarised as follows in Table 5:

Table 5: Summary of Rank Observations undertaken at King Street / High Street						
		Number of Hours	Total Passengers	Average Passenger Delay	Total Hackneys	Average Hackney Delay
Mon-Fri	DAY	8	180	0.06	130	5.92
Mon-Thu	NIGHT	8	114	0.57	80	16.38
Sat Day	DAY*	8	76	0.53	45	9.33
Fri-Sat	NIGHT	8	246	0.00	143	15.03
Sun	Day	4	42	0.00	29	16.03
			Est. Weekly Passengers	2008	Est. Weekly Hackneys	1359
Overall Weighted Average Passenger Delay			0.17			
Overall Weighted Average Hackney Delay			10.16			

3.3.7. The estimated number of weekly passengers are calculated as follows:

$$\begin{aligned}
 180 \times (5 \text{ Days}) &= 900 \\
 114 \times (4 \text{ Nights}) &= 456 \\
 76 \times (1 \text{ Sat Day}) &= 76 \\
 246 \times (2 \text{ W/End Nights}) &= 492 \\
 84 \times (1 \text{ Sun Day}) &= 84 \\
 \text{Total (1 Week)} &= \underline{\underline{2008}}
 \end{aligned}$$

3.3.8. The estimated number of weekly Hackneys is derived in the same fashion.

3.3.9. The overall weighted passenger delay at this rank is then derived as follows:

$$\begin{aligned}
 180 \times 5 \times (\text{Average Passenger Delay of } 0.06) &= 54 \\
 114 \times 4 \times (0.57) &= 259.92 \\
 76 \times (0.53) &= 40.28 \\
 246 \times 2 \times (0.00) &= 0 \\
 42 \times 1 \times (0.00) &= 0 \\
 \text{Total (1 Week)} &= \underline{\underline{354.2}}
 \end{aligned}$$

3.3.10. Total = 354.2 and this / 2008 = **0.1764** minutes weighted average passenger delay at this rank.

3.3.11. The overall weighted average Hackney delay at this rank is calculated in the same fashion.

- 3.3.12. An Average Passenger Delay across **all** the ranks of **0.39** minutes is then calculated from the sum of total passenger delays divided by the total weekly passengers at all ranks. The overall Hackney delay is calculated in a similar manner and works out at **14.46** minutes.
- 3.3.13. The observations suggest that in total there are approximately **3932** passenger departures and **2945** Hackney departures per week from all the ranks in Maidstone.

3.4. The Delay/Demand Profile

- 3.4.1. The above analysis can hide variations in service performance at different times of the day and of the week. To investigate the nature of passenger delay at ranks further, analysis has also been conducted by time of day and day of the week.
- 3.4.2. Figure 2 provides a graphical illustration of average daily passenger demand for all ranks from 10:00 Monday to 01.00 Friday, inclusive. Figure 3 indicates the equivalent information for the period 18.00 Friday to 01.00 Sunday, inclusive.
- 3.4.3. Figure 2 illustrates that the average passenger demand across all ranks is similar across the whole of the day but with slightly greater demand first thing in the morning.
- 3.4.4. Conditions at the weekend are shown in Figure 3. Demand is fairly constant throughout the daytime, but increases significantly during the evening and night time with peaks at 18.00, 24.00 and 01.00 respectively. Demand is at its lowest at 15.00.
- 3.4.5. The two profiles are combined and factored accordingly to represent average weekly profiles in Figure 4. The figure shows that generally demand is consistent throughout the day time but demand on weekends is greater in the evenings and night time.
- 3.4.6. In terms of passenger delays, Figure 5 and 6 provide an illustration by time of day for the 09.00 Monday to 24:00 Thursday and 09.00 - 24:00 weekend periods, respectively.
- 3.4.7. During the weekday period, minimal passenger delay occurs. The peak passenger delay of 0.31 minutes occurs at 24.00. Two peaks of 0.18 minutes also exist in the afternoon and night time at 16.00 and 22.00 respectively.
- 3.4.8. During the weekend period, the highest passenger delay is exhibited at 19.00 (0.87 minutes) with smaller delays at 16.00, 18.00 and 23.00.
- 3.4.9. Figure 7 provides an illustration by time of day, for passenger delays, of the weekday and weekend periods combined. It can be seen that those delays experienced during weekdays days are not replicated on weekends aside from at 16.00, which has delays on both weekday and weekend periods.

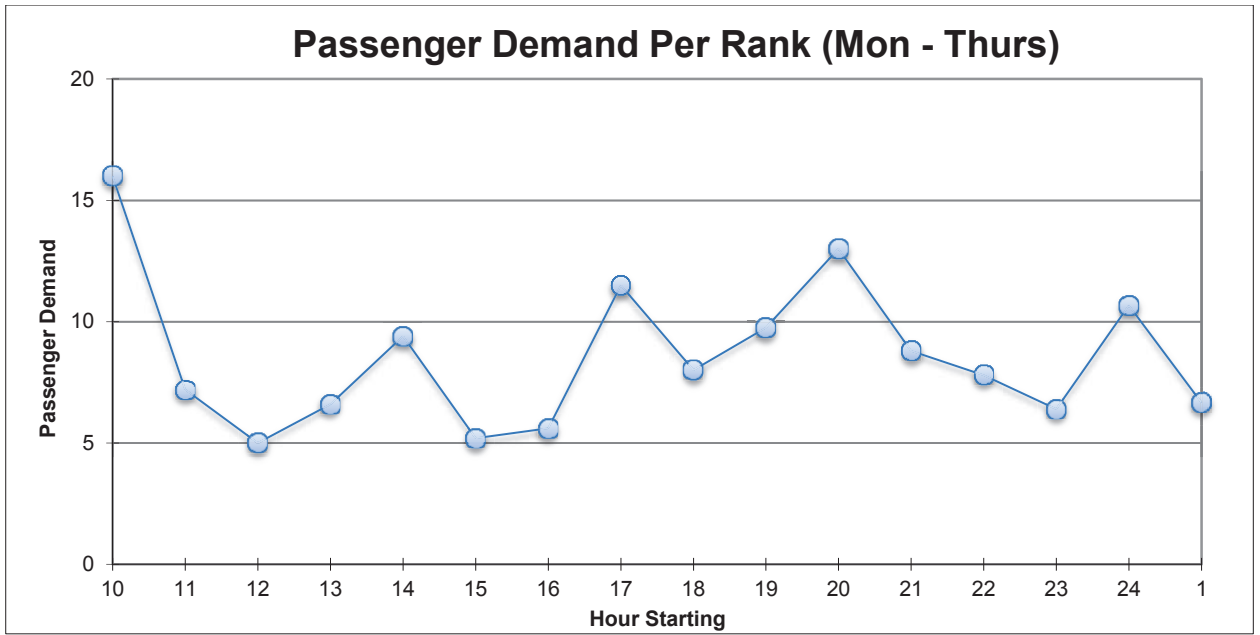


Figure 2: Average Daily Passenger Demand across all Ranks for the Weekly period 10:00 Monday to 01.00 Friday inclusive

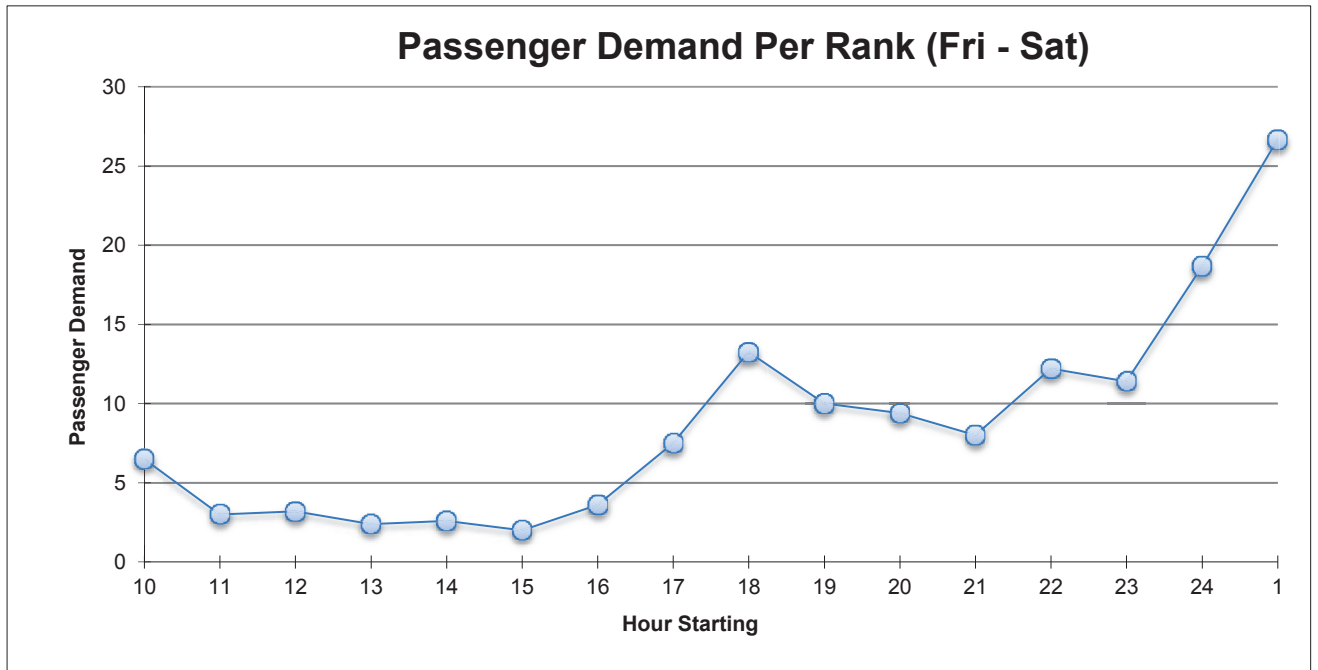


Figure 3: Average Daily Passenger Demand across all Ranks for the Weekend Period 18.00 Friday to 01.00 Sunday inclusive

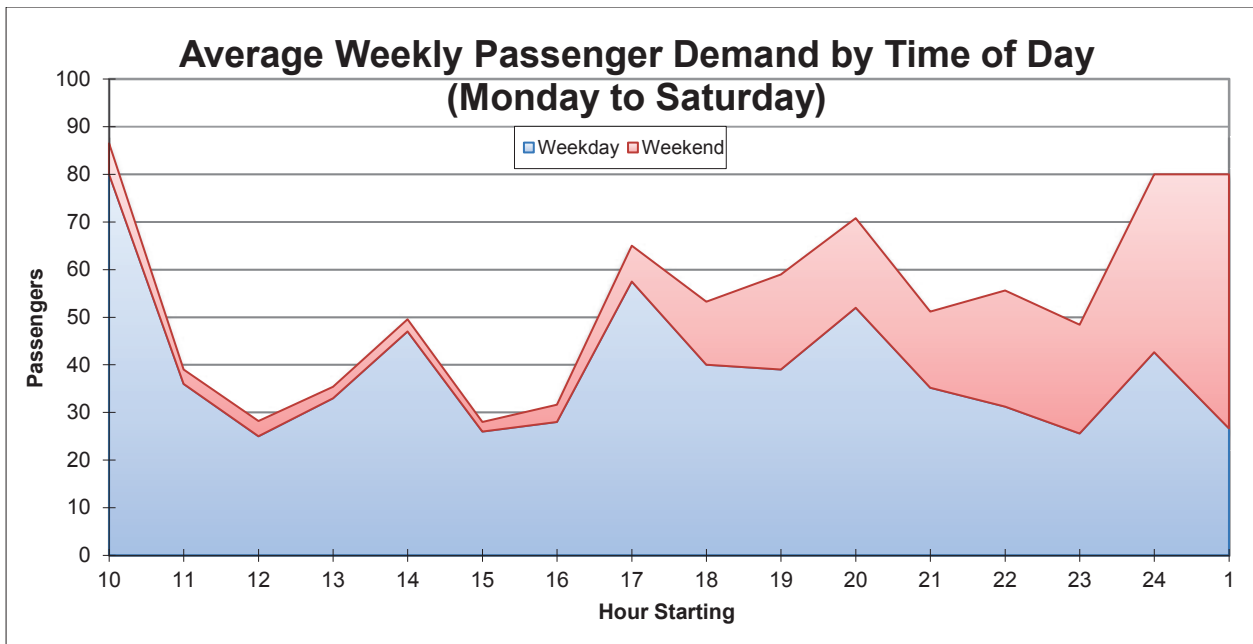


Figure 4: The Average Weekly Passenger Demand per rank for all Ranks for the weekly period 10:00 Monday to 01:00 Sunday

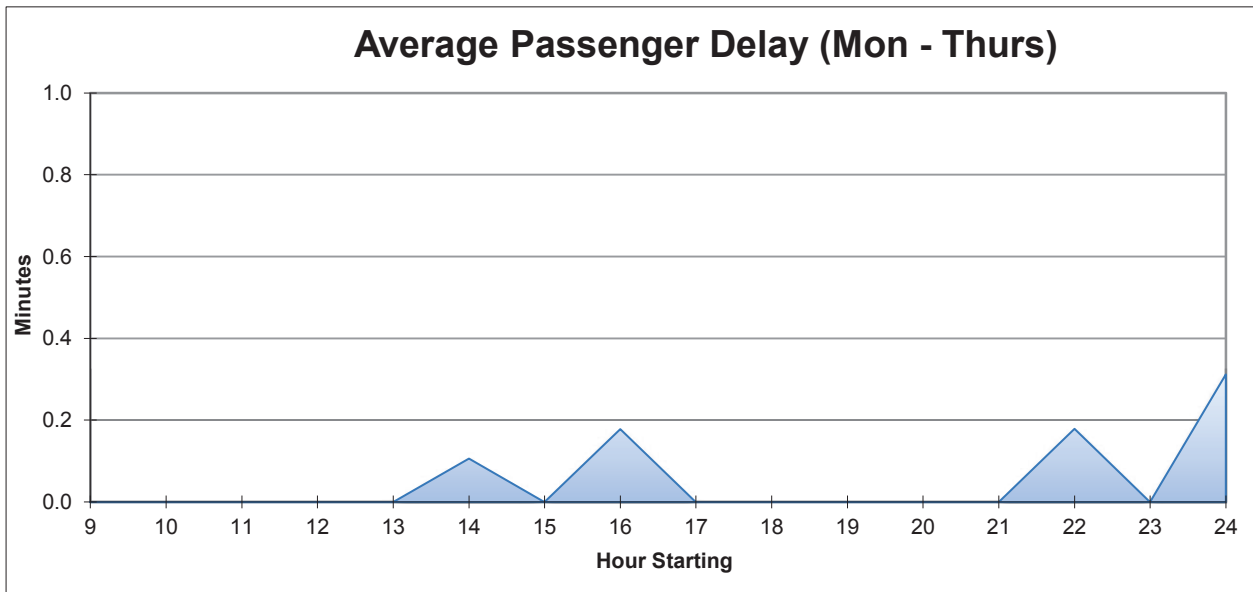


Figure 5: Average Daily Passenger Delay for the Weekly period 09:00 Monday to 24:00 Thursday inclusive

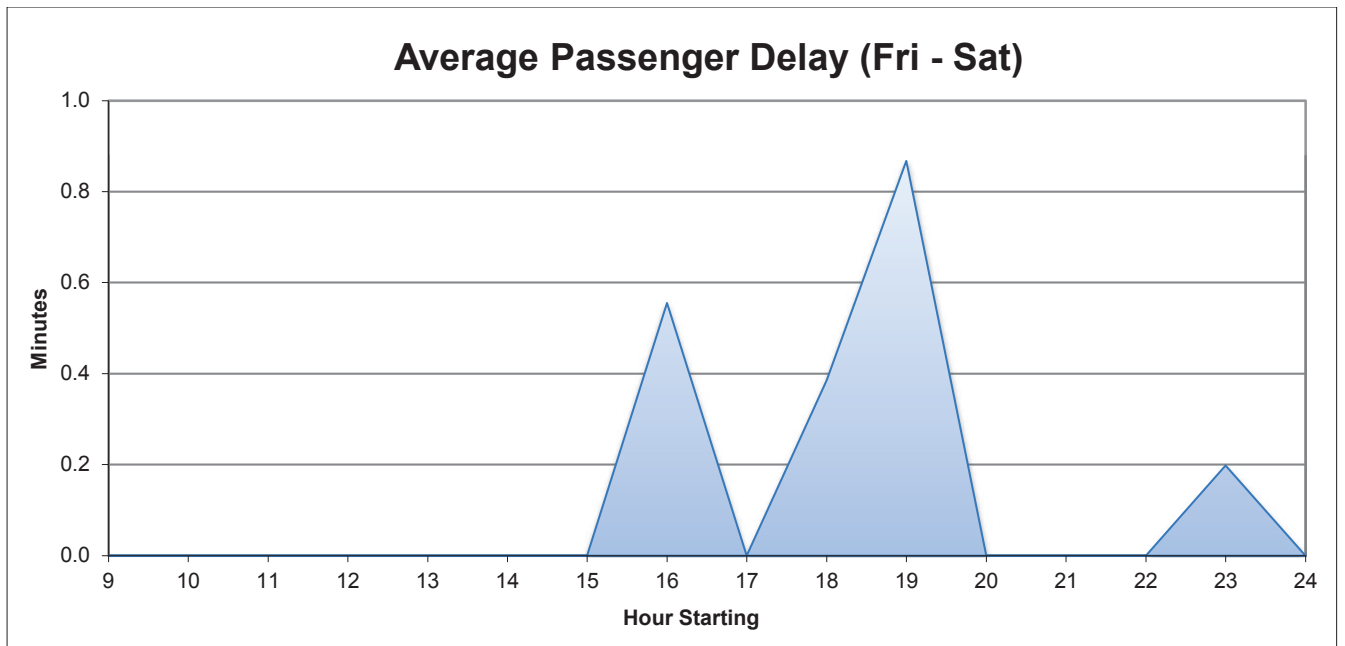


Figure 6: Average Daily Passenger Delay for the Weekend Period (09.00 – 24.00)

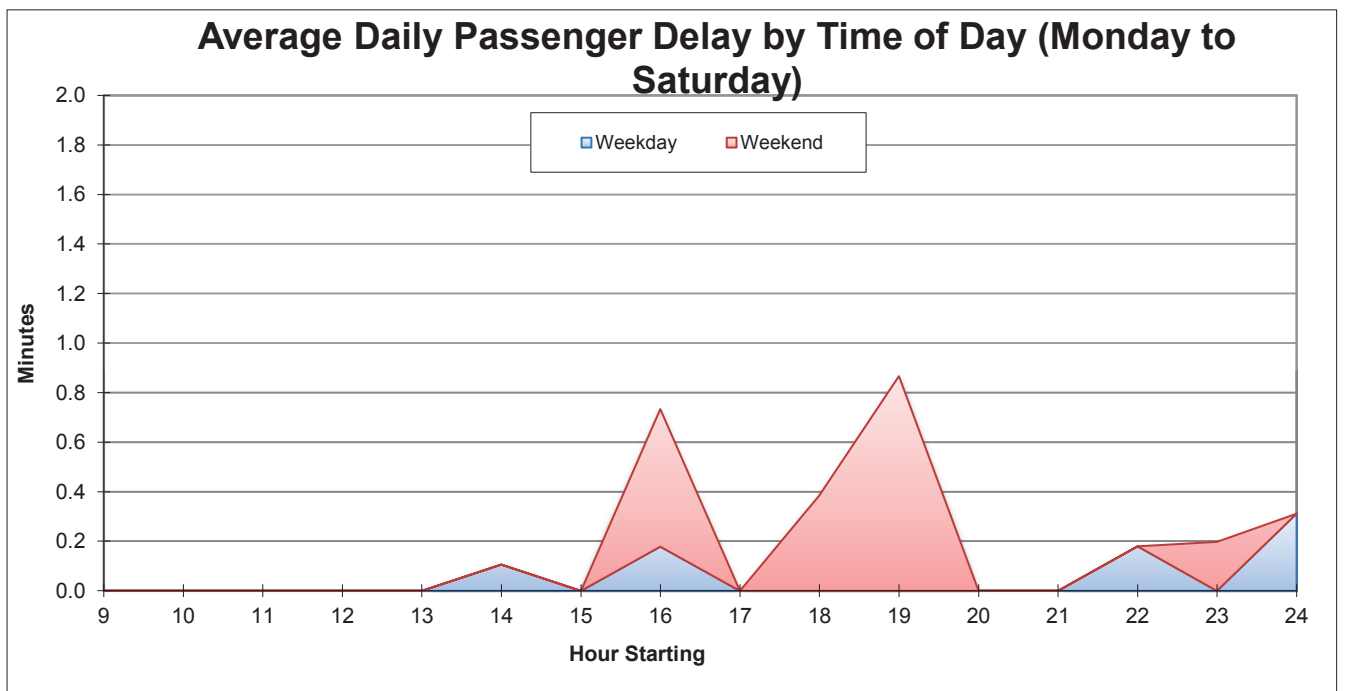


Figure 7: Average Daily Passenger Delay for the Week 09.00 – 24.00 (Monday to Saturday inclusive)

3.5. Indicator of Significant Unmet Demand

3.5.1. A single indicator of unmet demand can be calculated taking into account the size and incidents of passenger delay and the effect of peaks in demand. It is defined as the product of the average passenger delay, the percentage of passengers travelling in hours where the average delay is greater than or equal to one minute and the percentage of excess demand. If peaking demand is present, the average delay is factored by 0.5 to allow for the disproportionate effect of late night demand on the overall average delay. That is to say, the four main indicators from the rank observations, as follows:-

- 1) The average passenger delay across all time periods (APD);
- 2) The incidence of passenger queues (Excess Demand) during the Monday to Friday daytime period (ED);
- 3) The proportion of Hackney users travelling in hours where the delay at ranks was greater than or equal to one minute (P1); and
- 4) Whether the demand profile is highly peaked (HP).

3.5.2. Using these indicators a simple Index of Significant Unmet Demand (ISUD) has been developed as follows (where HP = 1 if no peaking and 0.5 if peaking is present)

$$\text{ISUD} = \text{APD} \times \text{ED} \times \text{P1} \times \text{HP}$$

The value of this indicator for Maidstone is 0.00;

$$\text{ISUD} = \text{APD} \times \text{ED} \times \text{P1} \times \text{HP}$$

$$= 0.39 \times 0.0 \times 18.96 \times 0.5 = 0.00$$

3.5.3. At the time the method was devised, those authorities where previous studies had resulted in a conclusion of significant unmet demand had produced values of 90, 162, 196, 275, 282, 408 and 972. At that time, the highest value obtained for a study where a conclusion of no significant unmet demand had been reached was 71. This suggests a threshold value of around 80 to use as a benchmark. The value of the indicator for Maidstone is 0.00 which results in a conclusion of there being no significant unmet demand in the rank based taxi market.

3.5.4. The indicator is normally calculated using excess demand for the Monday to Friday daytime period only. As this is 0 for Maidstone for completeness we have also undertaken the calculation using the figure for excess demand across the week as a whole; ie including excess demand on weekday nights and at weekends at all times.

$$= 0.39 \times 4.3 \times 18.96 \times 0.5 = 15.90$$

3.5.5. However, even undertaking the calculation in this manner the value obtained remains well below the threshold of 80, confirming the finding of there being no significant unmet demand in the rank based market for Maidstone, at any time.

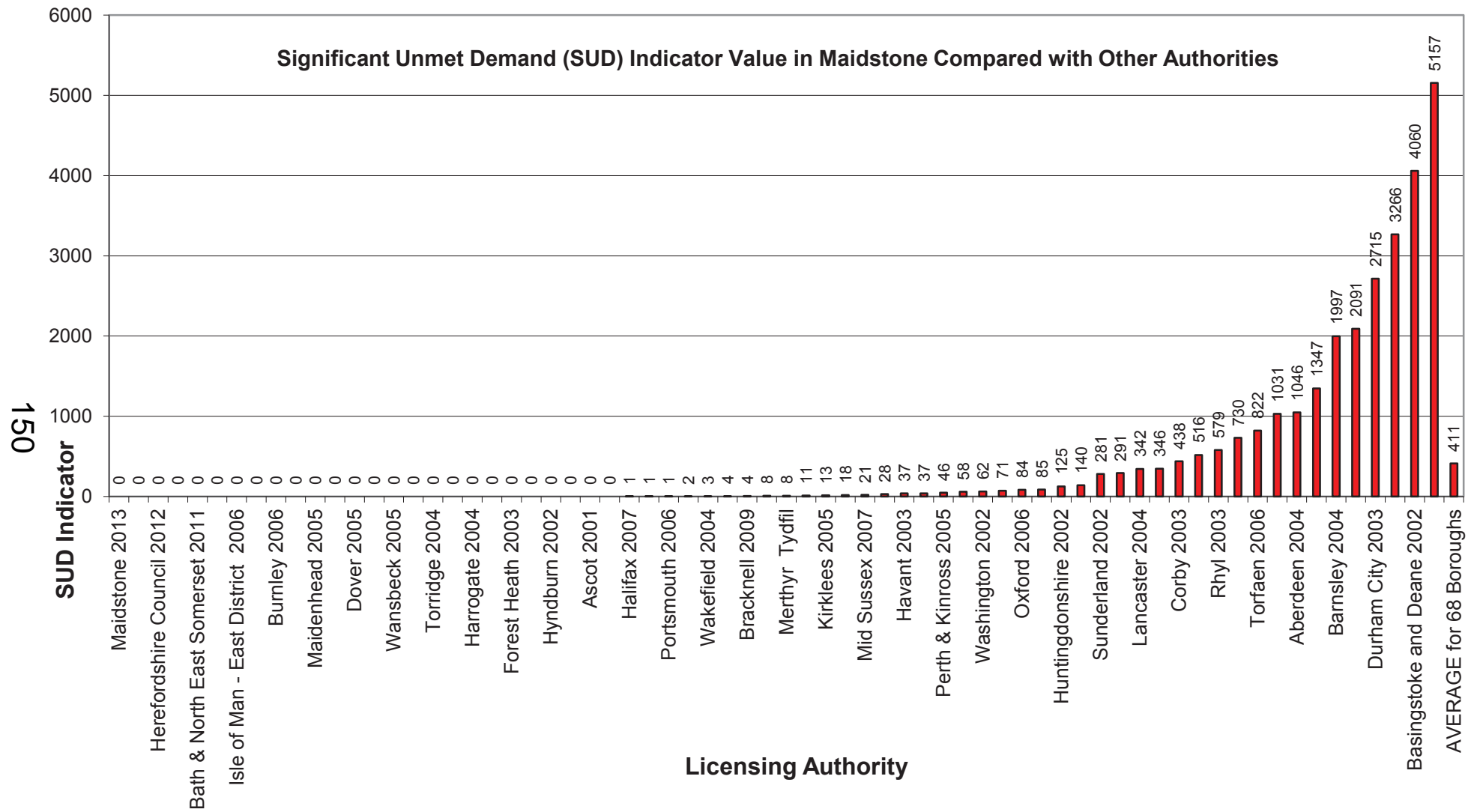


Figure 8: Comparison of ISUD value in Maidstone with other authorities

3.6. Comparisons

3.6.1. Any comparisons between authority areas should be treated with some caution. Areas vary widely according to population density, total population, public transport provision, car ownership and many other socio-economic and physical characteristics. However, previous studies undertaken over time can provide useful comparators. The following main points can be made about the results in Maidstone compared to other districts:

Table 6: Key Indicators Compared to Average of 67 Previous Studies				
	Population per Hackney	Average Passenger Delay (mins)	Average Hackney Delay (mins)	% Excess Demand
Maidstone	3232	0.39	14.46	4.3
Average for 100 others areas	1593	0.95	14.25	6.18

3.6.2. The population supplied by each Hackney in Maidstone is 3232, compared to the average of 1593 for the 100 other districts cited; i.e. the supply of Hackneys in Maidstone is significantly worse than the average.

3.6.3. However, the average passenger delay for Maidstone is significantly better than the average for other licensing authorities, while the delay experienced by Hackneys waiting for a passenger of 14.46 minutes is only slightly greater than the average of 14.25 minutes for the other authorities.

3.6.4. Figure 9 overleaf shows the Population per Hackney in Maidstone compared to other Authorities.

3.6.5. As far as is possible, the results of the current study are also compared below with the previous unmet demand study undertaken in January 2009 by Mouchel.

Table 7: Key Indicators Compared to 2009 Unmet Demand Study					
	ISUD	Passenger Departures	Average Passenger Delay (mins)	Average Hackney Delay (mins)	% Excess Demand
2012	0.00	3932	0.39	14.46	0.0
2009	No significant unmet demand	n/a	0.00	0.12	n/a

- 3.6.6. The report by Mouchel provided observations at only three ranks: High Street, Lockmeadow and Maidstone East Railway Station, over a period of 52 hours. There was no specific indicator of unmet demand calculated but the report in general concluded that, as now, there was no significant unmet demand at that time. The average passenger delay of 0 minutes identified by Mouchel across the three ranks observed compares well with the average passenger delay across 5 ranks in this report of 0.39 minutes. The average hackney delay of 0.12 minutes identified by Mouchel is significantly lower than the delay identified by this report of 14.6 minutes, suggesting this may have increased somewhat since the previous study.

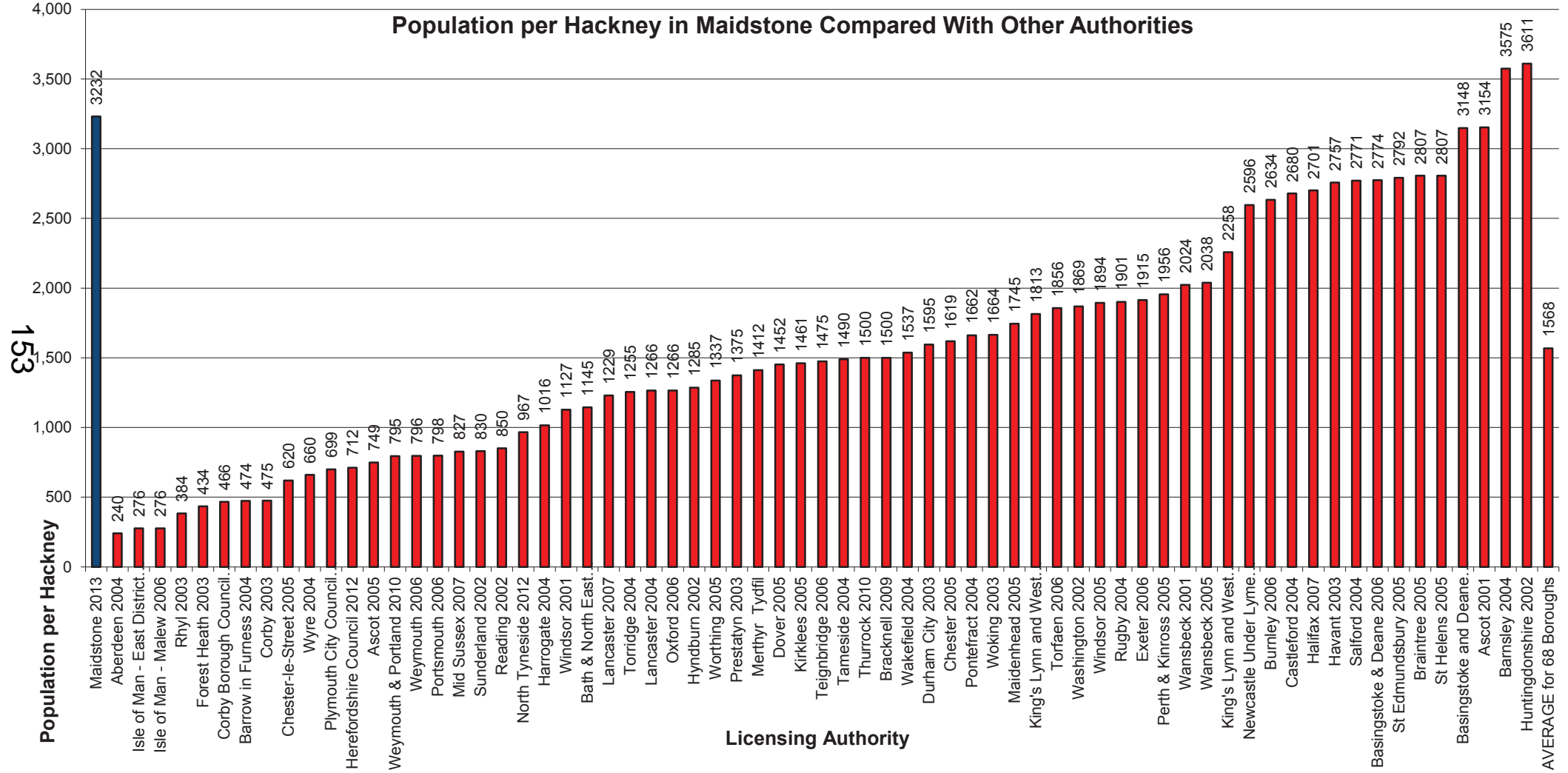


Figure 9: Population per Hackney in Maidstone Compared with other Authorities

4. On-Street Survey

4.1. Introduction

4.1.1. A public attitude survey was undertaken across to assess levels of satisfaction with cab use, flag down and telephone bookings. The survey also provided information on the views of frequent, infrequent and non-users of hackneys throughout different parts of the Borough. The survey structure comprised two elements. The first part identified the specific characteristics of a person's most recent cab trip undertaken in the last three months. The second part analysed respondents, longer term, Hackney Carriage requirements and factors influencing their amount of Hackney Carriage use.

4.1.2. A total of 428 valid surveys were obtained. It should be noted that in the tables that follow the totals do not always add up to the same amount. This is due to either not all respondents being required to answer all questions, some respondents failing or choosing not to answer some questions or some questions allowing multiple responses.

4.2. Demographics

4.2.1. Figure 10 shows that out of all the respondents, 36% were employed on a full time basis, with 21% in part-time employment. 9% of those who were questioned were students/pupils, 17% were retired, whilst 10% were unemployed and 6% were currently a housewife or husband.

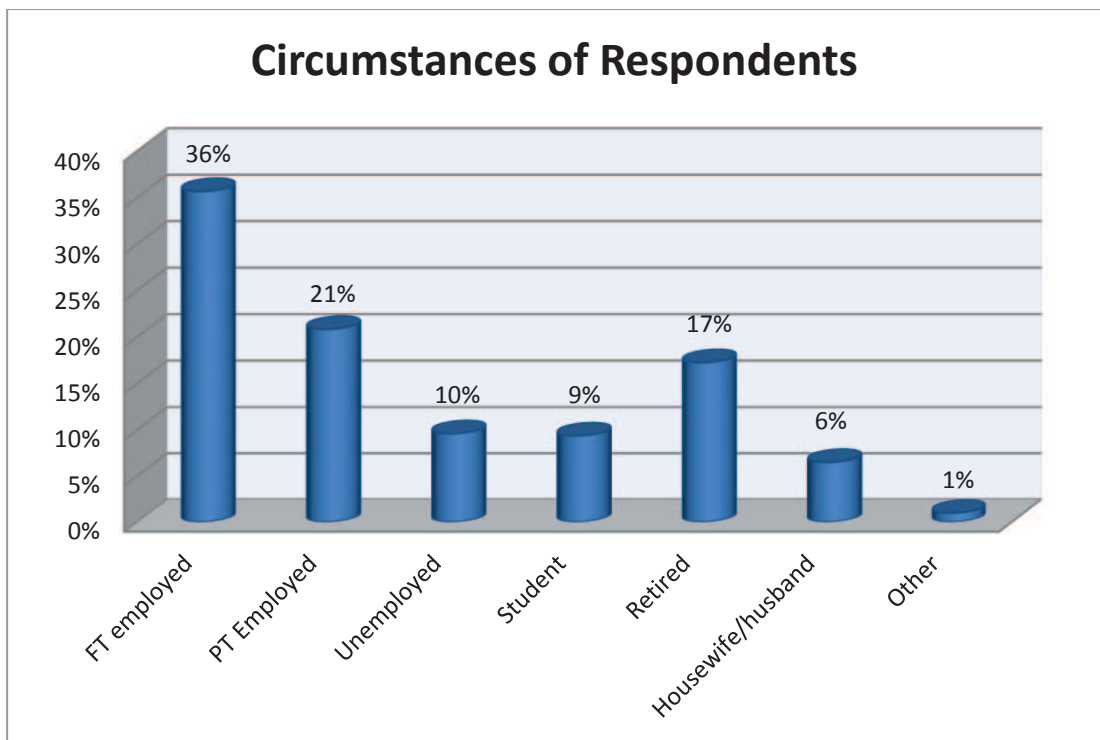


Figure 10: Circumstances of Respondents – Source: Amey

4.2.2. Of the respondents 45% were in the 16-34 year age group, 34% in the 34-65 year age group and 21% were over 65 + years of age, as can be seen in Figure 11. This suggests a sample that slightly over represents the middle and younger age groups and slightly under represents older people.

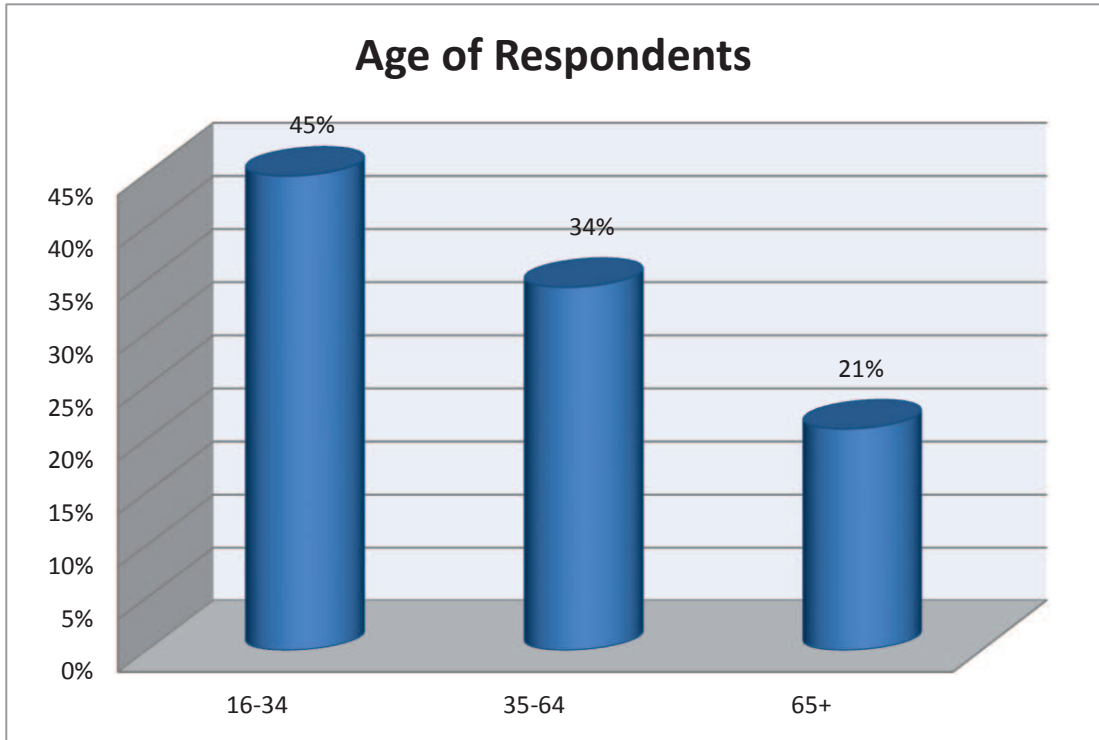


Figure 11: Age Profile of Respondents – Source: Amey

4.3. Characteristics of the most recent trip made within the last three month period

- 4.3.1. Asked if they had made a journey by cab in the last three months, 42% of respondents said they had, while the remaining 58% of respondents stated that they had not used a cab within the last three months, as illustrated in Figure 12.
- 4.3.2. Those who had made a recent cab journey were asked how they made their last trip. Figure 13 demonstrates that 62% of respondents made their last cab trip in a Hackney Carriage whilst 38% of respondents stated that they had used a PHV.
- 4.3.3. The results in the following section have been split to present the answers provided by 'hackney users' and 'PHV users'.

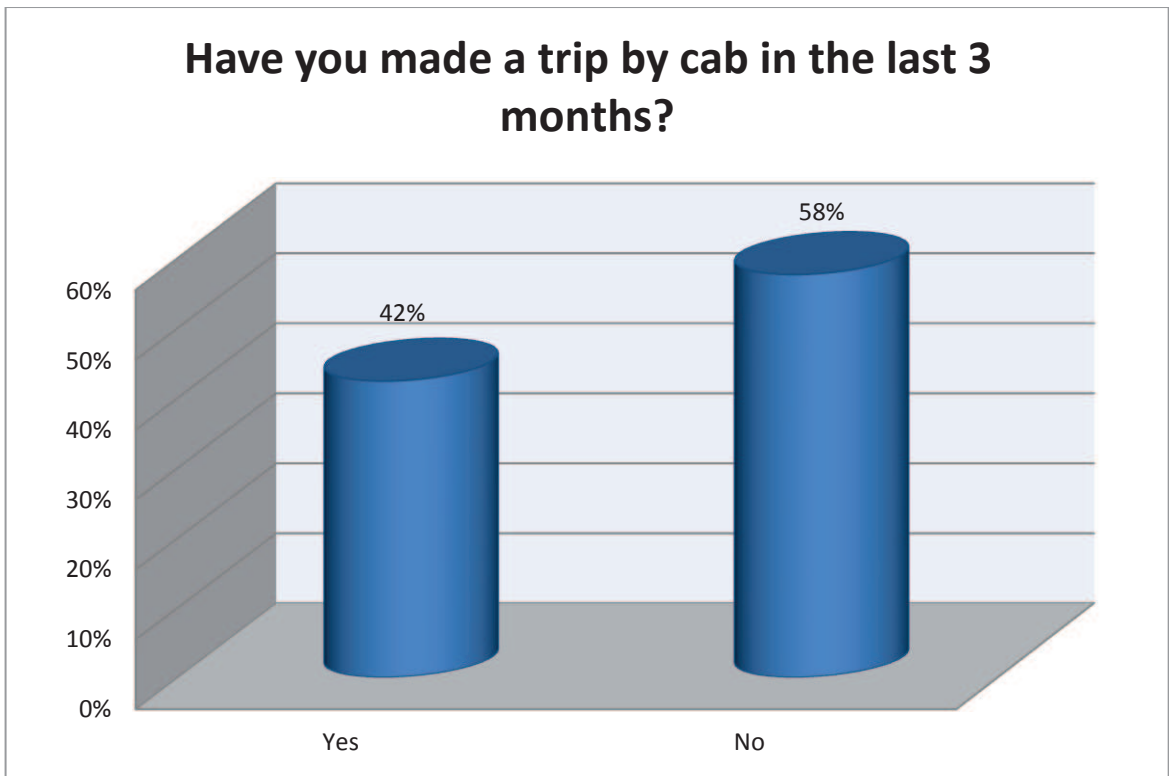


Figure 12: Percentage of Respondents who made a trip in a cab in the last 3 months– Source: Amey

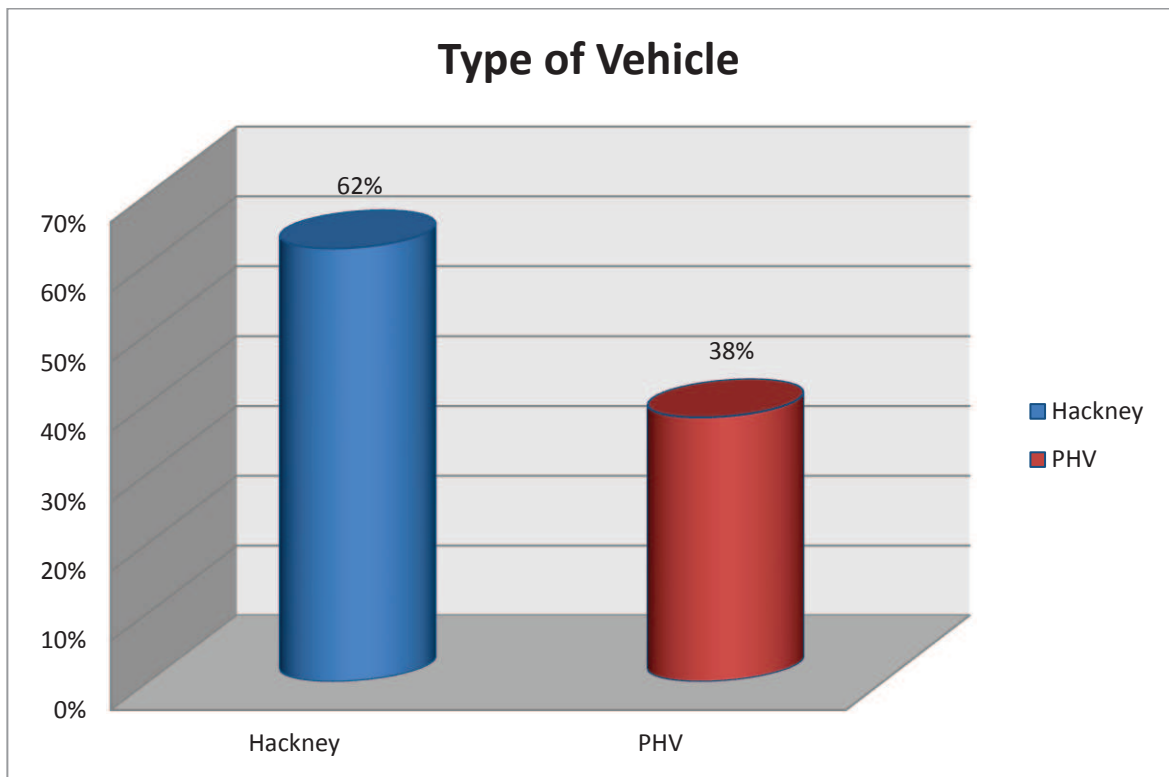


Figure 13: Type of Vehicle used – Source: Amey

4.3.4. Of those who indicated that they had used a Hackney cab in the last three months 77% obtained a taxi at a rank, 13% flagged down a vehicle and 10% booked a taxi by phone. Of those who used a PHV, 4% said they were picked up at a rank, 13% said they waved down the vehicle and 83% booked by telephone. The former suggests that either some respondents were mistaken about which vehicle they had obtained or how they obtained it, or that there may occasionally be some illegal plying for hire by private hire vehicles.

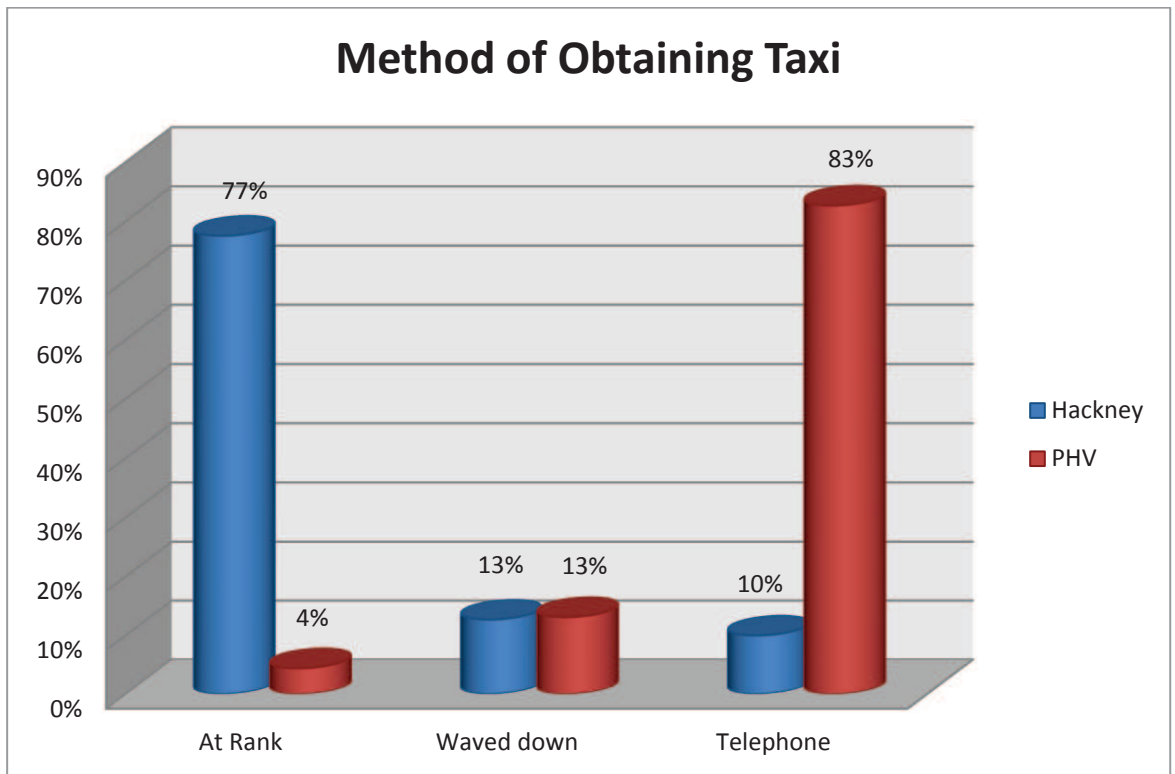


Figure 14: Method of Obtaining taxi – Source: Amey

4.3.5. Figure 15 shows the results for the reason why respondents used a cab. There were 48% of those who used a Hackney carriage in the last 3 months for Leisure purposes. A further 26% used a Hackney for work purposes, whilst 21% of respondents' reason for travel was for shopping. Education and medical reasons for travel only consisted of 2% and 1% of all hackney user respondents, respectively. The greatest proportion of PHV users' reason for travel was for both leisure (35%) and shopping (35%), with 20% of respondents travelling to work, 9% for educational purposes and only 1% requiring a PHV for medical reasons.

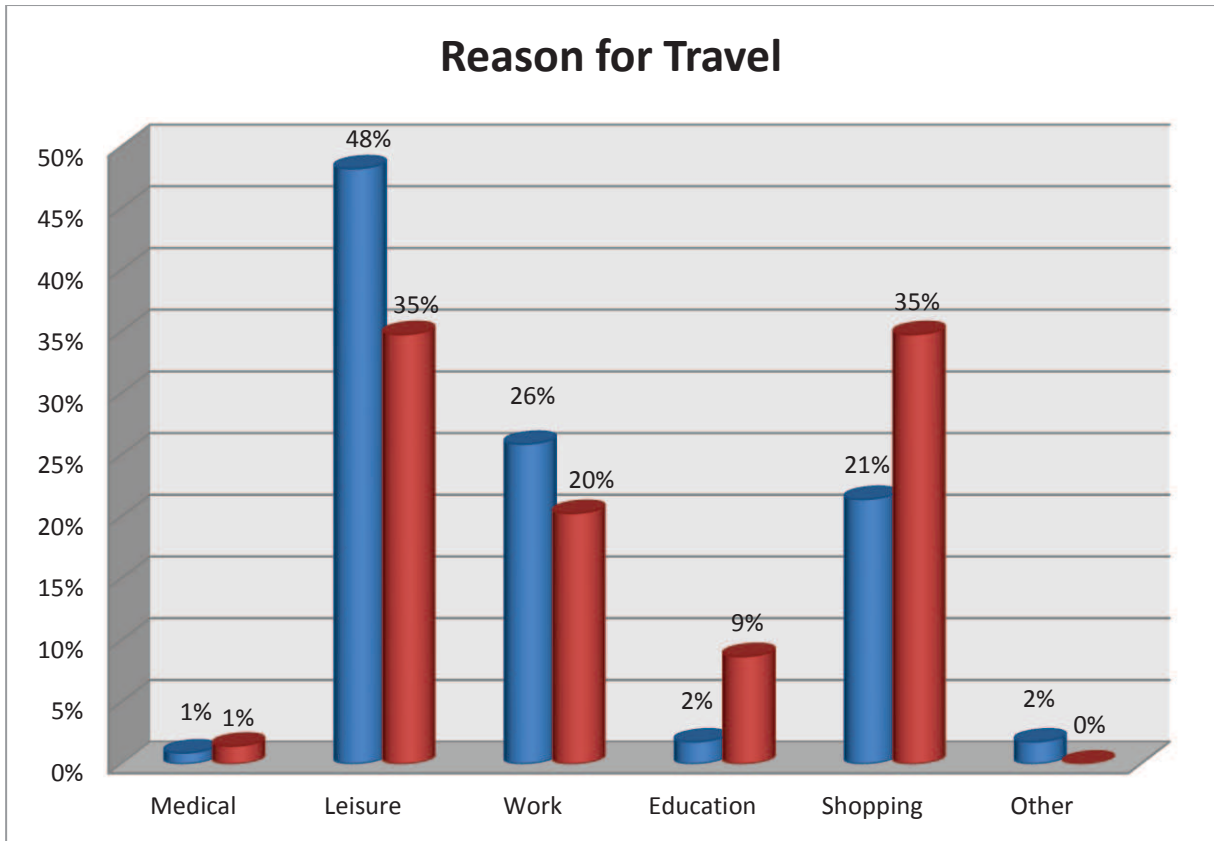


Figure 15: Reason for Travel – Source: Amey

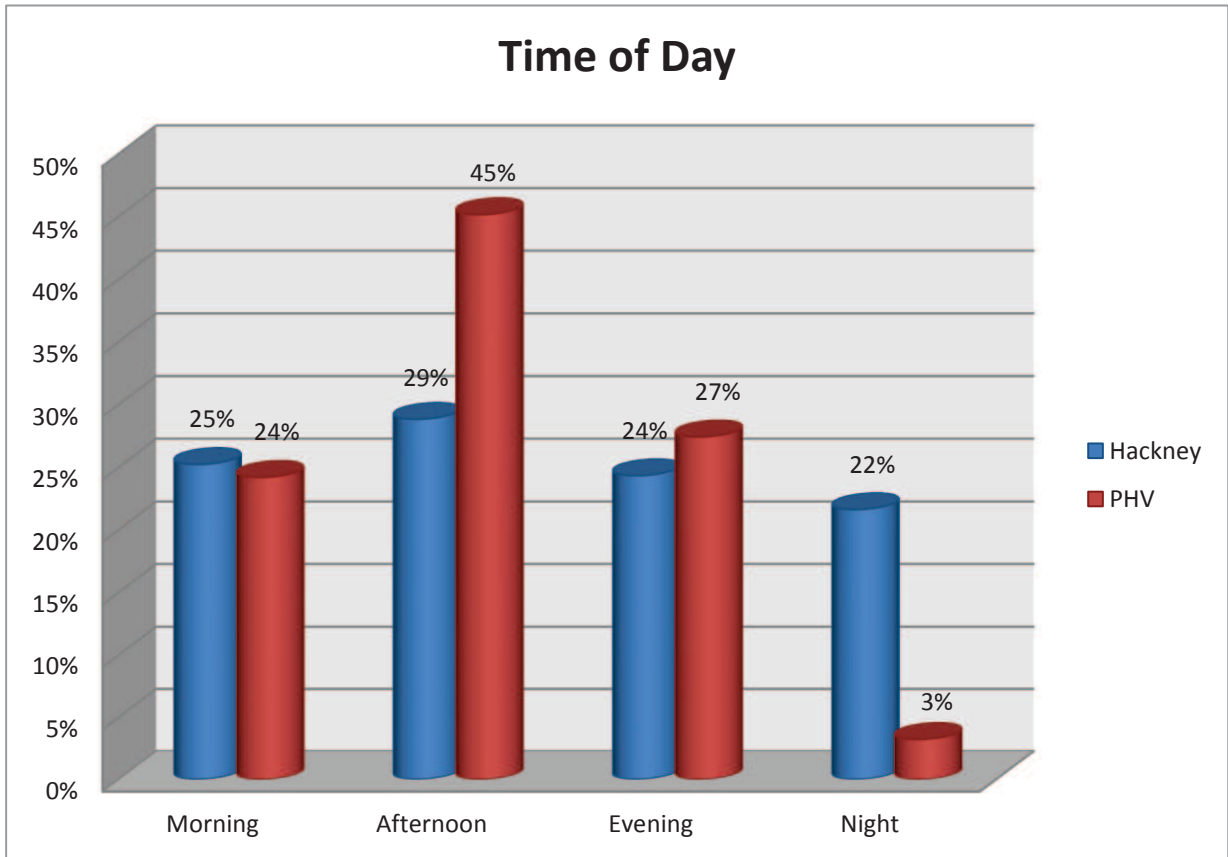


Figure 16: Time of Day – Source: Amey

4.3.1. As illustrated in Figure 16, use of hackneys is relatively evenly spread across the different times of the day with little difference between the greatest proportion of respondents (29%) using them in the afternoon and the lowest (22%) using them at night. Use of PHV's is less evenly spread with by far the greatest proportion (45%) using them in the afternoon and only 3% of respondents using them at night. The latter highlights the far greater relevance of hackneys at this time of day.

4.3.2. Respondents were asked to rate their trip for cleanliness of the vehicle both inside and out, the general condition of the vehicle, and the cab drivers helpfulness and appearance. A scale of 1 to 5 was used with 1 being very poor, 3 being average and 5 being very good. The results are shown in the chart below, in Figure 17. On average respondents rated the cleanliness of Hackney carriages at 4.08, but rate it just below 4 for PHV's., The general condition, for Hackney's and PHV's, scored 4.03 and 4.04 respectively. However, ratings drop slightly to an average of around 3.86 for driver helpfulness and 3.68 for appearance for Hackney cabs, whilst PHV driver helpfulness and appearance remain higher at 4.03 and 4.00 individually. Although there is a small variation across different scoring criteria, cab services generally score high with an average score of 4 ('Good') for all criteria.

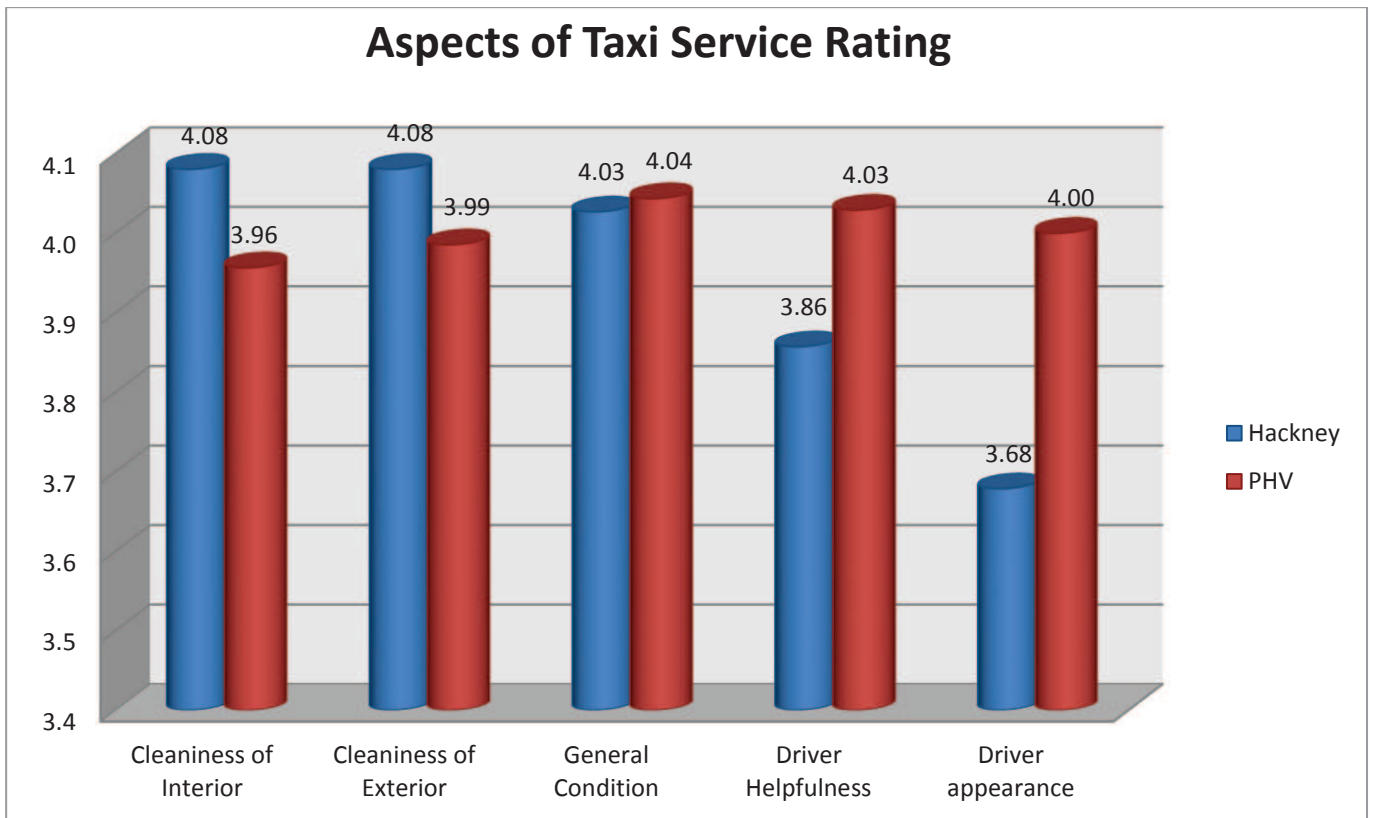


Figure 17: Aspects of Taxi Service Rating – Source: Amey

4.3.3. Respondents were asked what their last cab trip cost. The average of those that had made a trip by hackney in the last 3 months was £10.60p, while for PHV users it was slightly lower at £9.51p.

4.3.4. Figure 18 illustrates whether passengers felt their journey was value for money. Amongst hackney users 57% thought it was value for money and 43% did not. However, amongst PHV users the proportion who considered the trip value for money was much higher at 74%.

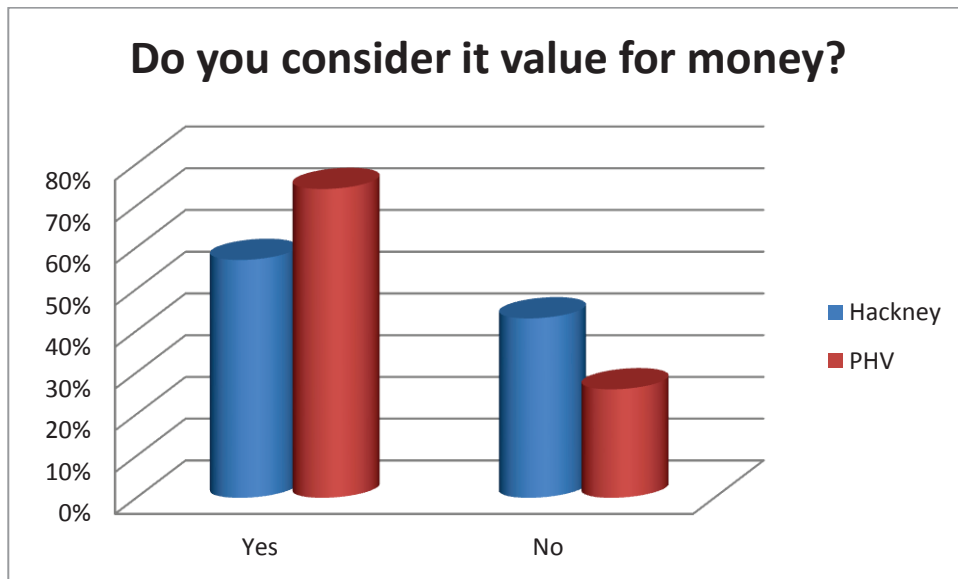


Figure 18: Value for Money Rating – Source: Amey

4.4. Obtaining a Cab

4.4.1. Respondents were asked about their knowledge of the legality of obtaining a cab at a rank or on street by answering true or false to the following four statements:

- Private Hire Vehicles are allowed to pick up passengers on street
- Hackney Carriage Vehicles are allowed to pick up passengers at a rank
- Private Hire Vehicles are allowed to pick up passengers at a rank
- Only Hackney Carriages are allowed to pick up at a rank or be flagged down

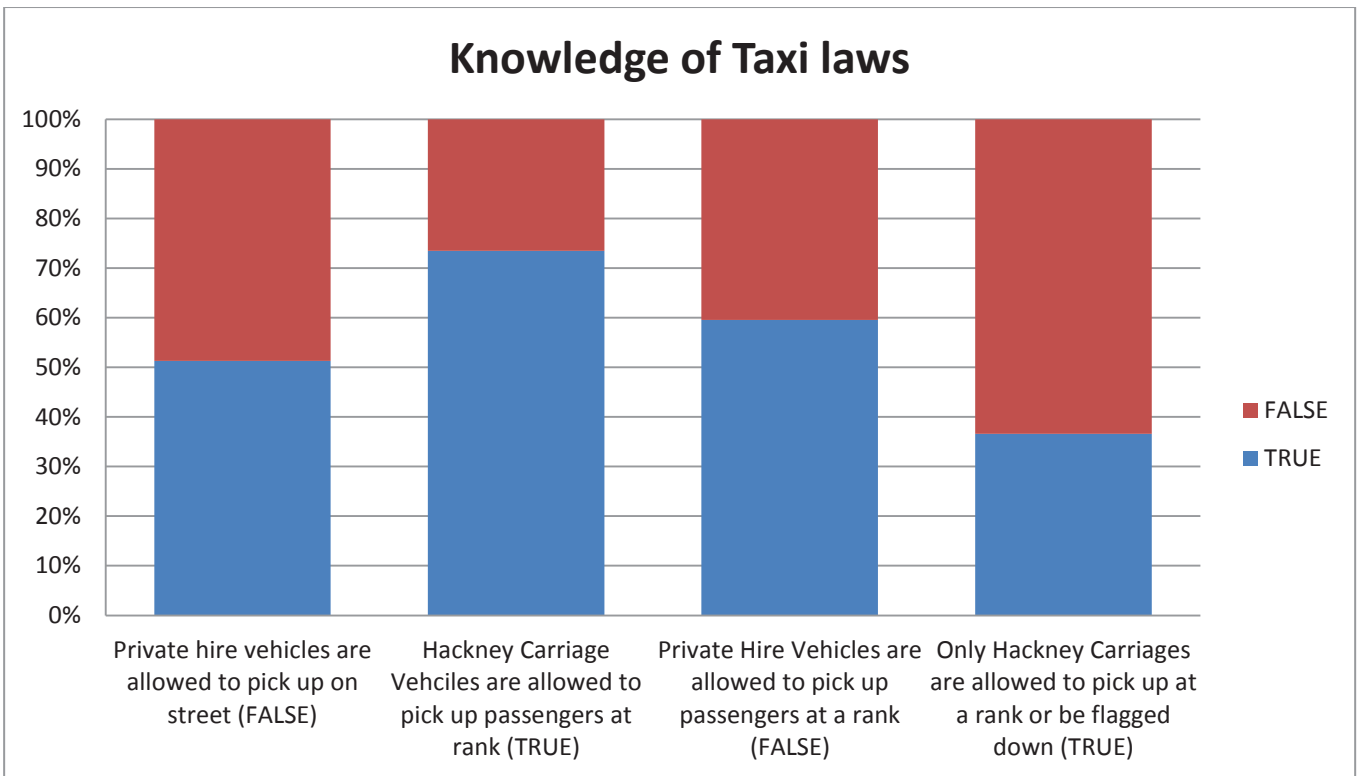


Figure 19: Knowledge of Statements – Source: Amey

4.4.2. The results show that only 49% of people knew it was illegal for a PHV to pick up fares by being flagged down in the street, while 74% of people knew that Hackney Carriages could pick up from a rank. There were 60% of respondents that incorrectly answered that private hire vehicles could pick up at a taxi rank and similarly 63% didn't know that only Hackney Carriages could be obtained at a rank or by being flagged down on the street.

4.5. Hackney Carriage Provision

4.5.1. All respondents were asked whether they thought the level of Hackney Carriages in the Borough of Maidstone (48 vehicles) was satisfactory. There were only 8% of respondents that believed there are too many taxis in Maidstone, whilst 24% thought the number was the right amount and 13% believed the number to be not enough. The remaining 55% expressed no opinion on the matter.

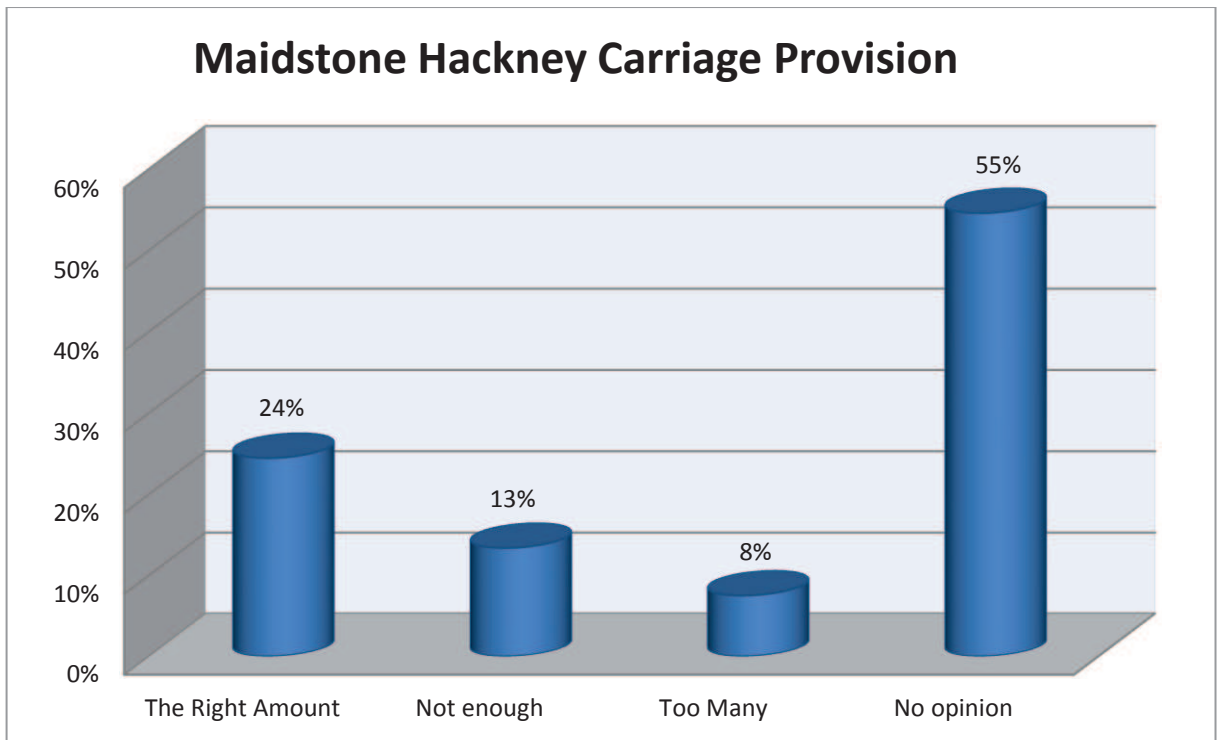


Figure 20: Maidstone Borough Hackney Carriage Provision

4.6. Potential for Improvement

4.6.1. The survey asked respondents what improvements they would like to see to Hackney Carriage services in Maidstone.

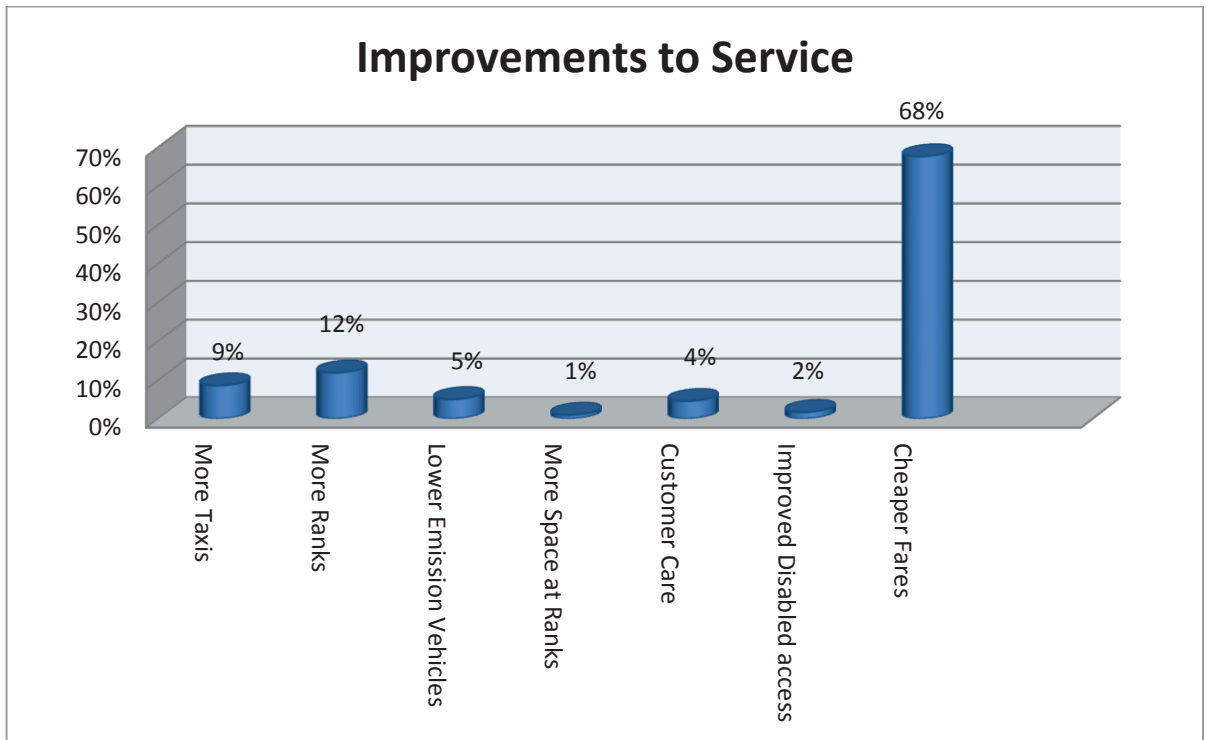


Figure 21: Improvements to Service – Source: Amey

- 4.6.2. By far the most often cited improvement was cheaper fares (68%). The response with the next highest frequency was more ranks (12%), followed by more taxis (9%) but only marginally higher than others which fluctuate around a lower frequency value of between 1 and 5%.
- 4.6.3. Respondents were asked whether there were any locations they would like new ranks introduced. Figure 22 shows the responses of the 13% that answered ‘yes,’ whilst 31% didn’t believe there was anywhere they would like to see a new rank. The remaining 56% replied, ‘don’t know.’ By far the most common suggestion for an additional rank is the High Street. Union Street and Maidstone Library were also suggested by a smaller number of people. Other possible locations recommended include Mill Street, Lock Meadow (cinema) and Lower Stone Street.

Table 8: Locations for new ranks	
Location	Frequency
High Street	18
Union Street	7
Maidstone Library	5
Mill Street	4
Lock Meadow / Cinema	3
Lower Stone Street	3
Earl Street	2
Odeon	1
Sainsbury’s	1
End of town, by bridge	1
Museum	1
Maidstone West	1
Outside Nightclubs	1
Top of Town	1
King Street	1
Week Street	1
Brewer Street	1
Maidstone Gateway	1
Borough Council	1

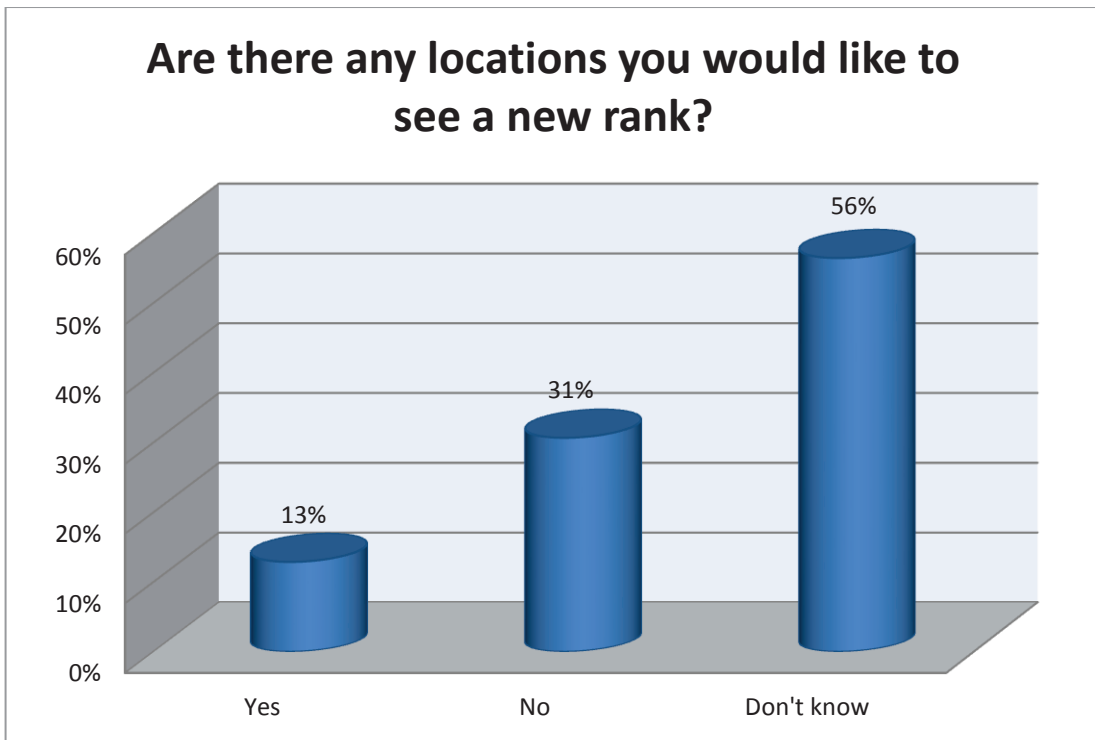


Figure 22: New Rank Locations – Source: Amey

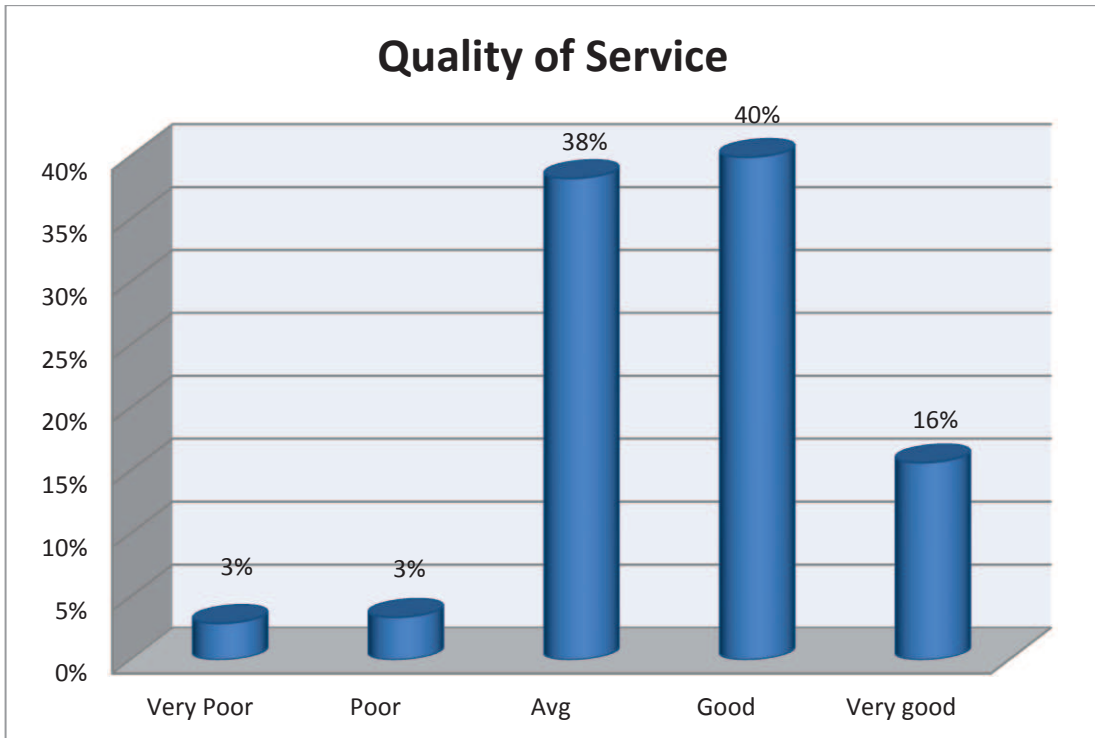


Figure 23: Quality of Service – Source: Amey

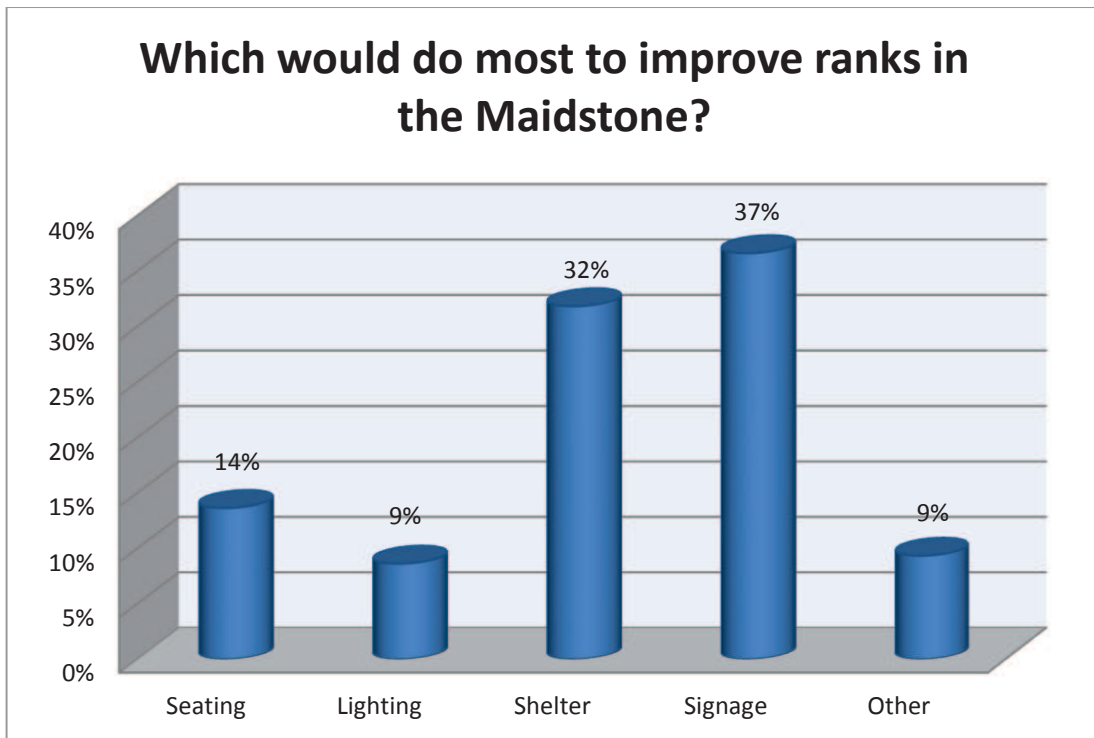


Figure 24: Rank Improvements – Source: Amey

- 4.6.4. As can be viewed in Figure 23, respondents were asked to rate the quality of the service provided specifically by Hackneys on a scale of 1 to 5 (with 1 being very poor, and 5 being very good). There were 16% of respondents that assessed the service to be very good, 40% rated the service as good, while 38% gave the service an average rating. Only 3% of respondents judged the service to be either poor or very poor respectively.
- 4.6.5. When asked what would do most to improve ranks in the Borough, the most common response was signage (37%), followed by shelter (32%). 9% of respondents chose 'other', with the majority suggesting all of the mentioned options would improve ranks in Maidstone, with one other recommendation of the ranks locations. Figure 24 shows the visual representation of the results.
- 4.6.6. Respondents were also asked, for what reason do they do not use Hackney's more often. Figure 25 shows that the majority of people do not use Hackney's more often due to the use of their cars, with 27% providing this as their reasoning. Bus use was the second highest reason (21%), with the cost associated with Hackney Carriages being the third most popular answer with 16% of respondents suggesting the price of journeys may limit their use. The remaining options or reasons for limited use fluctuated around a lower frequency value of between 1 and 10%.

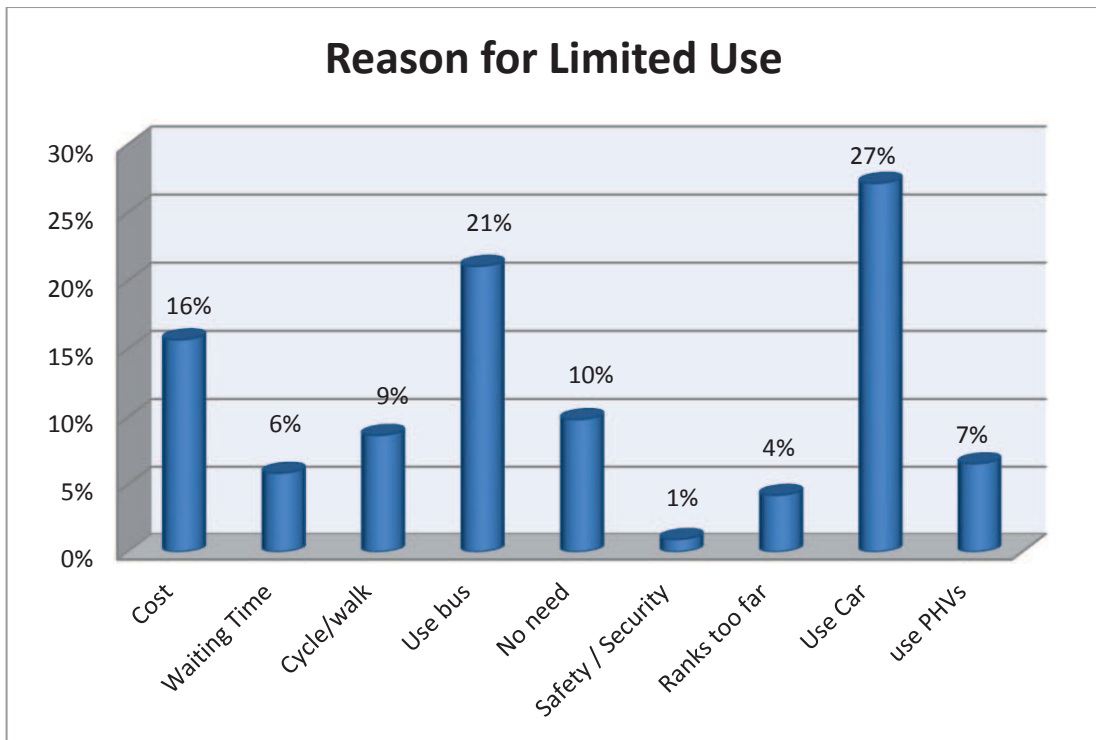


Figure 25: Reason for Limited Use – Source: Amey

4.6.7. Respondents were asked if they would welcome the use of Taxi Marshals in the Borough and nearly 17% said yes they would, while 83% said they wouldn't. A list of most common locations suggested for Marshals are listed in Table 9 and Figure 26 illustrates the findings.

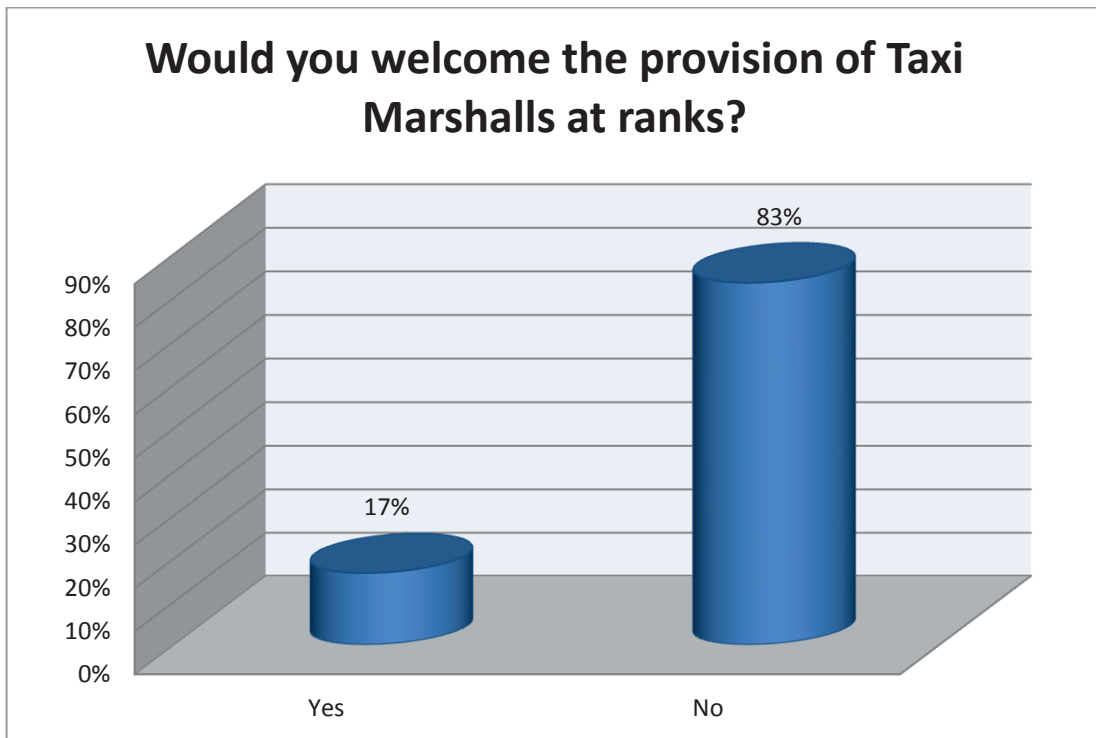


Figure 26: Taxi Marshall Provision – Source: Amey

Table 9: Locations for Taxi Marshalls	
Location	Frequency
High Street	16
All ranks	11
King Street	6
Maidstone East	6
Town Centre	4
Chequers Shopping Mall	3
Outside LUSH retail shop	3
All train stations	2
Near Nightclubs	2
Maidstone Library	1
Lower Stone Street	1

4.6.8. When asked whether the respondents would welcome taxibus services, 9% of respondents said they would and the other 91% said they wouldn't, as can be viewed in Figure 27 below. A list of the most common locations suggested for taxibuses are listed in Table 10.

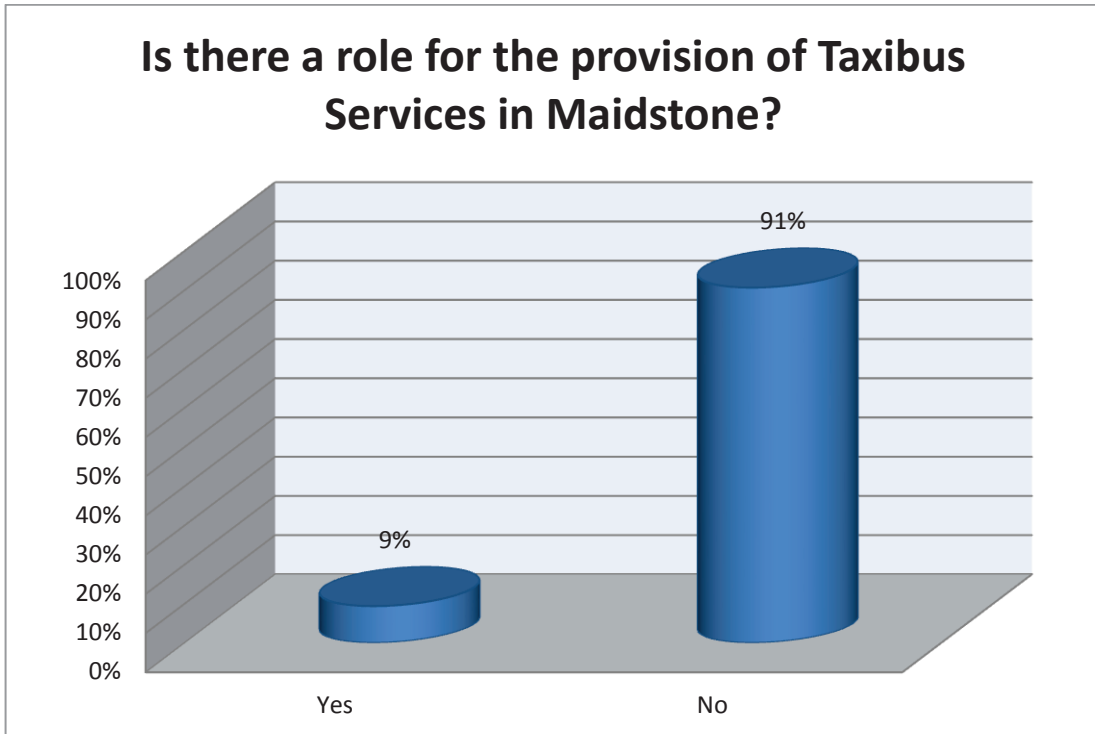


Figure 27: Taxibus Services – Source: Amey

Table 10: Locations for Taxibus Services		
Location	Time	Frequency
Town Centre	All the time / Night time	5
High Street	Any time	2
Maidstone Library	Mornings	2
Delting	Any time	2
Delting	Weekends	1
Delting	Mornings for OAP's	1
King Street	Evening time / Night time	1
Rural areas of Maidstone	Any time	1
Lenham	Every day	1
Universities	Evenings	1
Outside areas of Maidstone	Morning	1
Hylesbury Village	Morning for OAP's	1

4.6.9. When asked whether the respondents would welcome the provision of a Taxi Sharing scheme in Maidstone, 9% of the respondents again said they would and the remaining 91% said they wouldn't, as can be seen in Figure 28 below.

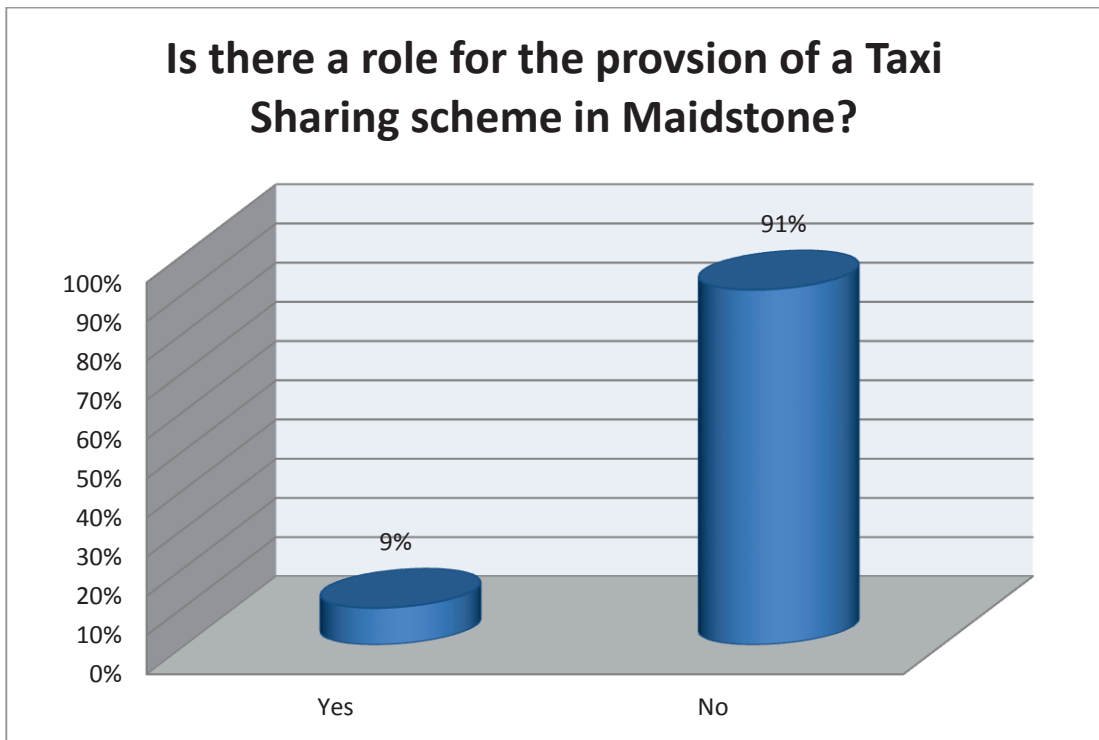


Figure 28: Taxi Sharing Scheme – Source: Amey

4.7. Rank Audit

- 4.7.1. On street audits were carried out at each of the ranks across the Borough of Maidstone. The purpose of the audits was to look at the suitability of the rank in terms of location, condition, accessibility and security for passengers. The remainder of this chapter gives a brief description of each of the key ranks and Figure 29 gives an overall assessment of the central criteria involved in the audit.
- 4.7.2. There are relatively new, well maintained, yellow or blue signs displayed at a couple of locations indicating a taxi rank is present. However, other signage at ranks is limited; with little information about fares or on the number of permitted vehicles and no advice on complaints procedures. Furthermore, there is no information explaining what to do if a taxi cannot be obtained. Signage indicating where the ranks can be found in the town centre is also not apparent.

4.8. Maidstone East Station

- 4.8.1. The rank is located along Station Access Road, just off Week Street, directly outside the train station. The taxi rank affords 5 spaces and operates between the hours of 14.00 and 01.00. Hackney owners pay an annual fee to South Eastern Trains for the right to use the rank, which is on their land. The rank experiences moderate use, mainly through customers of the train station and is in clear view from the main road (Week Street) accessing Station Road. There is no shelter provided for those waiting at the rank.
- 4.8.2. The pavement width is acceptable for waiting and wheelchair / pushchair use and the approach is free from clutter and other obstructions that disabled or visually impaired people may find difficult to negotiate. There is however a relatively significant negative gradient from East to West along the road, which some disabled users may find difficult.
- 4.8.3. Signage at the rank is limited; there are no signs on the main road (Week Street) indicating that a rank is present on Station Road. There are yellow painted markings on Station Road itself indicating taxi spaces, yet no information is provided at the rank indicating how people should queue or what to do in the event of there being no taxi's available. Despite lack of signage, convention and logic enable there be no procedural problems at this rank.

4.9. Maidstone West Station

- 4.9.1. The Maidstone West Station rank is located on Station Approach, off Tonbridge Road (A26) directly outside of the train station entrance. The rank has the capacity for 5 Hackney Carriage's and operates between the hours of 14.00 to 01.00 in the morning. Similar to Maidstone East Station rank, Hackney owners pay an annual fee to South Eastern Trains for the right to use the rank, which is on their land. This rank is used significantly less than the other Station rank. A private hire operator, 'Streamline,' had their offices located at the rank until October 2011, but this is no longer the case.

- 4.9.2. The rank itself is not particularly well lit, although some lighting comes from the exterior wall of the train station, as well as street lighting in the car park situated adjacent to the rank. The pavement leading to the rank is of an adequate width for wheelchair and pushchair use, with no obvious obstacles hindering disabled or visually impaired people. A dropped kerb is also present at the rank, alongside a safety rail directly outside the station entrance.
- 4.9.3. Signage to the rank is limited; there are no signs on Tonbridge Road indicating the location of the rank, only signage for the train station. There are however 2 blue, well-maintained, signs on the exterior wall of the station building illustrating that a taxi rank is located there. There are further signs indicating the directions to platforms and the ticket office within the train station; as well as an information board with a useful contacts list for customers.
- 4.9.4. The Station Approach road has a slight negative gradient from North to South but shouldn't be of issue for wheel chair users.

4.10. King Street / High Street

- 4.10.1. The rank operates between the hours of 10:00 and 02:00 and is located on High Street, outside LUSH retail shop. There are two official spaces and a large feeder rank, allowing around 8 taxis to queue, situated further along High Street. There is a large TV screen in King Street alerting the drivers to the situation at the head of the rank, drivers fill in the gaps as and when they appear. From the rank observations conducted, it confirmed that this rank is the busiest in Maidstone, with on average 2008 passengers and 1359 Hackney cabs estimated to use the rank per week and up to 10 vehicles waiting at busy times.
- 4.10.2. There's also 3 further spaces outside the old Somerfield / Coop store further down King Street, although this rank is now non-operational. There is no taxi rank shelter or seating provided, although street lighting makes the rank well lit. Pavement width and quality are suitable for wheelchair users and visually impaired customers. However signage and information on outlining complaints procedures or contact details etc. is not provided at this location.

4.11. Earl Street

- 4.11.1. Earl Street taxi rank is found outside 35 Earl Street. The rank can hold 2 Hackney's and operates between the hours of 12.00 and 20.00. Earl Street taxi rank is little used, with take-up mainly from the various bars and restaurants located on Earl Street.
- 4.11.2. Signage at the rank includes a yellow plaque elevated on a signpost stating 'no parking at any time except for taxis.' There is no signage however explaining queuing or complaints procedures, but pavement width and accessibility for waiting, wheelchairs etc. is more than adequate.

4.12. Lock Meadow

- 4.12.1. Lockmeadow taxi rank is located on Barker Road, near the junction of Hart Street. The rank is situated directly outside of Maidstone’s Lockmeadow Market, opposite B&Q. It has the capacity for 1 taxi and was in the past rarely used is now non-operational, as all the nightclubs have currently shut down at this location.
- 4.12.2. All the same, a rank audit was still conducted at this location, in the event that the rank should be re-opened. Thus, the rank has no signage, only fading road markings indicating a taxi rank is present. It also has no information regarding taxi complaints procedures or relevant contact numbers. Access to the rank is adequate with suitable pavement width for waiting passengers and wheelchair usage, although there is no dropped kerb for easy access from the pavement into taxis. There is also a bus shelter directly prior to the taxi rank meaning that suitable shelter and seating can be used whilst passengers are waiting for a taxi.

4.13. High Street West

- 4.13.1. High Street West is a taxi rank positioned outside of Chicago Rocks Café. The rank has the capacity for 3 taxis. The rank observations at the location confirmed that the rank is very rarely used during the daytime, but has a higher usage during the evening and night time periods. This is more than likely due to the location of the rank on the High Street near various bars and eateries. It appears the rank is often used as a private hire drop off and pick up point for pre booked fares.
- 4.13.1. The site visit confirmed that signage to and from the rank is poor and there is no information regarding taxi complaints procedures, licensing officer contact number or promotions. Accessibility at the rank is generally good; there is adequate pavement width for waiting pedestrians and wheelchair access. There is also a dropped kerb at the rank allowing customer’s easier access to the taxis. There is no shelter or seating provided but street lighting makes the rank well lit.

4.14. Overall Assessment of Ranks

- 4.14.1. Figure 29 illustrates an overall assessment of the central criteria involved in the audit. Appendix D at the rear of the report shows the rank audit check list used in order to obtain the information for each individual rank.

Rank	Signage		Road Markings		Information		Accessibility						Security							
	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗		
Maidstone East Station	✗	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✗	✗	✗	✓	✗	✗	✓	✓	✗
Maidstone West Station	✓	✓	✗	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✗	✓	✗	✓	✗	✗	✓

King Street / High Street	x	x	✓	x	x	x	x	✓	✓	x	✓	x	x	x	x	x	✓	✓	x	x	x	x
Earl Street	✓	x	✓	✓	x	x	✓	✓	✓	✓	x	x	x	x	x	✓	✓	x	x	x	x	
Lock Meadow	x	x	x	x	x	x	✓	✓	✓	x	x	✓	x	x	✓	x	✓	x	✓	x	✓	x
High Street West	x	x	x	x	x	x	✓	✓	✓	✓	x	x	x	x	x	✓	✓	x	x	x	x	

Figure 29: Overall Assessment of Ranks – Source: Amey

4.14.2. The taxi ranks in Maidstone are accessible, safe and the majority correctly marked out on the road surface, although some could benefit from being re-marked. However, as previously mentioned ranks could be improved with better signage. Also, more information could be provided at ranks to improve the customers experience should they have any difficulties in obtaining a taxi. Figure 30 illustrates the locations of the 5 ranks that observations were conducted at, for the purpose of this report.

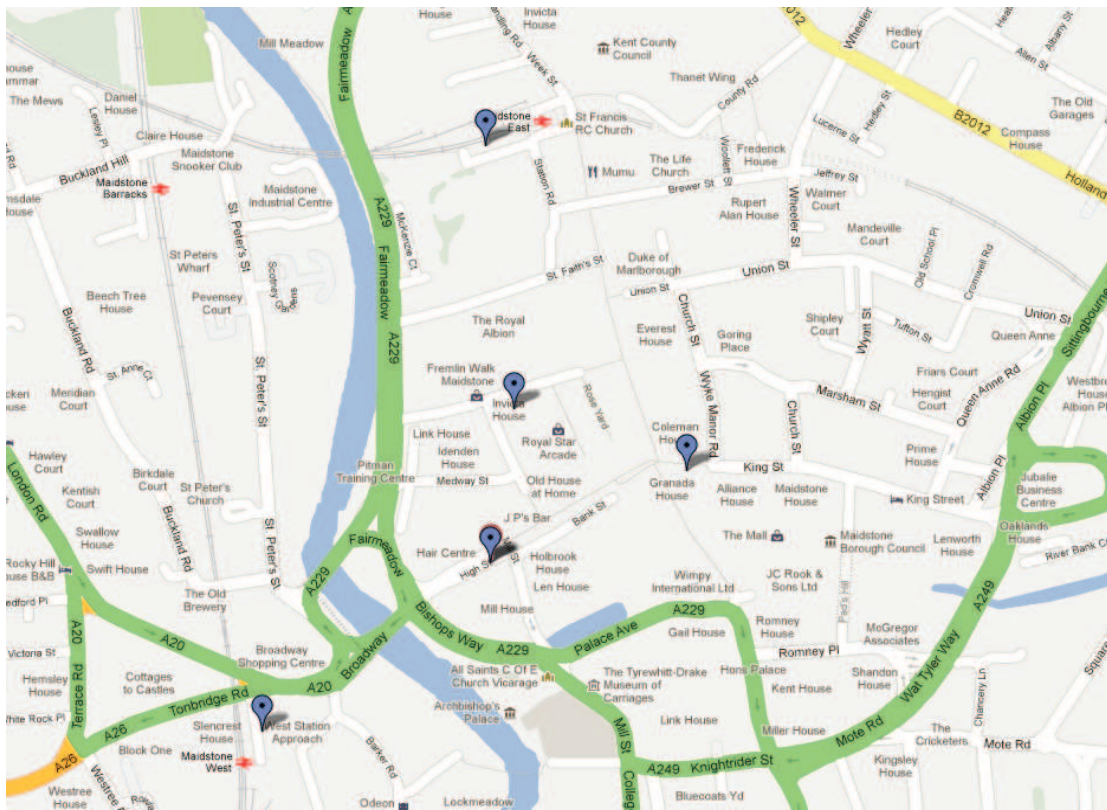


Figure 30: Location of ranks within Maidstone

5. Trade Consultation

5.1. Driver Consultation

- 5.1.1. A consultation letter and pro-forma was circulated by the council, on behalf of Amey, to licensed hackney carriage and private hire drivers in the Maidstone area. These encouraged responses in writing, by telephone, by e-mail or to a series of questions using the pro-forma questionnaire provided. A total of 33 pro-forma responses were received, the answers to which are collated below. It should be noted that in the tables that follow the totals do not always add up to the same amount. This is due to either not all Hackney drivers answering questions referring to PHV's and similarly not all PHV drivers answering questions referring to Hackney cabs.
- 5.1.2. Of the 33 drivers who responded, 39% stated that they were from drivers of Hackney Carriages and 61% were from Private Hire drivers.
- 5.1.3. There were 39% of respondents that shared a vehicle with another driver, while 61% of respondents stated that they were the only driver.
- 5.1.4. Each respondent was asked to estimate the average number of journeys (per vehicle) they undertook, each week. Table 11 and Figure 31 illustrate the results below.

Table 11: Average Journeys per week		
Average Journeys	Hackney Drivers	PHV's
From Ranks	64	0
From Flag downs	2	0
From Telephones	4	44
From Contracts	0	12
Total	70	56

- 5.1.5. Amongst hackney carriage drivers, 91% of journeys each week originate from the rank, 3% from flag downs, 5% from telephone bookings and 0% from contract work. Telephone bookings are responsible for 78% of Private hire journeys with the remaining 22% being contract bookings.

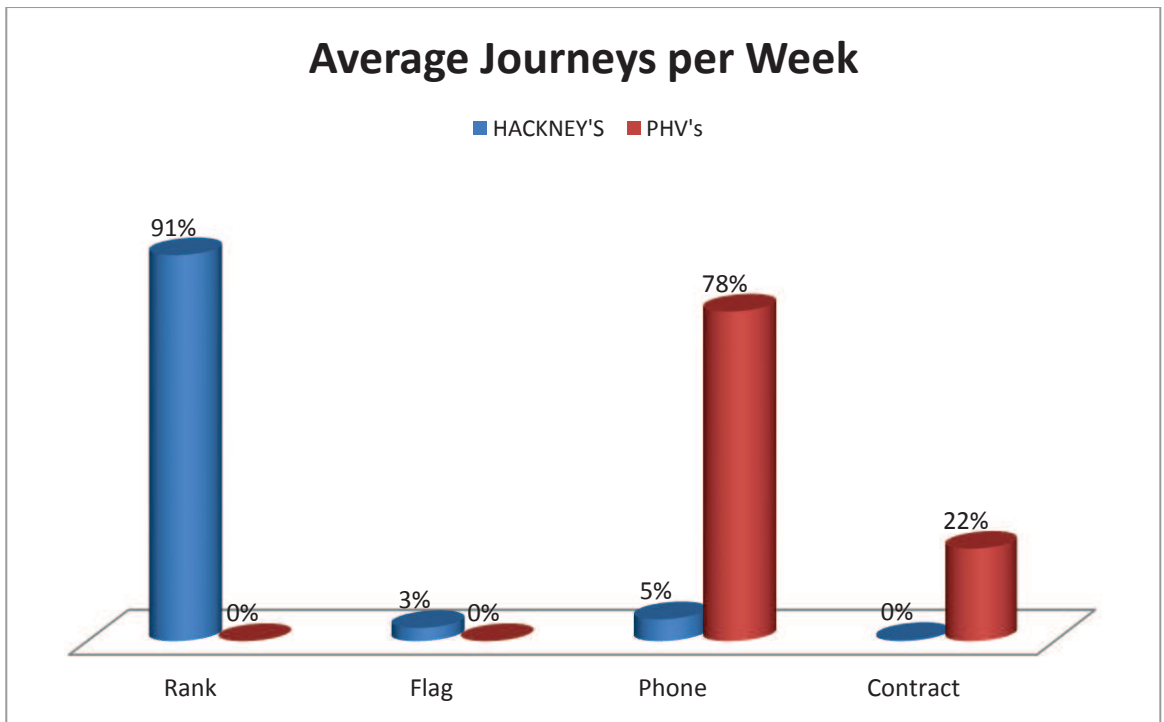


Figure 31: Average Journey's per Week – Source: Amey

5.1.6. The following figures illustrate the respondents' answers to a variety of questions associated with the cab trade in Maidstone.

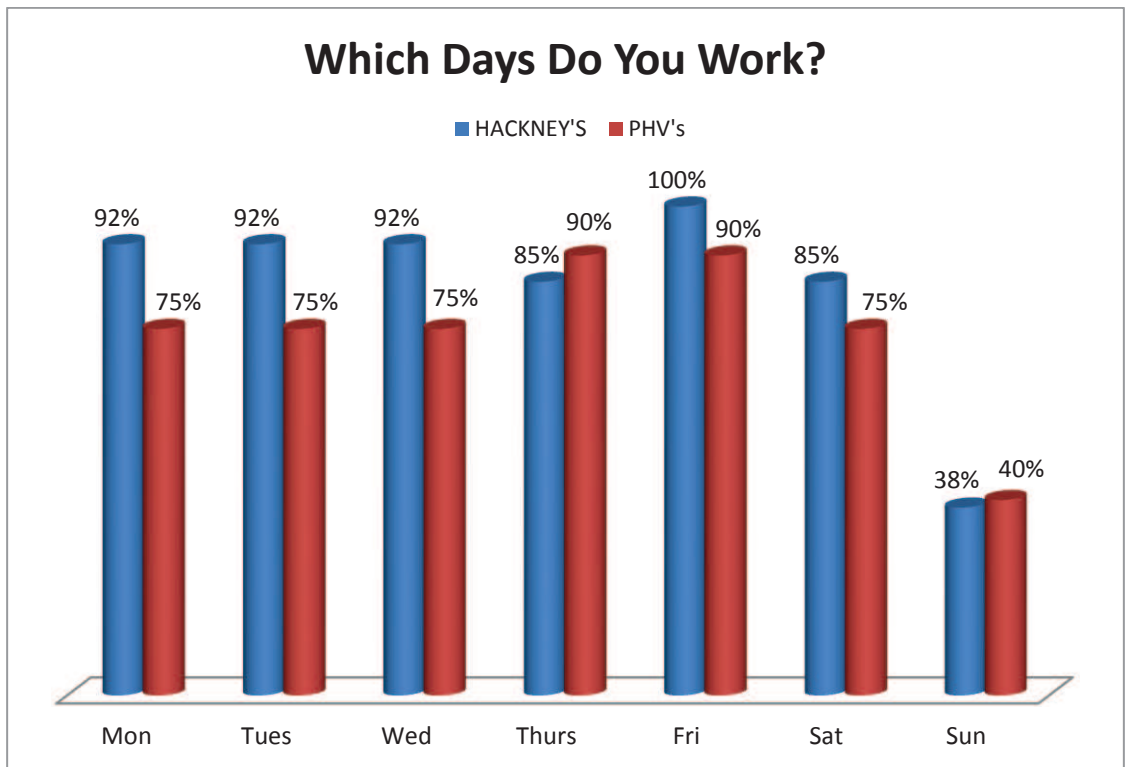


Figure 32: Days that drivers work – Source: Amey

5.1.7. Most drivers work at least 6 days and a number on 7 days a week. The least number of drivers said they operated on Sundays. It can be seen from Figure 32 that the greatest proportions of drivers work on a Thursday and Friday. Figures are much the same for both hackney and PHV drivers, apart from the period Monday to Wednesday where a greater proportion of Hackney drivers work, when compared to Private hire drivers.

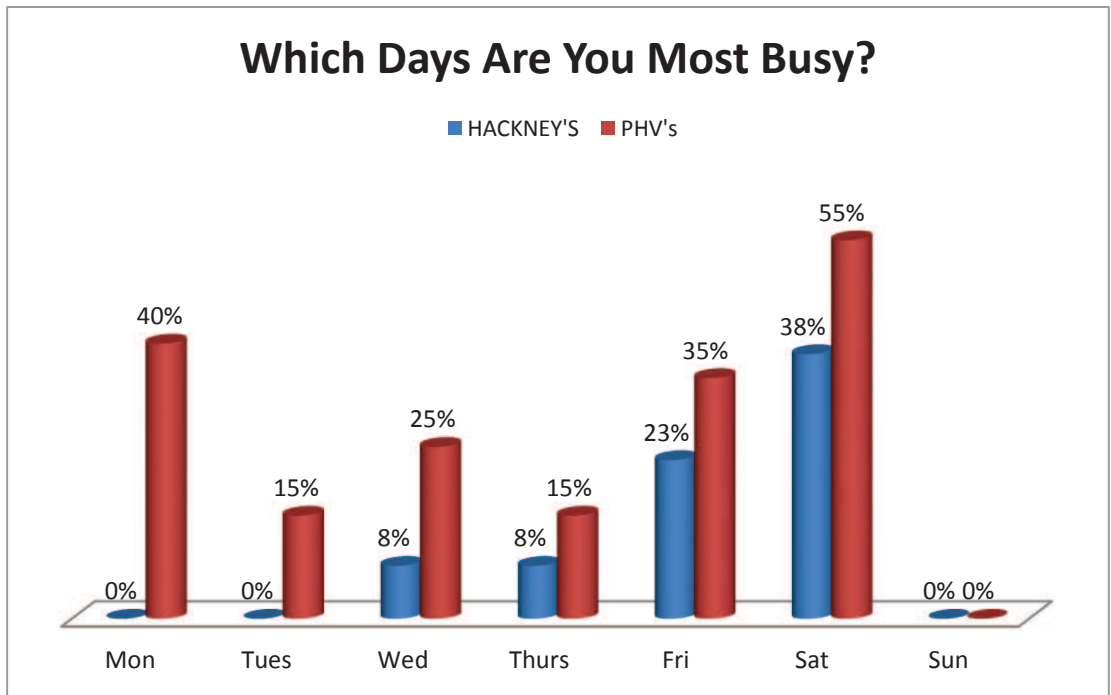


Figure 33: Busiest days for drivers in Maidstone – Source: Amey

5.1.8. Figure 33 shows that 38% of Hackney drivers and 55% of PHV drivers, by far the greatest proportion of all respondents, indicated that Saturdays were their busiest day. Friday was also a busy day for 23% of Hackney respondents and 35% of PHV respondents. Monday was actually the second busiest day for PHV drivers. However no Hackney drivers questioned thought this to be one of their busiest days. Sunday was the least busy day when combined for both sets of drivers. Whilst demand for Hackneys appears to build steadily from Wednesday through to Saturday for PHV drivers, it appears to be more evenly spread through the week.

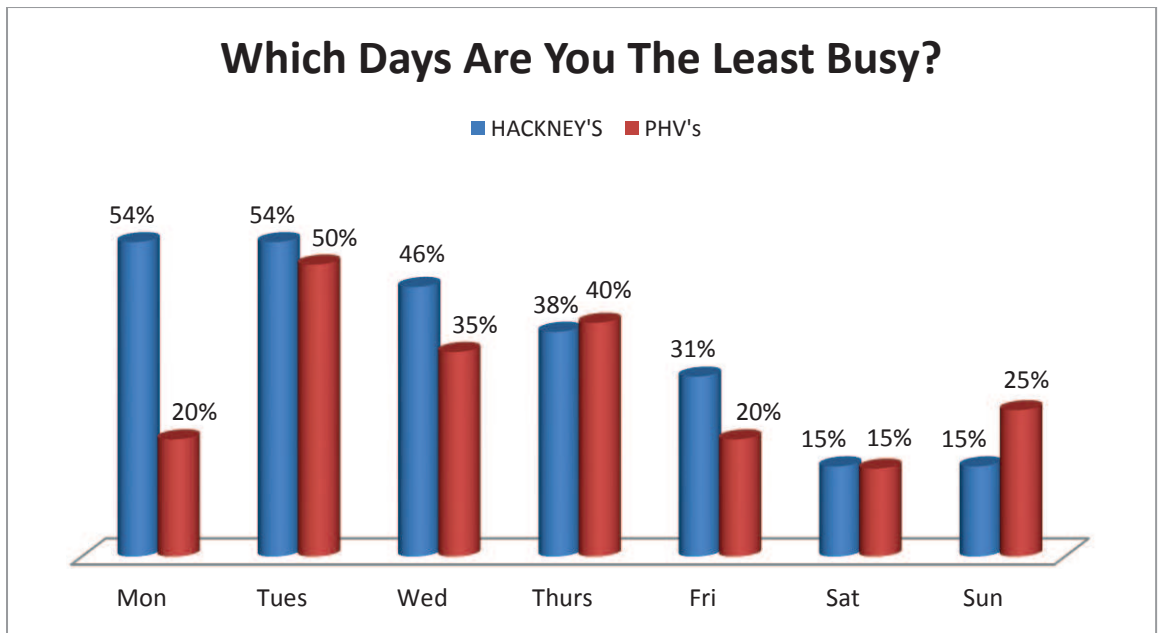


Figure 34: Least busy days for drivers in Maidstone – Source: Amey

- 5.1.9. The results for the least busy days mirror those for the busiest days both for Hackney and PHV drivers.
- 5.1.10. Figure 35 indicates that, overall, the greatest proportion of drivers work afternoons and the next greatest proportion during the morning period. The results show that a greater proportion of Hackney drivers work across all hours of the day when compared to PHV drivers.

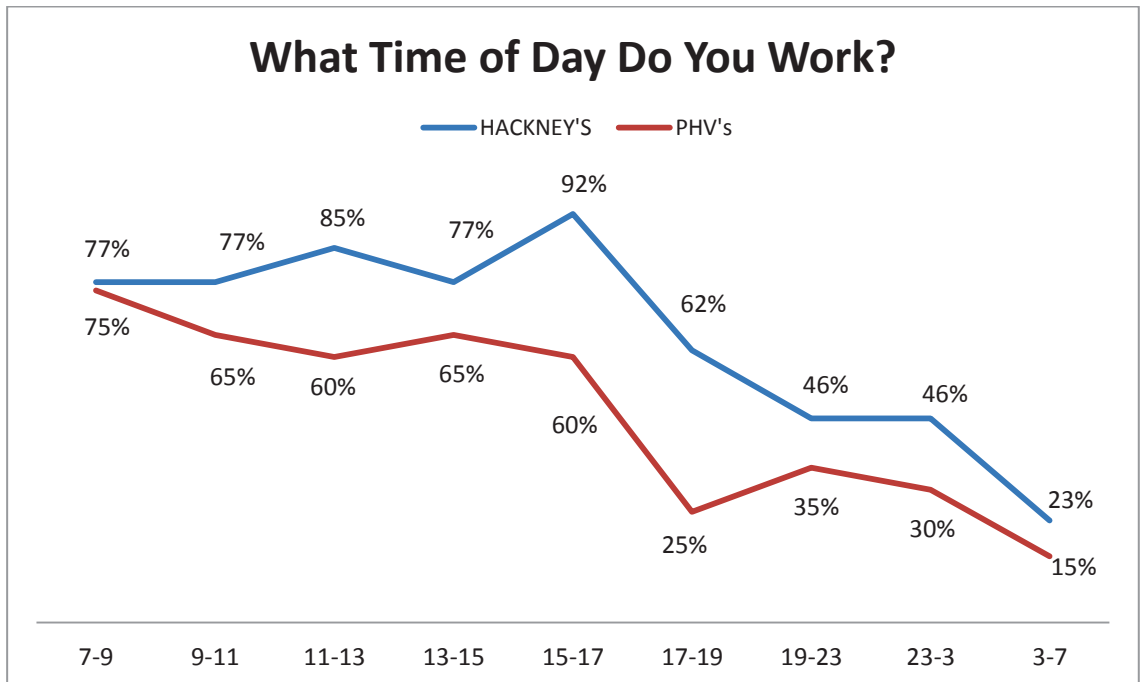


Figure 35: Time of day that drivers work – Source: Amey

5.1.11. The busiest hours of the day worked by PHV drivers was recorded as being from 07.00 – 09.00 in the morning (45%), whereas Hackney drivers consider the period of afternoon and evening from 15.00 to 19.00, as well as the night time 23.00 – 03.00 to be their busiest time of day (31%). Both sets of drivers considered the period between 11.00 – 13.00 and 03.00 – 07.00 to be their least busy hours, as Figure 36 shows.

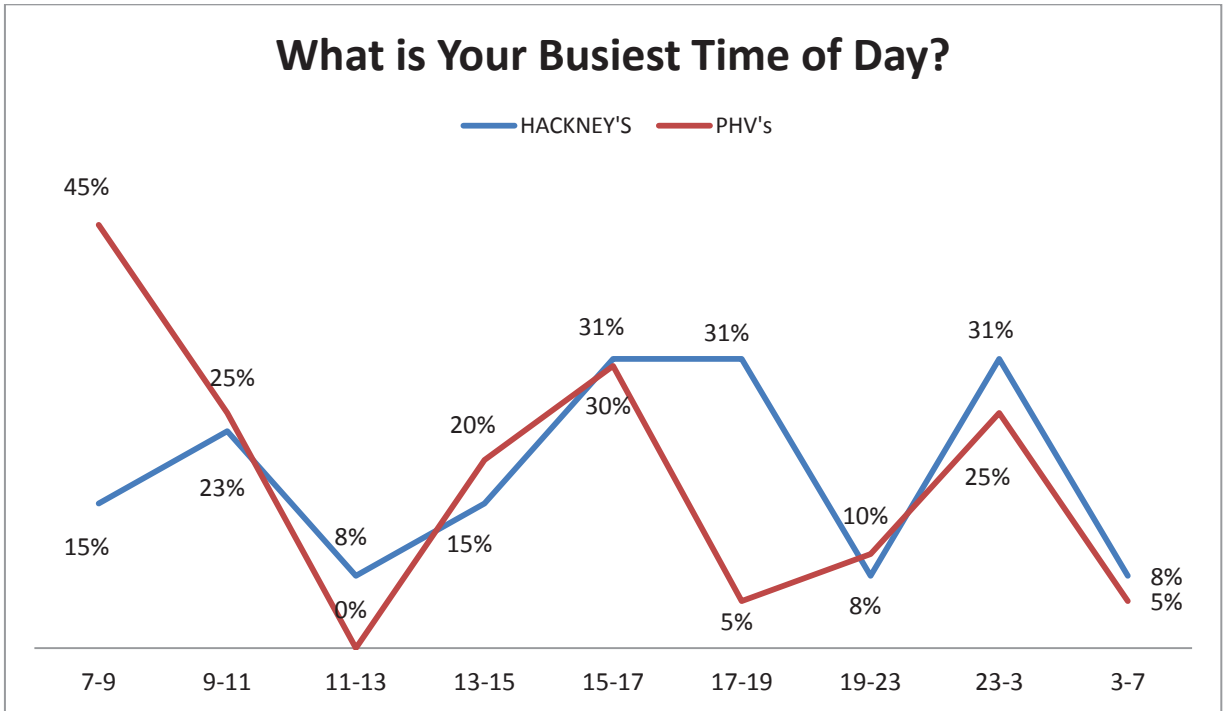


Figure 36: Busiest Time of Day – Source: Amey

5.1.12. Asked about the supply of Hackneys in Maidstone, 92% of all Hackney respondents and 40% of all PHV drivers felt that it was adequate, whilst just 8% of Hackney drivers and 5% of PHV drivers thought that more hackney carriages were needed to cover present demand. The remaining PHV drivers did not respond to the question.

5.1.13. Asked about the supply of PHV's in Maidstone 23% of Hackney drivers and 85% of PHV drivers believed that there is an adequate supply of Private Hire vehicles, whilst 8% of Hackney cab respondents and 10% of PHV respondents considered more PHV's were needed to cover demand, as can be viewed in Figure 37. The remaining Hackney and PHV drivers did not respond to the question.

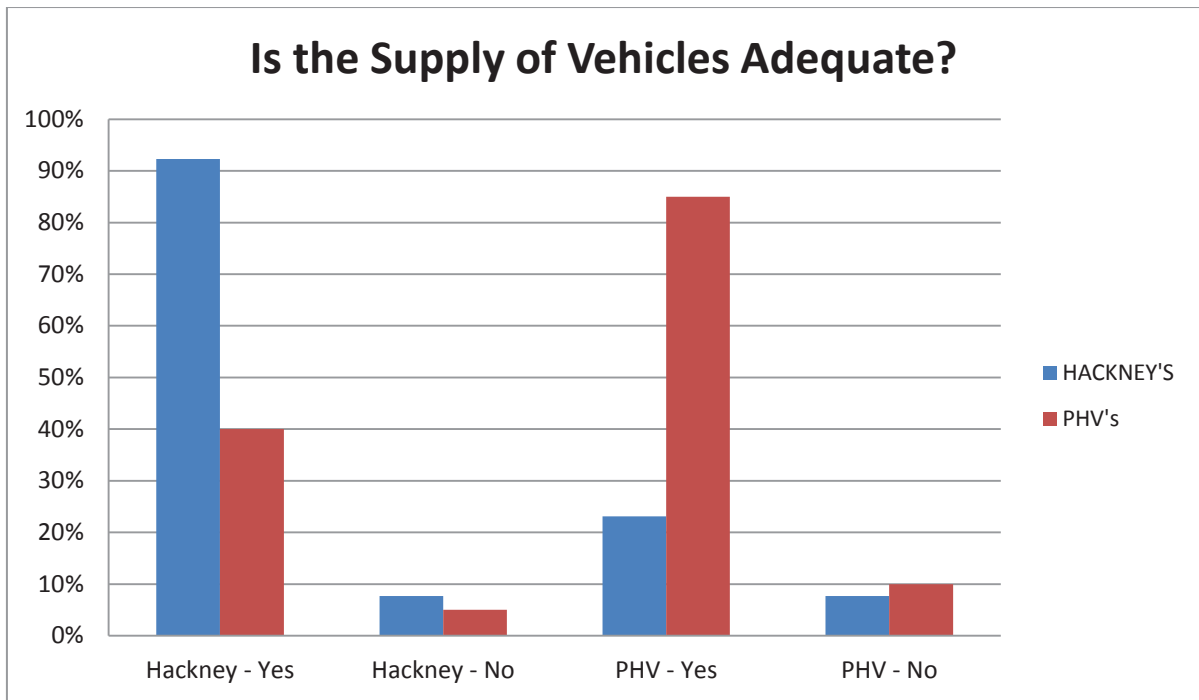


Figure 37: Is the Supply of Vehicles Adequate? – Source: Amey

5.1.14. When drivers were questioned about the supply of wheelchair accessible vehicles in Maidstone, 70% of all drivers who responded believed that there were adequate numbers of Hackney wheelchair vehicles available, while 2.5% of drivers considered there to be a shortage with wheel chair accessible Hackney's. Similarly, 36.5% of drivers that responded considered the supply of PHV wheel chair accessible vehicles to be adequate, whilst 16.5% of drivers thought that supply did not meet demand. Figure 38 breaks down the results from both Hackney and PHV drivers.

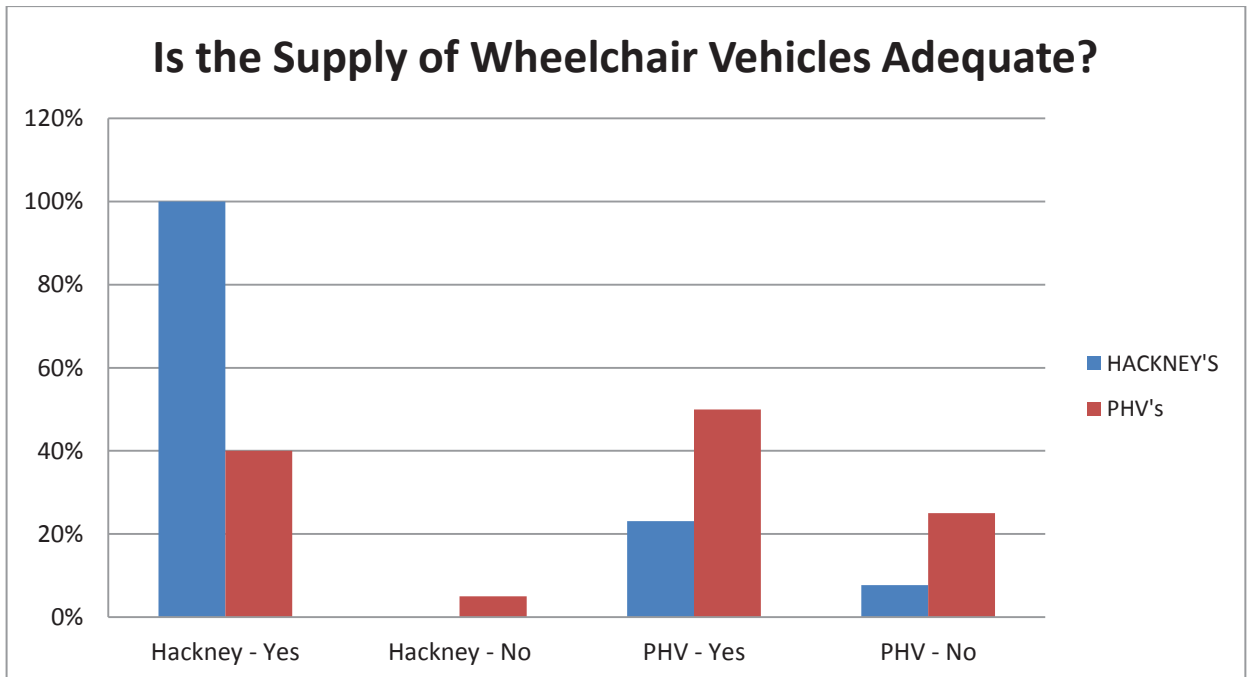


Figure 38: Is the Supply of Wheelchair Vehicles Adequate? – Source: Amey

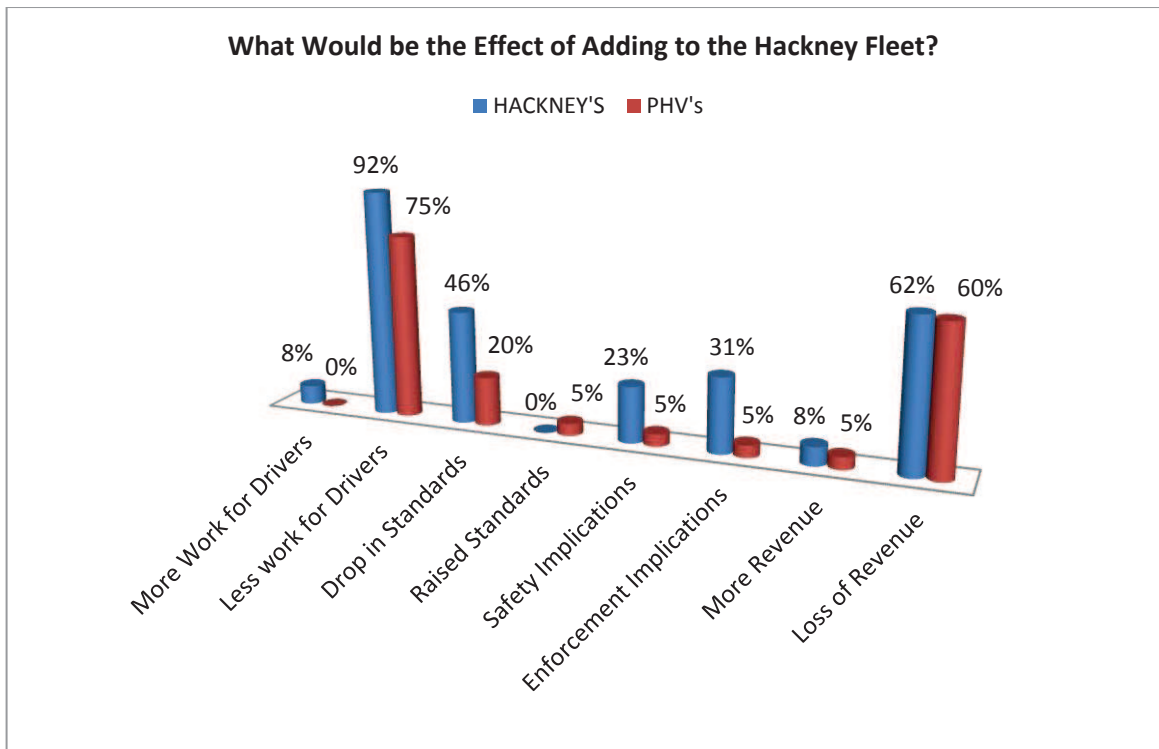


Figure 39: Impact on drivers should there be an increase in the number of taxis – Source: Amey

5.1.15. Asked what the effect would be if there was an increase in the number of Hackneys, the majority of Hackney drivers (92%) thought that there would be less work for drivers and 75% of PHV drivers also shared this response. Other significant effects suggested were a loss of revenue (by 62% Hackney and 60% PHV respondents respectively) and a drop in standards (by 46% of Hackney respondents), as can be viewed in Figure 39. Respondents were allowed multiple answers to this question.

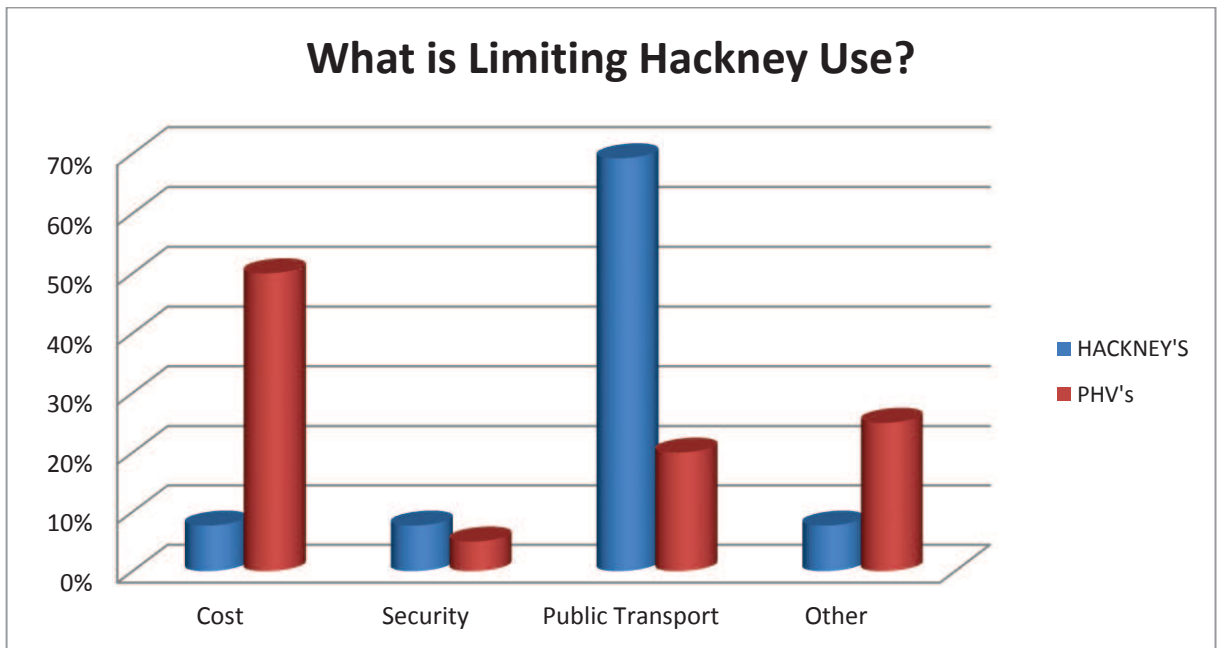


Figure 40: What is Limiting Hackney Use – Source: Amey

5.1.16. It can be seen from figure 40 that Hackney drivers (69%) believe what is limiting cab use most is the available 'public transport' alternatives. Amongst PHV drivers, 'cost' is seen as the main problem (50%).

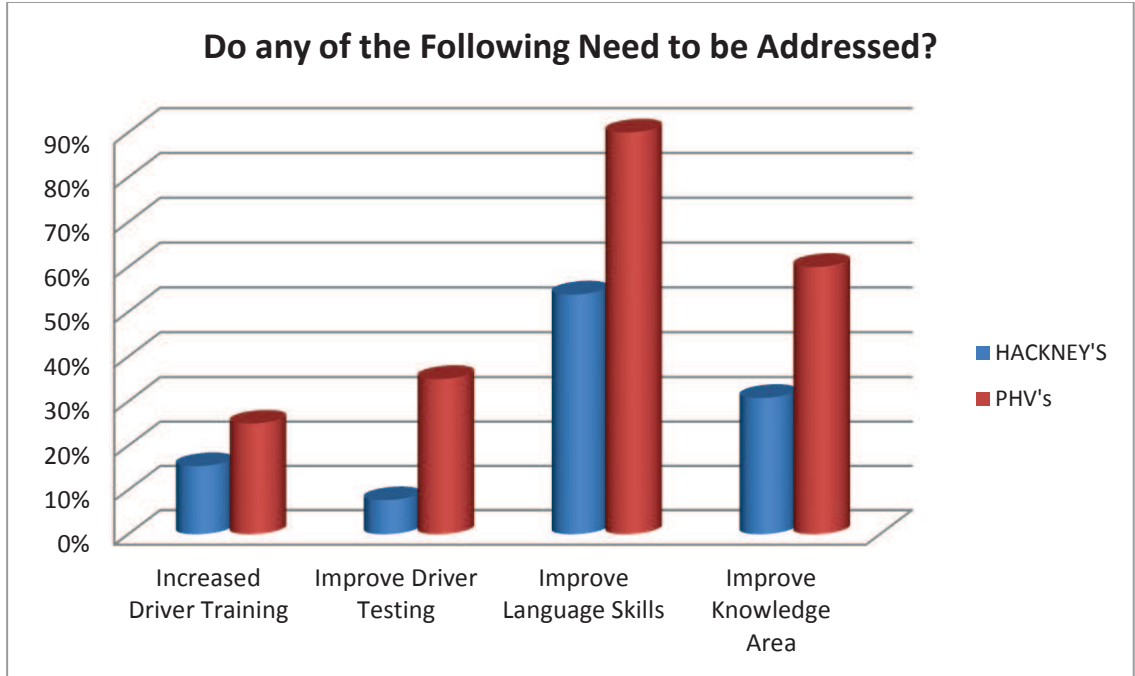


Figure 41: Do Any of These Issues Need to be Addressed? – Source: Amey

5.1.17. When asked if any of the criteria listed in Figure 41 above, needed to be addressed, the most common response from all taxi drivers was 'improving language skills' (54% of Hackney drivers and 90% of PHV drivers), followed by the issue of 'improving knowledge of the area', particularly in the case of PHV drivers (60%).

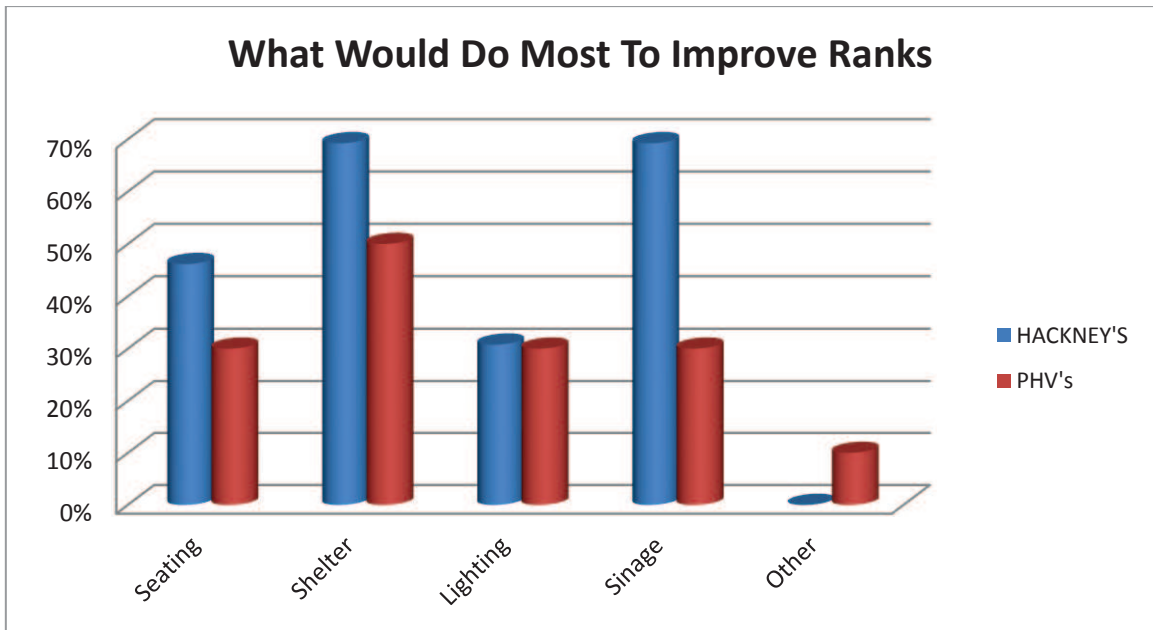


Figure 42: What Would do Most to Improve Ranks – Source: Amey

- 5.1.18. Drivers were asked about what would do most to improve the taxi ranks in Maidstone. As can be viewed in Figure 42, 'shelter' was the single improvement sought by most cab drivers, as the most important change (69% Hackney drivers and 50% PHV drivers). Signage improvements were also considered important, particularly by Hackney drivers (69%). Respondents gave multiple answers to this question.
- 5.1.19. Drivers were also asked whether there are any particular locations where they would welcome the provision of a new rank. Table 12 illustrates the results.

Table 12: Additional locations for taxi ranks in Maidstone	
Locations	Frequency
High Street	5
More pick up / drop off points for PHV drivers	3
Earl Street	1
Gabriel's Hill	1

- 5.1.20. The most suggested location was for more ranks to be situated on the High Street, whilst Earl Street and Gabriel's Hill were also mentioned as potential locations. A small number of PHV drivers illustrated their desire for there to be more specific pick up and drop off locations for PHVs in Maidstone.

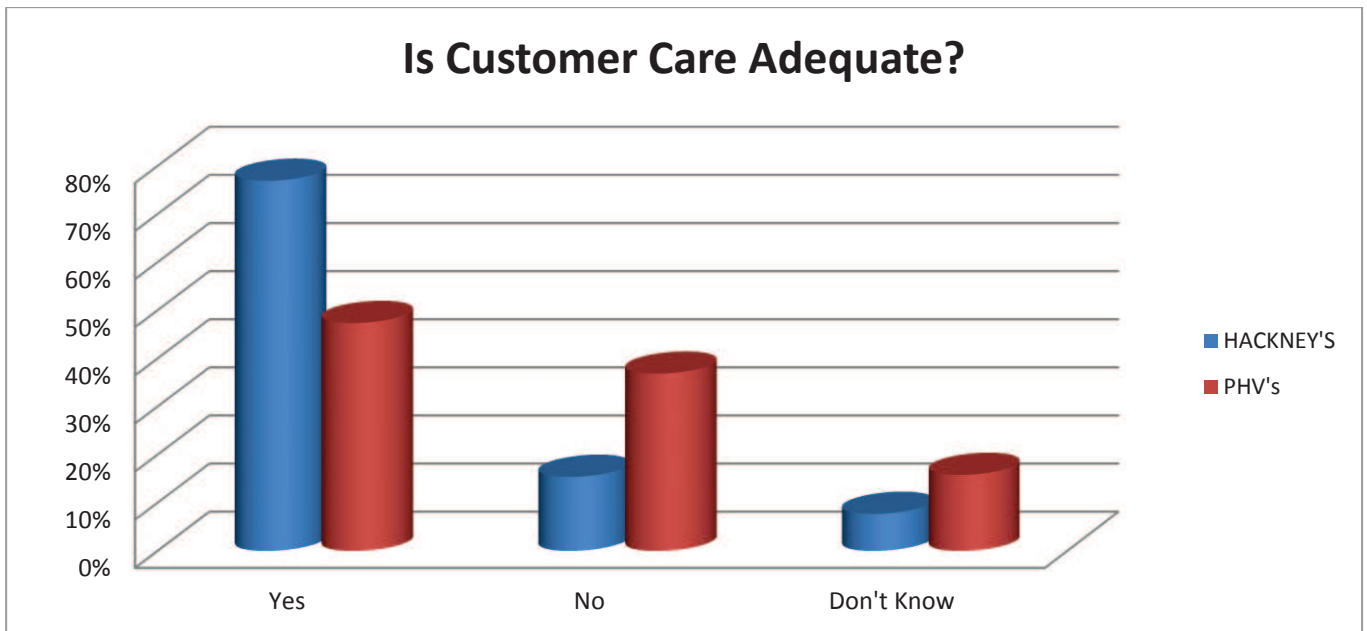


Figure 43: Is Customer Care Adequate (driver's opinions) – Source: Amey

5.1.21. Drivers were asked about customer care and whether they thought that the current level is suitable. There were 77% of Hackney drivers who thought that driver customer care was adequate and only 15% thought that it was not. Of the PHV drivers who responded a smaller proportion of 47% suggested customer care was adequate and 37% thought it was not. The remaining respondents did not answer this question.

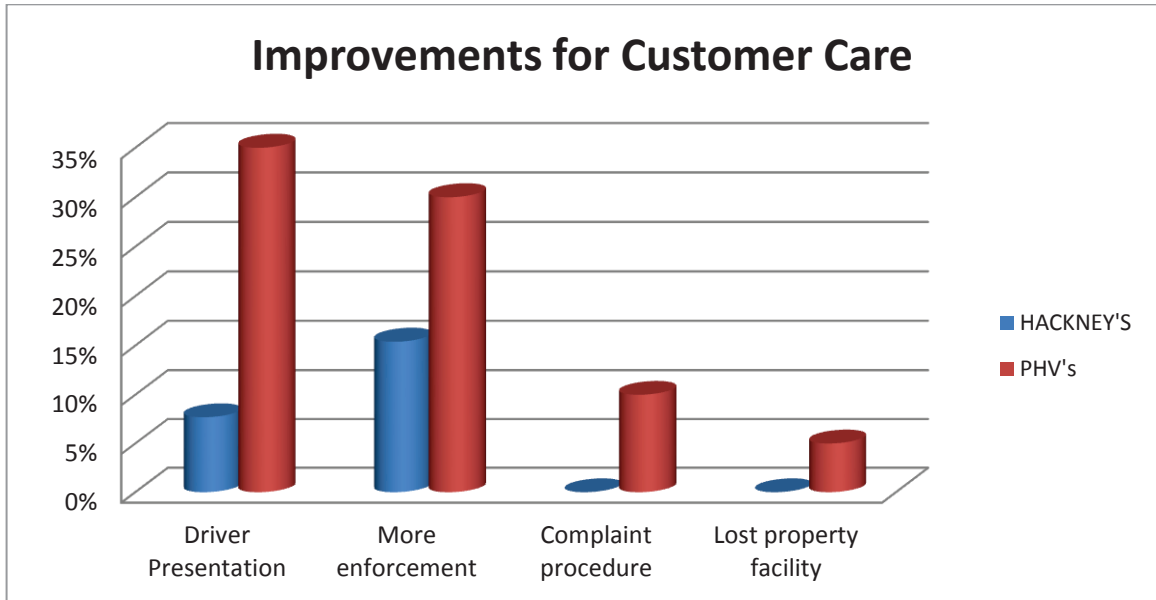


Figure 44: Improvements for Customer Care? – Source: Amey

5.1.22. Drivers were asked what improvements to customer care would have the largest beneficial effects for taxi drivers in Maidstone. Amongst the PHV drivers that responded, 'driver presentation' and 'more enforcement,' were the most popular choices (35% and 30% respectively). Hackney drivers considered 'more enforcement,' to be their most important improvement needed in customer care, followed by 'driver presentation' (15% and 8% respectively). Not all respondents participated in this question.

5.1.23. When asked if any of the criteria showed in Figure 45, were an issue for the local taxi trade, by far the most significant result from both Hackney and PHV drivers was the increasing expense of fuel for drivers (85% of Hackney respondents and 90% of PHV drivers). Congestion was also a matter of concern raised by the respondents with 54% and 60% of Hackney and PHV drivers, respectively, raising this as an issue that is impacting on the local taxi trade in Maidstone.

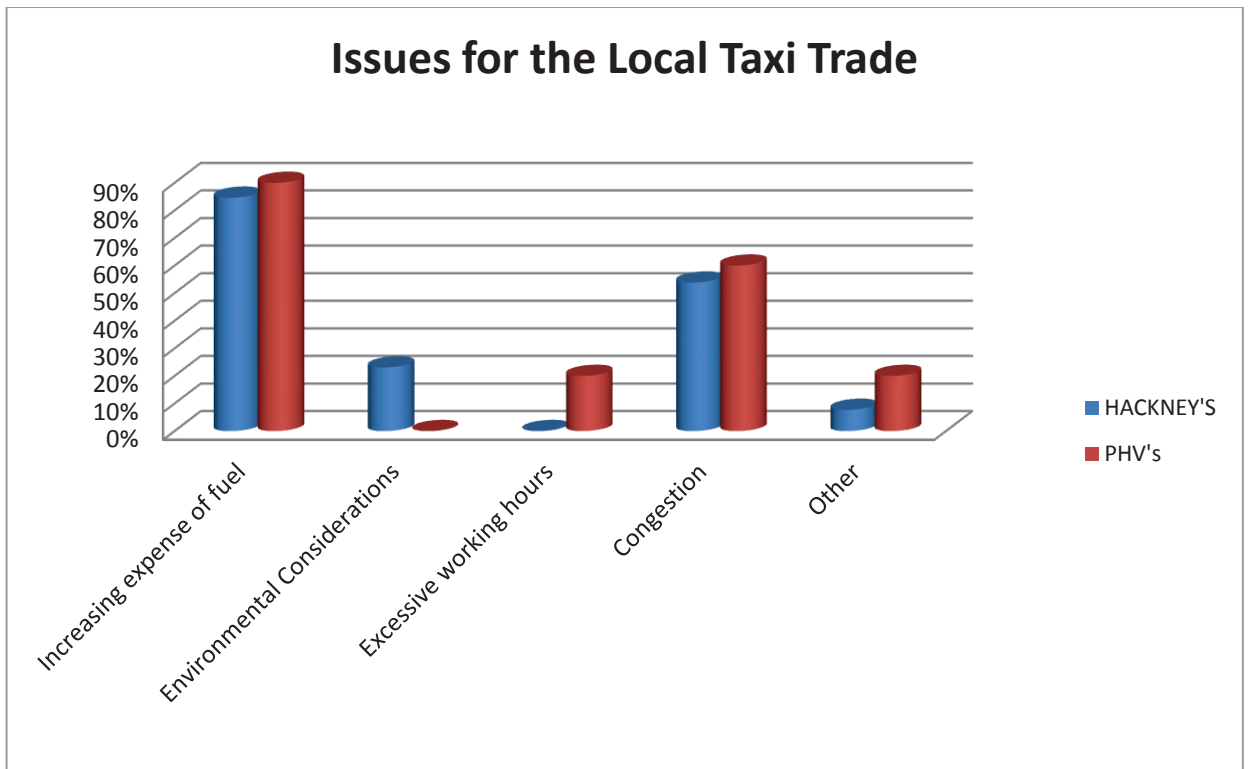


Figure 45: Issues for the Local Taxi Trade ? – Source: Amey

5.1.24. Drivers were asked if they believed there was a role for a Taxi Marshall Service in the Borough. Figure 46 shows that the majority of both Hackney (75 %) and PHV drivers (62%) would welcome the service.

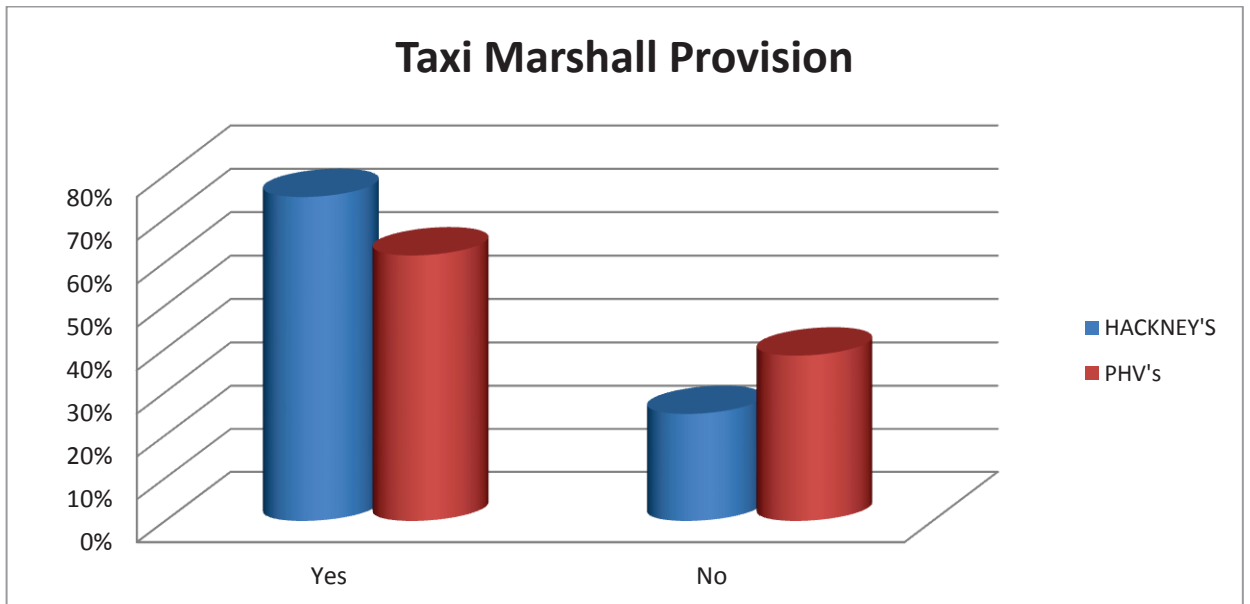


Figure 46: Would You Welcome the Provision of Taxi Marshalls at Ranks? – Source: Amey

5.1.25. The drivers were then asked which rank they would like to see the Taxi Marshall Service enforced at. Table 13 illustrates the results.

Table 13: Taxi Marshall Service	
Locations	Frequency
High Street	7
King Street	2
All	2

5.1.26. By far the majority of Hackney (85%) and PHV (58%) drivers considered that there was not a role for Taxibus Services in the Borough of Maidstone, as Figure 47 illustrates.

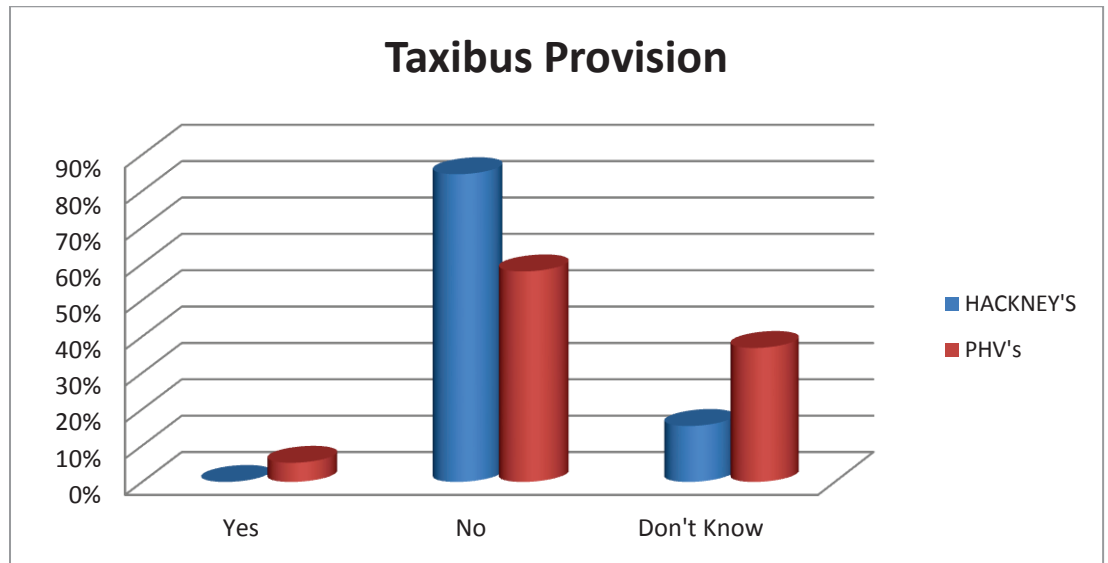


Figure 47: Is there a role for Taxibus Services in the Borough ? – Source: Amey

5.1.27. Almost all drivers did not believe the provision of a Taxi Sharing Scheme would be useful in Maidstone, with 75% of Hackney respondents and 82% of PHV respondents believing it would not be useful.

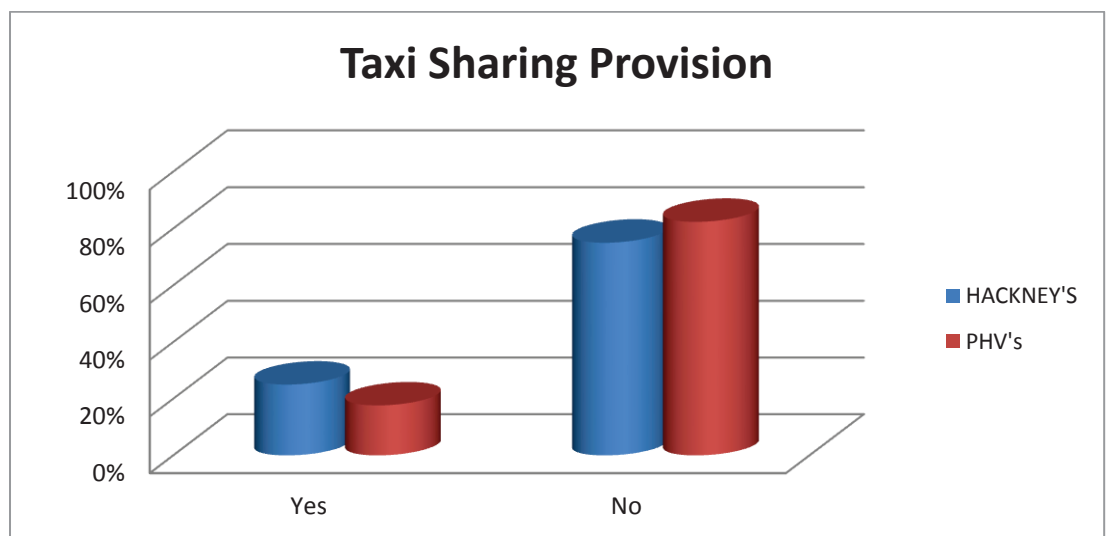


Figure 48: Would a Taxi Sharing Scheme be Useful in Maidstone ? – Source: Amey

5.1.28. The final question in the trade survey asked drivers for any further comments or issues that need to be addressed. The following lists the main comments received:

- *“We spend 75% of normal times queuing for work as shown on our metres by the amount of 'unpaid' time. The only time when there can be unmet demand is on Saturday night/Sunday morning between 1.20 and 4.00 a.m. when clubbers want to leave town.”*
- *“Licensing enforcement officer should be on cross check frequently.”*
- *“Over the last 5 years Hackney Carriage taxis work has gone down by at least 30-40%. There is enough taxis in Maidstone if anything too many.”*
- *“In reference to Q8, Q9, Q11 and Q12 there is no busy periods or days. Rate of work (days) is pretty constantly poor. Busy = 1 job per hour/slow = 1 job per 2 hours.”*
- *“There is adequate taxis in Maidstone any more would seriously affect our earnings. Better enforcements would be a far better help.”*
- *“We don't need any more taxis; we are struggling to make a living as it is. There are about 250 PHV's in Maidstone and they have been taking our trade off the streets. Also, Tonbridge Council have been giving out plates. And their drivers have been plying for trade in Maidstone. Also there are too many buses and park and rides. Also, there are not enough rank spaces and we keep getting moved on by traffic wardens.”*
- *“De-regulation in Maidstone would be a disaster for Hackney's. 60 odd plates is enough, there is no room for anymore, we are struggling to make a living as it is.*
- *“Firms coming from outside Maidstone are working here; more license officers on a Friday and Saturday to prevent this would be helpful.”*
- *“Not enough business for the number of drivers, forcing us to work over 70 hours a week to cover high costs and make a living.”*
- *“Increase fares - no increase since I started 2 and a half years ago but diesel has gone up considerably.”*
- *“This seems to apply mainly to the needs of hackney's and not PHV drivers. There are too many limiting access for PH drivers to pick up passengers. Whereas Hackney's have free access to the town centre. There is a need for PHV cars to operate in the town as many people prefer to ride a car rather than a hackney carriage, especially elderly people. PH cars are often preferred by disabled people as they are more comfortable.”*
- *“A constant menace of out of town 'taxis' plying for trade that enforcement are aware of, yet do nothing about!!!!”*
- *“New licensing procedures worse than before changes!”*

- *“The council's refusal to address the problem of taxi's from neighbouring Borough's coming into town and stealing work. Also, the use of 'O' plates in the town. ('O' plate driver being a driver without a CRB check, having had no medical and having passed no test) I being a licensed driver operate my vehicle at considerable expense to myself, 'O' plate drivers doing the same job pay nothing.”*

5.2. Consultation with Maidstone Taxi Proprietors Association

- 5.2.1. The consultant met with 4 representatives of the Maidstone Taxi Proprietors Association (MTPA) in November 2012. The Association primarily represents owner drivers in the Borough.
- 5.2.2. The MTPA were keen to ensure the appropriate ranks were observed during the course of the study. To this end the meeting first discussed the study methodology proposed and in particular which ranks were to be investigated. It was agreed that the observations proposed were to be undertaken at the ranks that were currently active.
- 5.2.3. Following this the issues of demand and rank provision were discussed in detail with the MTPA representatives and they made the following points:

In relation to demand

- That they believed demand for hackneys had reduced significantly, perhaps by as much as 40%, over the past 3 years since the previous study identified no unmet demand
- That this was reflected in reductions in earnings or drivers having to work longer hours to maintain earnings
- That Friday nights were no longer considered busy, except on occasions (pay days) between 01:00 and 03:00 and only Saturday night remained as a particularly busy time for hackneys on a regular basis.
- That demand had reduced in part as a result of the current economic climate but also because of other factors such as the provision of public transport, the number of PHVs in the Borough, reductions in contract work available and reductions in the number of taxi bays available at ranks.
- That at times of recession the taxi market was often one of the first to be 'hit' and one of the last to recover
- That demand was expected to reduce further before the situation improved
- That delimitation would have a major detrimental effect on the trade and would not be in the public interest as service quality would be likely to reduce

In relation to rank provision

- That in general there were not enough bays at ranks in the town and the trade had seen a steady reduction in the number of bays in recent years

- That they have lost bays from outside the Elephant
- That 2 bays opposite the rank in Earl Street are no longer available
- That there is often over-ranking in King Street with hackneys queuing on both sides of the road and this can affect traffic in the area. This has led to some conflict with Parking Services staff who will seek to move drivers on who are over-ranking
- That 2 bays introduced outside Summerfield did not attract passengers
- That they regularly liaise with the licencing officers and committee regarding rank provision but feel a little frustrated that this doesn't always achieve the outcomes they are seeking
- That rather than additional ranks the Association would prefer to see additional bays at the existing ranks
- The only potential location for a new rank would be the Hospital
- That provision of shelters and better signage of ranks would be the other most useful improvement at ranks
- Increased provision of marshals, especially for the main rank in King St/High St, would be considered useful and the Association would be prepared to discuss meeting some of the costs of such provision through fees, alongside an increase in the tariff.
- That club doormen who act as taxi marshals are available on a Saturday night between 01.30 and 04.30 and operators find them useful.

5.2.4. There was also brief discussion of a number of other issues affecting the taxi trade and the following was raised by the representatives present:

- Drivers are reluctant to roam the town for flag downs as these rarely occur. It is thought that most passengers not at a rank will go to a PHV office in the town to pick up a cab
- Many (possibly around 3 out of every 4) owner operators will work with a second driver to keep their vehicle busy throughout the night and day
- However, it can prove difficult at times of economic difficulty to find drivers that will commit to the trade. Many looking for work will take up driving but only until they can find something better. This can have an impact on the quality of service offered
- Anti-social behaviour in the town at night is not too bad and does not cause a particular problem for operators
- Operators work well with the clubs and local police to manage any problems
- Most contract work in the Borough is undertaken by PHVs and is thought to be reducing. However, the Association is looking into how it might assist hackney owners to look further at this market
- In general there is not believed to be any significant issue with PHVs plying for hire illegally

5.3. Consultation with Private Hire Operators

- 5.3.1. A consultation meeting was organised to which all the main Private Hire Operators in the Borough were invited. However, in the event none chose to attend. Operators were also sent a questionnaire pro-forma with cover letter inviting them to respond by email, telephone or by post using the pro-forma provided. However no responses were received other than from individual PHV drivers.

6. Stakeholder Consultation

6.1. Introduction

- 6.1.1. To inform the study of the views of other organisations, consultation was also undertaken with a range of stakeholders, either by meeting with them face to face or by letter, email, and telephone.

6.2. Key Stakeholder Forum

- 6.2.1. A consultation forum for Key stakeholders was organised in November 2012 to which representatives of the following were invited:

- Maidstone Borough Council, Senior Licensing Officer
- Kent County Council, Transport Policy
- Kent County Council, Transport Procurement
- The Police

- 6.2.2. On the day the Police were unable to attend. However, representatives of the 3 remaining organisations were present and a wide ranging discussion took place on taxi provision in general. The following key points emerged:

In relation to demand

- In general it was considered that the Borough was well provided for and there were few problems with taxi provision
- The only time it was thought that there may be unmet demand was late on a Saturday night/early Sunday morning
- It was understood that at this time the police would be likely to encourage PHVs into the town to supplement Hackney provision
- It was noted that the night time economy in the town was shrinking and it was considered that this would have an impact on trade
- Similarly, footfall in the town in general was known to be decreasing and again this was likely to have an impact on the taxi trade
- Both the above were considered a direct result of the economic situation and it was expected that the recession would also be impacting on the market for taxis in general
- As suggested by the MPTA, it was noted that the night time economy was buoyed on 'pay days' (the weekend at the end of the month or every other weekend) and this was leading to the town only being particularly busy on Saturdays, every other weekend, rather than every weekend

In relation to transport procurement

- The procurement officer present was not aware of any particular problems obtaining cabs for transport contracts with the County often receiving 4 or 5 bids from cab operators for every relevant tender they published
- If anything transport procurement had noticed the number of operators responding to tender opportunities had been increasing recently
- The County were also said to be turning to cab operators more as they found they offered good value for money and a service of reasonable quality
- The tender process is open so there is no need for operators to pre-qualify to establish themselves on a framework before they can bid for tenders

In relation to rank provision

- It was considered that rank provision was adequate and the ranks provided were in the correct locations
- The issues of over ranking in King St were highlighted, although it was pointed out that this was a problem that had existed for some time
- Operators were thought to queue at ranks rather than roam the town looking for flag downs or go to the Hospital to look for work. It was thought this may have led to a lack of expectation in the public that flagging a taxi will attract one. One representative suggested they had only ever seen a taxi flagged down once by a member of the public, in the 10 years they had lived in the town

In relation to transport integration

- It was considered that operators could potentially be more pro-active in developing their market; ie undertake more marketing activities themselves, maybe do more to look at contract opportunities, seek a greater role in providing Patient Transport in the area or to change the culture in relation to flag downs
- As bus services had been scaled back in the area recently it was considered surprising that their availability had been cited as a barrier to cab use
- The Licensing section of the Council would be open to exploring a Taxi sharing scheme with operator if they wished to do so
- It was noted that there is not a specific strategy for taxis within the current Local Transport Plan as they are treated as part of the wider public transport network. In particular they are regarded as the means to fill gaps in the bus network; ie by operating late at night when there are few buses available, serving rural parts of the area that are not or not often served by bus or improving the frequency of provision
- Taxi fares were considered expensive and it was thought operators could potentially look at operating taxibuses on a demand responsive basis as a means to offer a lower cost option that could fill gaps in the public transport offer

- The County transport policy representative believed they could be interested in exploring the opportunities for both the above with cab operators

Other

- There was not considered to be a significant issue with anti-social behaviour in the town or any particular security issues for cab passengers or drivers
- Taxis were not thought to contribute significantly to air quality issues

6.3. Stakeholder Questionnaires

6.3.1. In conjunction with the consultation undertaken face to face with key stakeholders a wide range of stakeholders were circulated with a questionnaire pro-forma and covering letter inviting them to respond to consultation by email, telephone or by returning the completed pro-forma questionnaire by post. This circulation included all key stakeholders thus giving the opportunity for any not able to attend the consultation forum to respond by other means.

6.3.2. The organisations in Maidstone that responded to the pro-forma questionnaires are listed below followed by a brief summary of each response received:

- *Morrisons Supermarket*
- *Maidstone Care Centre*
- *Lashings Bar and Restaurant*
- *Mu-Mu's*
- *Maidstone Town Centre Management*
- *The Swan Inn*

6.4. Morrisons Supermarkets

6.4.1. A manager employed at Morrisons Supermarket in Maidstone responded to the Stakeholder Unmet Demand Taxi Study Questionnaire, on his own behalf. He stated that he used a cab service in Maidstone 'sometimes,' with PHV's being his preferred type of vehicle. He found out where he could book a cab from, by using his telephone or mobile phone and answered 'yes,' when asked if operators/drivers are responsive to his needs. He further answered the questions in the survey by suggesting that shelters would do most to improve ranks in Maidstone. He finds it most difficult to obtain a cab on a Saturday and finds school times as the most difficult time of the day to obtain a PHV/Hackney vehicle. He also suggested he waits on average 5 – 10 minutes to obtain a cab in Maidstone.

6.4.2. When asked if there are any journey purposes he finds it difficult to obtain a hackney or PHV for, he responded 'no.' Similarly, he also deemed there to be no particular area of the Borough where it is difficult to obtain a cab. However, availability was the reason he gave for limiting or preventing his use of taxis and he believed the current limit set by the council for 48 licensed Hackney's was not enough. He rated the overall quality of service offered as 'good.'

- 6.4.3. The respondent never had difficulty differentiating between Hackneys and PHV's and does not believe that Taxi Marshalls are required at any ranks in Maidstone. He also suggested that the impact of extending licensing hours in Maidstone has increased taxi provision in the Borough, but believes relatively high numbers of PHV's have a detrimental effect and reduces the number of operational Hackney's. When asked about whether a Taxi Sharing scheme in Maidstone would be useful he responded 'no.'

6.5. Maidstone Care Centre

- 6.5.1. A manager employed at Maidstone Care Centre responded to the Stakeholder Unmet Demand Taxi Study Questionnaire, on the organisation's behalf. She stated that the Centre uses cab services in Maidstone 'quite a lot,' with PHV's being their preferred type of vehicle. They found out where to book a cab from, by using a telephone or mobile phone and answered 'sometimes,' when asked if operators/drivers are responsive to his needs. The respondent failed to answer what criteria would do most to improve taxi ranks and similarly did not respond to which day they find it most difficult to obtain a taxi. However they suggested that school times and the afternoon period are the most difficult time of the day to obtain a PHV/Hackney vehicle. Maidstone Care Centre also suggested that they do not have to wait as vehicles booked are usually on time.
- 6.5.2. When asked if there are any journey purposes for which the organisation finds it difficult to obtain a hackney or PHV, they stated that 'taking clients to the theatre' was of difficulty. However, they did not deem there to be any particular area of the Borough where it is difficult to obtain a taxi. Availability and cost were the main reasons given for limiting or preventing their use of cabs. They believed the current limit set by the council for 48 licensed Hackney's was not enough; but did rate the overall quality of service offered as 'good.' The respondent never has difficulty differentiating between Hackneys and PHV's and does not believe that Taxi Marshalls are required at any ranks in Maidstone. They also believe that increasing licensing hours of taxis in the Borough had no impact on the provision of PHV's or Hackneys. The final comment of the respondent was that, *'there needs to be more disabled services. I.e. more wheelchair accessible PHVs.'*

6.6. Lashings Bar and Restaurant

- 6.6.1. A company employee of Lashings Bar and Restaurant in Maidstone responded to the Stakeholder Unmet Demand Taxi Study Questionnaire, on her own behalf. She stated that she used cabs in Maidstone 'quite a lot,' with both Hackneys and PHV's being obtained. She found out where she could book a taxi from, by using her telephone or mobile phone and answered 'yes,' when asked if operators/drivers are responsive to her needs. When questioned on what would do most to improve taxi ranks in Maidstone, she responded by suggesting that seating, shelter, lighting and signage could all be introduced or improved to develop the ranks further. No responses were given when asked what day or time of day was most difficult in which to obtain a cab. She did however suggest she waits approximately 5 – 10 minutes to obtain a cab in Maidstone.

- 6.6.2. When asked if there are any journey purposes for which she finds it difficult to obtain a hackney or PHV, she responded 'no.' Similarly, she also deemed there to be no particular area of the Borough where it is difficult to obtain a taxi. Cost was the single reason the respondent suggested for limiting or preventing her use of taxis, whilst she believed the current limit set by the council for 48 licensed Hackney's was not enough; but did rate the overall quality of service offered as 'very good.' The respondent never has difficulty differentiating between Hackneys and PHV's and does not believe that Taxi Marshalls are required at any ranks in Maidstone. When asked if extensions to licensing hours had any impact on the provision of hackneys or PHV's, or whether the relatively high numbers of PHV's have any impact on the provision of Hackneys, she believed there would be no impact in both regards. The respondent provided no response to a question about Taxibus services, but believed a Taxi Sharing Scheme would not be of any use in Maidstone. The respondent provided the following comments on Hackney and PHV provision in the area: *'Every time I have got a Hackney cab they have always been a great service, the only thing I have an issue with is the price, especially when I get a cab home from work I find the price to be too high.* The respondent also asked a question on the form by saying, *'If I hadn't booked a taxi and got in a PHV, would I be insured in that vehicle? As we have customers who do that.'*

6.7. Mu Mu's

- 6.7.1. A manager employed at Mu Mu's restaurant and bar in Maidstone responded to the Stakeholder Unmet Demand Taxi Study Questionnaire, on the organisation's behalf. She stated that the company uses cab services in Maidstone 'a lot,' with PHV's being the vehicle they use the most. They found out where to book a taxi from, by going on-line and answered 'yes,' when asked if operators/drivers are responsive to their needs. The respondent suggested that seating would do most to improve taxi ranks in the Borough, and that the morning period is the most difficult time of the day to obtain a PHV/Hackney vehicle. Mu Mu's also suggested that they wait for their cabs in the region of 10 – 20 minutes.
- 6.7.2. When asked if there are any journey purposes for which the organisation finds it difficult to obtain a hackney or PHV, they answered 'no.' Similarly, they did not deem there to be any particular area of the Borough where it is difficult to obtain a cab. Cost was the reason suggested for limiting or preventing their use of cabs, whilst they believed the current limit set by the council at 48 licensed Hackney's was adequate; and rated the overall quality of service offered as 'average.' Finally, the respondent never has difficulty differentiating between Hackneys and PHV's.

6.8. Maidstone Town Centre Management

- 6.8.1. A manager at Maidstone Town Centre Management responded to the Stakeholder Unmet Demand Taxi Study Questionnaire, on the organisation's behalf. He stated that it uses cab services in Maidstone 'occasionally,' with both Hackneys and PHV's being used. They found out where to book a taxi from by other means than through a telephone/mobile phone, phone book, on-line or phone in shop. They also deemed operators/drivers to be responsive to their needs when they've been used.
- 6.8.2. When asked if there are any journey purposes which the organisation finds it difficult to obtain a hackney or PHV for, they answered 'no.' They also did not deem there to be any particular area of the Borough where it is difficult to obtain a taxi. Cost was the single reason suggested for limiting or preventing their use of taxis, whilst they believed the current limit set by the council for 48 licensed Hackney's was adequate; and rated the overall quality of service offered as 'very good.' The respondent never has difficulty differentiating between Hackneys and PHV's and believes that Taxi Marshalls would be useful at ranks in Maidstone, in particular in King Street on Saturday nights. They believe that increasing licensing hours in the Borough had no impact on the provision of PHV's or Hackneys, as well as believing that no impact would be felt as a result of relatively high numbers of PHV's.

6.9. The Swan Inn

- 6.9.1. The licensee of The Swan pub in Maidstone responded to the Stakeholder Unmet Demand Taxi Study Questionnaire, on the organisation's behalf. She stated that the company uses cab services in Maidstone 'sometimes,' with both Hackneys and PHV's being used. They found out where to book a cab from, by using a telephone or mobile phone and answered 'yes,' when asked if operators/drivers are responsive to their needs. The respondent suggested that signage would do most to improve taxi ranks in the Borough and believed that a Saturday was the most difficult day to obtain a cab. The Swann Inn also suggested that their cabs usually arrive at the time they are requested.
- 6.9.2. When asked if there are any journey purposes which the organisation finds it difficult to obtain a hackney or PHV, they answered 'no.' Similarly, they did not deem there to be any particular area of the Borough where it is difficult to obtain a taxi. They believed the current limit set by the council for 48 licensed Hackney's was not enough; and rated the overall quality of service offered as 'good.' Finally, the respondent never has difficulty differentiating between Hackneys and PHV's. The Swan Inn suggested Taxi Marshalls would be useful in the town centre but provided no response to questions directed at Taxibus Services, Taxi Sharing Schemes or any further comments relating to Hackney and PHV provision in Maidstone. They did, however, suggest the extensions to licensing hours as well as relatively high numbers of PHV's have a detrimental effect and reduced the provision of Hackney carriages.

7. Conclusions

7.1. Unmet Demand

- 7.1.1. The ISUD model shows an overall value of 0. As this is well below the threshold of 80, it is concluded that significant unmet demand for Hackney carriages does not exist in the rank based market in Maidstone. This remains the case even when the model is run to take account of excess demand throughout the week, which gives a value of 16. The finding is supported by the relatively low overall level of excess demand found at any time at ranks (4.3%), that supply and demand is in equilibrium the majority (89.7%) of the time and that the average passenger delay is only 0.39 minutes whereas the average taxi delay is 14.46 minutes.
- 7.1.2. There is also no indication from any of the research undertaken that there is any significant unmet demand in any other aspects of the hackney market as a whole, despite the number of Hackneys per capita in the Borough being significantly lower than the average for 100 other licensing areas. Amongst the general public surveyed there were only 13% that suggested there were not enough Hackneys licensed in the Borough, while 32% believed there were too many or just the right amount and 55% chose to express no opinion. Similarly, when asked what would do most to improve Hackney services, only 9% of the general public suggested more Hackneys were needed compared to by far the majority (68%) who sought cheaper fares and 12% who wanted more ranks. The finding is supported by the key stakeholders consulted all of whom believed that hackney supply was adequate and by some, but not all, of the other stakeholders who responded to consultation. Amongst the latter, however, few expressed any difficulty obtaining a cab for any particular purpose or from any particular area. The representative of transport procurement at the key stakeholder forum also confirmed they had no issues obtaining cabs to meet their contract requirements.
- 7.1.3. Amongst members of the trade the majority of Hackney drivers (92%) and the majority of PHV drivers (40%), that responded to the question, believed the number of Hackneys licensed in Maidstone to be adequate. Similarly this was also the view of the MTPA, who also highlighted that they believed there had been a reduction in demand since the previous unmet demand study was undertaken in 2009 (and identified that no unmet demand existed at that time). This reduction in demand was also suggested by the key stakeholders consulted.
- 7.1.4. The main concern of drivers if the Hackney fleet were to increase was that there would be less work for drivers (92% of Hackney drivers and 75% of PHV drivers) and consequently, a loss of revenue (62% of Hackney drivers and 60% of PHV drivers). The MTPA also pointed out drivers were already working longer hours to retain revenue and the driver survey reflected this in that many drivers were working 6 or 7 days a week.

7.2. Ranks

- 7.2.1. In terms of the rank provision in the Borough there was no significant evidence of a need for additional ranks. The MTPA expressed far more concern over a shortage of bays at existing ranks together with an interest in seeing better facilities at these, rather than a need for additional ranks to be provided. Amongst drivers while there were 5 that suggested a new rank was required in High St (to add to the existing rank) there were far more who sought improved shelter (69%) and signage (69%) at existing ranks.
- 7.2.2. Amongst the general public, as mentioned above, only 12% sought additional ranks as a means to improve Hackney provision, with 18 people suggesting if there were to be such their preference would be for this to be in High St (again, presumably, to add to the existing rank). In addition 7 people suggested Union St and 5 Maidstone Library. Neither was the need for additional ranks a particular concern amongst stakeholders with many choosing not to respond to this question.
- 7.2.3. In terms of improvements to existing ranks the general public concurred with operators that they would like to see additional signage (37%) and additional shelter (32%) at ranks. The need for improved signage in particular was also a finding of the rank audit undertaken by the consultant.
- 7.2.4. The MTPA did suggest there may be scope for a new rank at the Hospital. They also suggested they would welcome further discussion with the Council regards the provision of Taxi Marshals in the town and alongside a tariff increase, may be prepared to look at this being funded through fees. The need for Taxi Marshals was not a particular priority amongst the general public, with only 17% suggesting they would welcome this. However, there were 75% of Hackney drivers that would welcome Taxi Marshals and 62% of PHV drivers that would. Some stakeholders also thought they would be useful. In terms of where Marshals would be most useful High St was highlighted by most.

7.3. Other Significant Issues

- 7.3.1. Just over half (56%) of the general public surveyed thought the quality of hackney services in Maidstone to be good or very good and 38% considered them to be of average quality. Only 6% thought service quality was poor or very poor. When asked what would do most to improve hackney services by far the majority (68%) of the general public sought a reduction in fares. Cost was also considered by PHV drivers to be that which most limited cab use. However, amongst Hackney drivers available Public Transport was considered the most limiting factor with cost 'equal' second alongside security. Asked what would do most to improve hackney services, Hackney drivers (54%) highlighted the need for improved language skills as did 90% of PHV drivers. The MTPA were more concerned to see a greater level of enforcement, whereas key stakeholders were keen on greater dialogue with operators over integration of taxi services with the wider public transport network and most other stakeholders chose not to suggest improvements.

- 7.3.2. When the general public were asked about their knowledge of how Hackney's and PHVs can go about picking up passengers there was a significant number who answered the questions incorrectly, suggesting they were not that aware of the legal distinction between the two. In particular, there were 60% that thought they could obtain a PHV from a rank and 63% who didn't know they could only obtain a Hackney from a rank or by flagging it down. Similarly amongst those members of the general public that had used a cab in the last 3 months, of the 38% that said they had used a PHV there were 4% who said they had obtained this from a rank and 13% who suggested they had flagged it down. This despite all other stakeholders consulted who answered the question suggesting they were able to distinguish easily between a Hackney and a PHV. As both the MTPA and key stakeholders don't believe there is any significant illegal plying for hire by PHVs taking place the above points to people being mistaken about the type of vehicle used.
- 7.3.3. There was very little interest shown by any of those consulted in the provision of taxibus services. Amongst Hackney drivers there were 19% who expressed an interest in taxisharing and key stakeholders also suggested they would be interested in pursuing dialogue with operators about such a scheme. However, this level of interest was not shared by the general public, other stakeholders or the MTPA.

8. Options and Recommendations

8.1. Options

8.1.1. In the absence of any significant unmet demand Maidstone Borough Council can currently choose to:

- maintain its limit at the current level of Hackney Carriage licences;
- issue that number of Hackney Carriage licences as it sees fit (in one or in stages); or
- remove the current limit on Hackney Carriages (de-limitation)

8.1.2. The choice of policy is ultimately a political decision and Amey therefore, does not make any specific recommendations in this report on which option the Council should choose. However, for information we provide below a summary of some of the key positive and negative impacts that need to be taken into account when considering the choices available. The proposal of the Law Commission in its current consultation document to remove the option for limitation should also be born in mind as should the potential reduction in demand for Hackneys since the previous unmet demand survey:

Table 14: Options		
Option	Positives	Negatives
Maintain the current limit on Hackney licenses	Most closely meets the preference of local consultation Most likely to sustain operator viability Most likely to maintain service quality No disruption in provision	Little scope for increased provision Least likely to encourage improvements in service provision Sustains the current 'premium' on Hackney licenses
Increase the current limit on Hackney licenses (in one)	Provides for the impact on operator viability to be limited Can maintain or improve service quality through entry standards and controls Can meet some demands for increased vehicle provision and market entry Can allow specific entry requirements to be placed alongside the new licenses available Continues regulation while allowing for growth in operations	Offers neither the benefits of retaining a limit or of deregulating Maintains the possibility of a court challenge by both those who do not think there should be a limit and those that do not wish to see it removed Increasing the limit requires further study to establish by how much it should be raised. This will require modelling of the elasticity of demand. Increasing the limit in one go risks introducing too many Hackneys if the above calculations prove inaccurate
Increase the current limit on Hackney licenses (in stages)	Provides for a controlled increase in Hackney numbers Can maintain or improve service quality through entry standards and controls Can meet some demands for increased market entry, over time Can allow specific entry requirements to be placed alongside the new licenses	Requires new operators to incur costs of changing or obtaining new vehicles Offers neither the benefits of retaining a limit or of deregulating Maintains the possibility of a court challenge by both those who do not think there should be a limit and those that do not wish to see it removed

Table 14: Options		
Option	Positives	Negatives
	<p>available and improved/ changed at each issue</p> <p>Continues regulation while allowing for controlled growth in operations</p> <p>Increasing the limit in stages negates the need for detailed further study to establish by how much it should be raised, as long as impacts of each increase are monitored</p> <p>Avoids the risk of over supply to the market</p> <p>Can be used as a 'stepping stone' towards deregulation</p>	<p>Will take time to bring about any service improvements and market growth.</p>
Remove the limit on Hackney licenses	<p>Most closely meets thrust of national policy</p> <p>Most likely to bring consumer benefits</p> <p>Assuming transfer of PHVs to Hackneys, most likely to increase Hackney and reduce PHV numbers</p> <p>Most likely to meet the demands of those consulted who sought increased numbers of taxis or opportunities for market entry (i.e. drivers currently leasing a vehicle)</p> <p>No need for costly unmet demand surveys to be undertaken every 3 years</p> <p>Can lead to reduced fares</p>	<p>May generate excessive competition for prime demand (i.e. as the 'bus wars' that developed following the 1985 transport ACT)</p> <p>May cause a reduction in service quality</p> <p>Can be disruptive to markets until new arrangements settle</p> <p>Can require substantial administration and enforcement effort until markets and the trade settle</p> <p>New licence holders cannot easily be required to serve particular or new aspects of the taxi market</p> <p>Can lead to a reduction in the viability/sustainability of operators</p>

8.2. Recommendations

8.2.1. It is recommended that:

- Based on our analyses, Maidstone City Council has the discretion to either:
 1. Maintain the limit at the current level of Hackney licences;
 2. Issue that number of Hackney Carriage licences as it sees fit; or
 3. Remove the current limit on Hackney Carriages (de-limitation)
- If there is to be any change, to the current policy, this should be considered in the light of the most recent DfT guidance to licensing authorities and the potential outcome of Law Commission considerations due to be published towards the end of 2013.
- No recommendation is made regarding provision of additional ranks in the Borough. However, it is recommended that consideration is given to extending the bays available at the rank in the High St as this was the location for a new rank suggested by the most members of the public and similarly by drivers.
- Alongside this it is also recommended that consideration is given to trialling the provision of Taxi Marshalls at the High St rank on a Saturday night, following discussion with the MTPA on how the costs of such a trial might be shared with the Council.
- Following the above, funds should be sought to improve the shelter at and signage at and to/from at least the main ranks in the town.
- It is recommended that discussion takes place with the MTPA and other Hackney operators to establish the feasibility of introducing a taxisharing scheme in the Borough with the main focus being on use of this to address the cost and public transport issues identified as the main barriers to Hackney use.
- Dialogue should take place with the MTPA and other operators on how the Council might assist operators to take a more pro-active approach to marketing their services and in particular on how services might be better integrated with the wider public transport network.
- Training should be made available as a matter of course to Hackney drivers, on entry or renewal of their license, covering language skills for those whose first language is not English.
- The Council should consider running a public awareness campaign to raise awareness of the distinction between Hackneys and PHVs with a particular focus on the risks of inappropriate use; ie that passengers not pre-booking a PHV will not be insured when travelling in the vehicle.
- Future Public/Passenger Transport Strategies and policy documents, including the Local Transport Plan for Kent, should take account of this report.

Appendix A

DfT Guidance 2010

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Project Name: Maidstone Council Taxi Study

Document Title: Taxi Unmet Demand Study

TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

March 2010

INTRODUCTION

1. The Department first issued Best Practice Guidance in October 2006 to assist those local authorities in England and Wales that have responsibility for the regulation of the taxi and private hire vehicle (PHV) trades.
2. It is clear that many licensing authorities considered their licensing policies in the context of the Guidance. That is most encouraging.
3. However, in order to keep our Guidance relevant and up to date, we embarked on a revision. We took account of feedback from the initial version and we consulted stakeholders in producing this revised version.
4. The key premise remains the same - it is for individual licensing authorities to reach their own decisions both on overall policies and on individual licensing matters, in the light of their own views of the relevant considerations. This Guidance is intended to assist licensing authorities but it is only guidance and decisions on any matters remain a matter for the authority concerned.
5. We have not introduced changes simply for the sake of it. Accordingly, the bulk of the Guidance is unchanged. What we have done is focus on issues involving a new policy (for example trailing the introduction of the Safeguarding Vulnerable Groups legislation); or where we consider that the advice could be elaborated (eg enforcement); or where progress has been made since October 2006 (eg the stretched limousine guidance note has now been published).

THE ROLE OF TAXIS AND PHVs

1. Taxis (more formally known as hackney carriages) and PHVs (or minicabs as some of them are known) play an important part in local transport. In 2008, the average person made 11 trips in taxis or private hire vehicles. Taxis and PHVs are used by all social groups; low-income young women (amongst whom car ownership is low) are one of the largest groups of users.
2. Taxis and PHVs are also increasingly used in innovative ways - for example as taxi-buses - to provide innovative local transport services (see paras 92-95)

THE ROLE OF LICENSING: POLICY JUSTIFICATION

1. The aim of local authority licensing of the taxi and PHV trades is to protect the public. Local licensing authorities will also be aware that the public should have reasonable access to taxi and PHV services, because of the part they play in local transport provision. Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of operation or otherwise restricting entry to the trade. Local licensing authorities should recognise that too restrictive an approach can work against the public interest – and can, indeed, have safety implications.

1. For example, it is clearly important that somebody using a taxi or PHV to go home alone late at night should be confident that the driver does not have a criminal record for assault and that the vehicle is safe. But on the other hand, if the supply of taxis or PHVs has been unduly constrained by onerous licensing conditions, then that person's safety might be put at risk by having to wait on late-night streets for a taxi or PHV to arrive; he or she might even be tempted to enter an unlicensed vehicle with an unlicensed driver illegally plying for hire.
2. Local licensing authorities will, therefore, want to be sure that each of their various licensing requirements is in proportion to the risk it aims to address; or, to put it another way, whether the cost of a requirement in terms of its effect on the availability of transport to the public is at least matched by the benefit to the public, for example through increased safety. This is not to propose that a detailed, quantitative, cost-benefit assessment should be made in each case; but it is to urge local licensing authorities to look carefully at the costs – financial or otherwise – imposed by each of their licensing policies. It is suggested they should ask themselves whether those costs are really commensurate with the benefits a policy is meant to achieve.

SCOPE OF THE GUIDANCE

11. This guidance deliberately does not seek to cover the whole range of possible licensing requirements. Instead it seeks to concentrate only on those issues that have caused difficulty in the past or that seem of particular significance. Nor for the most part does the guidance seek to set out the law on taxi and PHV licensing, which for England and Wales contains many complexities. Local licensing authorities will appreciate that it is for them to seek their own legal advice.

CONSULTATION AT THE LOCAL LEVEL

12. It is good practice for local authorities to consult about any significant proposed changes in licensing rules. Such consultation should include not only the taxi and PHV trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, or Chambers of Commerce, organisations with a wider transport interest (eg the Campaign for Better Transport and other transport providers), womens' groups or local traders.

ACCESSIBILITY

1. The Minister of State for Transport has now announced the way forward on accessibility for taxis and PHVs. His statement can be viewed on the Department's web-site at: <http://www.dft.gov.uk/press/speechesstatements/statements/accesstotaxis>. The Department will be taking forward demonstration schemes in three local authority areas to research the needs of people with disabilities in order to produce guidance about the most appropriate provision. In the meantime, the Department recognises that some local licensing authorities will want to make progress on enhancing accessible taxi provision and the guidance outlined below constitutes the Department's advice on how this might be achieved in advance of the comprehensive and dedicated guidance which will arise from the demonstration schemes.

14. Different accessibility considerations apply between taxis and PHVs. Taxis can be hired on the spot, in the street or at a rank, by the customer dealing directly with a driver. PHVs can only be booked through an operator. It is important that a disabled person should be able to hire a taxi on the spot with the minimum delay or inconvenience, and having accessible taxis available helps to make that possible. For PHVs, it may be more appropriate for a local authority to license any type of saloon car, noting that some PHV operators offer accessible vehicles in their fleet. The Department has produced a leaflet on the ergonomic requirements for accessible taxis that is available from: <http://www.dft.gov.uk/transportforyou/access/taxis/pubs/research>
15. The Department is aware that, in some cases, taxi drivers are reluctant to pick up disabled people. This may be because drivers are unsure about how to deal with disabled people, they believe it will take longer for disabled people to get in and out of the taxi and so they may lose other fares, or they are unsure about insurance arrangements if anything goes wrong. It should be remembered that this is no excuse for refusing to pick up disabled people and that the taxi industry has a duty to provide a service to disabled people in the same way as it provides a service to any other passenger. Licensing authorities should do what they can to work with operators, drivers and trade bodies in their area to improve drivers' awareness of the needs of disabled people, encourage them to overcome any reluctance or bad practice, and to improve their abilities and confidence. Local licensing authorities should also encourage their drivers to undertake disability awareness training, perhaps as part of the course mentioned in the training section of this guidance that is available through Go-Skills.
16. In relation to enforcement, licensing authorities will know that section 36 of the Disability Discrimination Act 1995 (DDA) was partially commenced by enactment of the Local Transport Act 2008. The duties contained in this section of the DDA apply only to those vehicles deemed accessible by the local authority being used on "taxibus" services. This applies to both hackney carriages and private hire vehicles.
17. Section 36 imposes certain duties on drivers of "taxibuses" to provide assistance to people in wheelchairs, to carry them in safety and not to charge extra for doing so. Failure to abide by these duties could lead to prosecution through a Magistrates' court and a maximum fine of £1,000.
18. Local authorities can take action against non-taxibus drivers who do not abide by their duties under section 36 of the DDA (see below). This could involve for example using licence conditions to implement training requirements or, ultimately, powers to suspend or revoke licences. Some local authorities use points systems and will take certain enforcement actions should drivers accumulate a certain number of points
19. There are plans to modify section 36 of the DDA. The Local Transport Act 2008 applied the duties to assist disabled passengers to drivers of taxis and PHVs whilst being used to provide local services. The Equality Bill which is currently on its passage through Parliament would extend the duties to drivers of taxis and PHVs whilst operating conventional services using wheelchair accessible vehicles. Licensing authorities will be informed if the change is enacted and Regulations will have to be made to deal with exemptions from the duties for drivers who are unable, on medical grounds to fulfil the duties.

Duties to carry assistance dogs

1. Since 31 March 2001, licensed taxi drivers in England and Wales have been under a duty (under section 37 of the DDA) to carry guide, hearing and other prescribed assistance dogs in their taxis without additional charge. Drivers who have a medical condition that is aggravated by exposure to dogs may apply to their licensing authority for an exemption from the duty on medical grounds. Any other driver who fails to comply with the duty could be prosecuted through a Magistrates' court and is liable to a fine of up to £1,000. Similar duties covering PHV operators and drivers have been in force since 31 March 2004.
2. Enforcement of this duty is the responsibility of local licensing authorities. It is therefore for authorities to decide whether breaches should be pursued through the courts or considered as part of the licensing enforcement regime, having regard to guidance issued by the Department.

<http://www.dft.gov.uk/transportforyou/access/taxis/pubs/taxis/carriageofassistancedogsinta6154?page=2>

Duties under the Part 3 of the DDA

1. The Disability Discrimination Act 2005 amended the DDA 1995 and lifted the exemption in Part 3 of that Act for operators of transport vehicles. Regulations applying Part 3 to vehicles used to provide public transport services, including taxis and PHVs, hire services and breakdown services came into force on 4 December 2006. Taxi drivers now have a duty to ensure disabled people are not discriminated against or treated less favourably. In order to meet these new duties, licensing authorities are required to review any practices, policies and procedures that make it impossible or unreasonably difficult for a disabled person to use their services.
2. The Disability Rights Commission, before it was incorporated into the Equality and Human Rights Commission, produced a Code of Practice to explain the Part 3 duties for the transport industry; this is available at http://www.equalityhumanrights.com/uploaded_files/code_of_practice_provision_and_use_of_transport_vehicles_dda.pdf. There is an expectation that Part 3 duties also now demand new skills and training; this is available through GoSkills, the sector skills council for road passenger transport. Go-Skills has also produced a DVD about assisting disabled passengers. Further details are provided in the training section of this guidance.
3. Local Authorities may wish to consider how to use available courses to reinforce the duties drivers are required to discharge under section 3 of DDA, and also to promote customer service standards for example through GoSkills.
4. In addition recognition has been made of a requirement of basic skills prior to undertaking any formal training. On-line tools are available to assess this requirement prior to undertaking formal training.

VEHICLES

Specification Of Vehicle Types That May Be Licensed

1. The legislation gives local authorities a wide range of discretion over the types of vehicle that they can license as taxis or PHVs. Some authorities specify conditions that in practice can only be met by purpose-built vehicles but the majority license a range of vehicles.
2. 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.
3. 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. For example, the Department believes authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies. But of course the purpose-built vehicles are amongst those which a local authority could be expected to license. Similarly, it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).
4. The owners and drivers of vehicles may want to make appropriate adaptations to their vehicles to help improve the personal security of the drivers. Licensing authorities should look favourably on such adaptations, but, as mentioned in paragraph 35 below, they may wish to ensure that modifications are present when the vehicle is tested and not made after the testing stage.

Tinted windows

30. The minimum light transmission for glass in front of, and to the side of, the driver is 70%. Vehicles may be manufactured with glass that is darker than this fitted to windows rearward of the driver, especially in estate and people carrier style vehicles. When licensing vehicles, authorities should be mindful of this as well as the large costs and inconvenience associated with changing glass that conforms to both Type Approval and Construction and Use Regulations.

Imported vehicles: type approval (see also “stretched limousines”, paras 40-44 below)

31. It may be that from time to time a local authority will be asked to license as a taxi or PHV a vehicle that has been imported independently (that is, by somebody other than the manufacturer). Such a vehicle might meet the local authority’s criteria for licensing, but the local authority may nonetheless be uncertain about the wider rules for foreign vehicles being used in the UK. Such vehicles will be subject to the ‘type approval’ rules. For

passenger cars up to 10 years old at the time of first GB registration, this means meeting the technical standards of either:

- a European Whole Vehicle Type approval;
- a British National Type approval; or
- a Individual Vehicle Approval.

Most registration certificates issued since late 1998 should indicate the approval status of the vehicle. The technical standards applied (and the safety and environmental risks covered) under each of the above are proportionate to the number of vehicles entering service. Further information about these requirements and the procedures for licensing and registering imported vehicles can be seen at www.businesslink.gov.uk/vehicleapprovalschemes

Vehicle Testing

32. There is considerable variation between local licensing authorities on vehicle testing, including the related question of age limits. The following can be regarded as best practice:

- **Frequency Of Tests.** The legal requirement is that all taxis should be subject to an MOT test or its equivalent once a year. For PHVs the requirement is for an annual test after the vehicle is three years old. An annual test for licensed vehicles of whatever age (that is, including vehicles that are less than three years old) seems appropriate in most cases, unless local conditions suggest that more frequent tests are necessary. However, more frequent tests may be appropriate for older vehicles (see 'age limits' below). Local licensing authorities may wish to note that a review carried out by the National Society for Cleaner Air in 2005 found that taxis were more likely than other vehicles to fail an emissions test. This finding, perhaps suggests that emissions testing should be carried out on ad hoc basis and more frequently than the full vehicle test.
- **Criteria For Tests.** Similarly, for mechanical matters it seems appropriate to apply the same criteria as those for the MOT test to taxis and PHVs*. The MOT test on vehicles first used after 31 March 1987 includes checking of all seat belts. However, taxis and PHVs provide a service to the public, so it is also appropriate to set criteria for the internal condition of the vehicle, though these should not be unreasonably onerous.

*A manual outlining the method of testing and reasons for failure of all MOT tested items can be obtained from the Stationary Office see <http://www.tsoshop.co.uk/bookstore.asp?FO=1159966&Action=Book&From=SearchResults&ProductID=0115525726>

- **Age Limits.** It is perfectly possible for an older vehicle to be in good condition. So the setting of an age limit beyond which a local authority will not license vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be appropriate for older vehicles - for example, twice-yearly tests for vehicles more than five years old.

- Number Of Testing Stations. There is sometimes criticism that local authorities provide only one testing centre for their area (which may be geographically extensive). So it is good practice for local authorities to consider having more than one testing station. There could be an advantage in contracting out the testing work, and to different garages. In that way the licensing authority can benefit from competition in costs. (The Vehicle Operators and Standards Agency – VOSA – may be able to assist where there are local difficulties in provision of testing stations.)

33. The Technical Officer Group of the Public Authority Transport Network has produced Best Practice Guidance which focuses on national inspection standards for taxis and PHVs. Local licensing authorities might find it helpful to refer to the testing standards set out in this guidance in carrying out their licensing responsibilities. The PATN can be accessed via the Freight Transport Association.

Personal security

34. The personal security of taxi and PHV drivers and staff needs to be considered. The Crime and Disorder Act 1998 requires local authorities and others to consider crime and disorder reduction while exercising all of their duties. Crime and Disorder Reduction Partnerships are also required to invite public transport providers and operators to participate in the partnerships. Research has shown that anti-social behaviour and crime affects taxi and PHV drivers and control centre staff. It is therefore important that the personal security of these people is considered.
35. The owners and drivers of vehicles will often want to install security measures to protect the driver. Local licensing authorities may not want to insist on such measures, on the grounds that they are best left to the judgement of the owners and drivers themselves. But it is good practice for licensing authorities to look sympathetically on - or actively to encourage - their installation. They could include a screen between driver and passengers, or CCTV. Care however should be taken that security measures within the vehicle do not impede a disabled passenger's ability to communicate with the driver. In addition, licensing authorities may wish to ensure that such modifications are present when the vehicle is tested and not made after the testing stage.
36. There is extensive information on the use of CCTV, including as part of measures to reduce crime, on the Home Office website (e.g. <http://scienceandresearch.homeoffice.gov.uk/hosdb/cctv-imaging-technology/CCTV-andimaging-publications>) and on the Information Commission's Office website (www.ico.gov.uk). CCTV can be both a deterrent to would-be trouble makers and be a source of evidence in the case of disputes between drivers and passengers and other incidents. There is a variety of funding sources being used for the implementation of security measures for example, from community safety partnerships, local authorities and drivers themselves.
37. Other security measures include guidance, talks by the local police and conflict avoidance training. The Department has recently issued guidance for taxi and PHV drivers to help them improve their personal security. These can be accessed on the Department's website at: <http://www.dft.gov.uk/pgr/crime/taxiphv/>.

In order to emphasise the reciprocal aspect of the taxi/PHV service, licensing authorities might consider drawing up signs or notices which set out not only what passengers can expect from drivers, but also what drivers can expect from passengers who use their service. Annex B contains two samples which are included for illustrative purposes but local authorities are encouraged to formulate their own, in the light of local conditions and circumstances. Licensing authorities may want to encourage the taxi and PHV trades to build good links with the local police force, including participation in any Crime and Disorder Reduction Partnerships.

Vehicle Identification

38. Members of the public can often confuse PHVs with taxis, failing to realise that PHVs are not available for immediate hire and that a PHV driver cannot be hailed. So it is important to distinguish between the two types of vehicle. Possible approaches might be:

- a licence condition that prohibits PHVs from displaying any identification at all apart from the local authority licence plate or disc. The licence plate is a helpful indicator of licensed status and, as such, it helps identification if licence plates are displayed on the front as well as the rear of vehicles. However, requiring some additional clearer form of identification can be seen as best practice. This is for two reasons: firstly, to ensure a more positive statement that the vehicle cannot be hired immediately through the driver; and secondly because it is quite reasonable, and in the interests of the travelling public, for a PHV operator to be able to state on the vehicle the contact details for hiring;
- a licence condition which requires a sign on the vehicle in a specified form. This will often be a sign of a specified size and shape which identifies the operator (with a telephone number for bookings) and the local licensing authority, and which also has some words such as 'pre-booked only'. This approach seems the best practice; it identifies the vehicle as private hire and helps to avoid confusion with a taxi, but also gives useful information to the public wishing to make a booking. It is good practice for vehicle identification for PHVs to include the contact details of the operator.
- Another approach, possibly in conjunction with the previous option, is a requirement for a roof-mounted, permanently illuminated sign with words such as 'pre-booked only'. But it can be argued that any roof-mounted sign, however unambiguous its words, is liable to create confusion with a taxi. So roof-mounted signs on PHVs are not seen as best practice.

Environmental Considerations

39. Local licensing authorities, in discussion with those responsible for environmental health issues, will wish to consider how far their vehicle licensing policies can and should support any local environmental policies that the local authority may have adopted. This will be of particular importance in designated Air Quality Management Areas (AQMAs), Local authorities may, for example, wish to consider setting vehicle emissions standards for taxis and PHVs. However, local authorities would need to carefully and thoroughly

assess the impact of introducing such a policy; for example, the effect on the supply of taxis and PHVs in the area would be an important consideration in deciding the standards, if any, to be set. They should also bear in mind the need to ensure that the benefits of any policies outweigh the costs (in whatever form).

Stretched Limousines

1. Local licensing authorities are sometimes asked to license stretched limousines as PHVs. It is suggested that local authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats -have a legitimate role to play in the private hire trade, meeting a public demand. Indeed, the Department's view is that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle and that any authorities which do adopt such practices are leaving themselves open to legal challenge. A policy of excluding limousines creates an unacceptable risk to the travelling public, as it would inevitably lead to higher levels of unlawful operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators. The Department has now issued guidance on the licensing arrangements for stretched limousines. This can be accessed on the Department's website at <http://www.dft.gov.uk/pgr/regional/taxis/stretchlimousines.pdf>.
2. The limousine guidance makes it clear that most operations are likely to fall within the PHV licensing category and not into the small bus category. VOSA will be advising limousine owners that if they intend to provide a private hire service then they should go to the local authority for PHV licences. The Department would expect licensing authorities to assess applications on their merits; and, as necessary, to be proactive in ascertaining whether any limousine operators might already be providing an unlicensed service within their district.
3. Imported stretched limousines were historically checked for compliance with regulations under the Single Vehicle Approval (SVA) inspection regime before they were registered. This is now the Individual Vehicle Approval (IVA) scheme. The IVA test verifies that the converted vehicle is built to certain safety and environmental standards. A licensing authority might wish to confirm that an imported vehicle was indeed tested by VOSA for IVA before being registered and licensed (taxed) by DVLA. This can be done either by checking the V5C (Registration Certificate) of the vehicle, which may refer to IVA under the "Special Note" section; or by writing to VOSA, Ellipse, Padley Road, Swansea, SA1 8AN, including details of the vehicle's make and model, registration number and VIN number.
4. Stretched limousines which clearly have more than 8 passenger seats should not of course be licensed as PHVs because they are outside the licensing regime for PHVs. However, under some circumstances the SVA regime accepted vehicles with space for more than 8 passengers, particularly where the precise number of passenger seats was hard to determine. In these circumstances, if the vehicle had obtained an SVA certificate, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than 8 passengers, bearing in mind that refusal may encourage illegal private hire operation.

1. Many councils are concerned that the size of limousines prevents them being tested in conventional MoT garages. If there is not a suitable MoT testing station in the area then it would be possible to test the vehicle at the local VOSA test stations. The local enforcement office may be able to advise (contact details on <http://www.vosa.gov.uk>).

QUANTITY RESTRICTIONS OF TAXI LICENCES OUTSIDE LONDON

1. The present legal provision on quantity restrictions for taxis outside London is set out in section 16 of the Transport Act 1985. This provides that the grant of a taxi licence 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'.
2. Local licensing authorities will be aware that, in the event of a challenge to a decision to refuse a licence, the local authority concerned would have to establish that it had, reasonably, been satisfied that there was no significant unmet demand.
3. Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice. Where restrictions are imposed, the Department would urge that the matter should be regularly reconsidered. The Department further urges that the issue to be addressed first in each reconsideration is whether the restrictions should continue at all. It is suggested that the matter should be approached in terms of the interests of the travelling public - that is to say, the people who use taxi services. What benefits or disadvantages arise for them as a result of the continuation of controls; and what benefits or disadvantages would result for the public if the controls were removed? Is there evidence that removal of the controls would result in a deterioration in the amount or quality of taxi service provision?
4. In most cases where quantity restrictions are imposed, vehicle licence plates command a premium, often of tens of thousands of pounds. This indicates that there are people who want to enter the taxi market and provide a service to the public, but who are being prevented from doing so by the quantity restrictions. This seems very hard to justify.
5. If a local authority does nonetheless take the view that a quantity restriction can be justified in principle, there remains the question of the level at which it should be set, bearing in mind the need to demonstrate that there is no significant unmet demand. This issue is usually addressed by means of a survey; it will be necessary for the local licensing authority to carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court. An interval of three years is commonly regarded as the maximum reasonable period between surveys.
6. As to the conduct of the survey, the Department's letter of 16 June 2004 set out a range of considerations. But key points are:
 - the length of time that would-be customers have to wait at ranks.** However, this alone is an inadequate indicator of demand; also taken into account should be...

- **waiting times for street hailings and for telephone bookings.** But waiting times at ranks or elsewhere do not in themselves satisfactorily resolve the question of unmet demand. It is also desirable to address...
- **latent demand,** for example people who have responded to long waiting times by not even trying to travel by taxi. This can be assessed by surveys of people who do not use taxis, perhaps using stated preference survey techniques.
- **peaked demand.** It is sometimes argued that delays associated only with peaks in demand (such as morning and evening rush hours, or pub closing times) are not 'significant' for the purpose of the Transport Act 1985. The Department does not share that view. Since the peaks in demand are by definition the most popular times for consumers to use taxis, it can be strongly argued that unmet demand at these times should not be ignored. Local authorities might wish to consider when the peaks occur and who is being disadvantaged through restrictions on provision of taxi services.
- **consultation.** As well as statistical surveys, assessment of quantity restrictions should include consultation with all those concerned, including user groups (which should include groups representing people with disabilities, and people such as students or women), the police, hoteliers, operators of pubs and clubs and visitor attractions, and providers of other transport modes (such as train operators, who want taxis available to take passengers to and from stations);
- **publication.** All the evidence gathered in a survey should be published, together with an explanation of what conclusions have been drawn from it and why. If quantity restrictions are to be continued, their benefits to consumers and the reason for the particular level at which the number is set should be set out.
- **financing of surveys.** It is not good practice for surveys to be paid for by the local taxi trade (except through general revenues from licence fees). To do so can call in question the impartiality and objectivity of the survey process.

51. Quite apart from the requirement of the 1985 Act, the Department's letter of 16 June 2004 asked all local licensing authorities that operate quantity restrictions to review their policy and justify it publicly by 31 March 2005 and at least every three years thereafter. The Department also expects the justification for any policy of quantity restrictions to be included in the Local Transport Plan process. A recommended list of questions for local authorities to address when considering quantity controls was attached to the Department's letter. (The questions are listed in Annex A to this Guidance.)

TAXI FARES

Local licensing authorities have the power to set taxi fares for journeys within their area, and most do so. (There is no power to set PHV fares.) Fare scales should be designed with a view to practicality. The Department sees it as good practice to review the fare scales at regular intervals, including any graduation of the fare scale by time of day or day of the week. Authorities may wish to consider adopting a simple formula for

deciding on fare revisions as this will increase understanding and improve the transparency of the process. The Department also suggests that in reviewing fares authorities should pay particular regard to the needs of the travelling public, with reference both to what it is reasonable to expect people to pay but also to the need to give taxi drivers sufficient incentive to provide a service when it is needed. There may well be a case for higher fares at times of higher demand.

53. Taxi fares are a maximum, and in principle are open to downward negotiation between passenger and driver. It is not good practice to encourage such negotiations at ranks, or for on-street hailings; there would be risks of confusion and security problems. But local licensing authorities can usefully make it clear that published fares are a maximum, especially in the context of telephone bookings, where the customer benefits from competition. There is more likely to be a choice of taxi operators for telephone bookings, and there is scope for differentiation of services to the customer's advantage (for example, lower fares off-peak or for pensioners).
54. There is a case for allowing any taxi operators who wish to do so to make it clear – perhaps by advertising on the vehicle – that they charge less than the maximum fare; publicity such as '5% below the metered fare' might be an example.

DRIVERS

Duration Of Licences

1. It is obviously important for safety reasons that drivers should be licensed. But it is not necessarily good practice to require licences to be renewed annually. That can impose an undue burden on drivers and licensing authorities alike. Three years is the legal maximum period and is in general the best approach. One argument against 3-year licences has been that a criminal offence may be committed, and not notified, during the duration of the licence. But this can of course also be the case during the duration of a shorter licence. In relation to this, authorities will wish to note that the Home Office in April 2006 issued revised guidance for police forces on the Notifiable Occupations Scheme. Paragraphs 62-65 below provide further information about this scheme.
2. However, an annual licence may be preferred by some drivers. That may be because they have plans to move to a different job or a different area, or because they cannot easily pay the fee for a three-year licence, if it is larger than the fee for an annual one. So it can be good practice to offer drivers the choice of an annual licence or a three-year licence.

Acceptance of driving licences from other EU member states

57. Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 as enacted stated that an applicant for a taxi or private hire vehicle (PHV) driver's licence must have held a full ordinary GB driving licence for at least 12 months in order to be granted a taxi or PHV driver's licence. This requirement has subsequently been amended since the 1976 Act was passed. The Driving Licences (Community Driving Licence) Regulations 1996 (SI 1996 No 1974) amended sections 51 and 59 of the 1976 Act to allow full driving licences issued by EEA states to count towards the qualification

requirements for the grant of taxi and PHV driver's licences. Since that time, a number of central and eastern European states have joined the EU and the EEA and the Department takes the view that drivers from the Accession States are eligible to acquire a taxi or PHV driver's licence under the 1976 Act if they have held an ordinary driving licence for 12 months which was issued by an acceding State (see section 99A(i) of the Road Traffic Act 1988). To complete the picture, the Deregulation (Taxis and Private Hire Vehicles) Order 1998 (SI 1998 No 1946) gave equal recognition to Northern Ireland driving licences for the purposes of taxi and PHV driver licensing under the 1976 Act (see section 109(i) of the Road Traffic Act 1988, as amended).

Criminal Record Checks

1. A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable. Taxi and PHV drivers can be subject to a Standard Disclosure (and for those working in "Regulated Activity" to an Enhanced Disclosure) through the Criminal Records Bureau. Both levels of Disclosure include details of spent and unspent convictions, cautions reprimands and final warnings. An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police, for example, details of minor offences, non-conviction information on the Police National Computer such as Fixed Penalty Notices and, in some cases, allegations. An Enhanced Disclosure is for those working in Regulated Activity¹ and the Government has produced guidance in relation to this and the new "Vetting and Barring Scheme" which is available at www.isagov.org.uk/default.aspx?page=402.
[The Department will issue further advice as the new SVG scheme develops.]
2. In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.
3. Local licensing authorities will also want to have a policy on background checks for applicants from elsewhere in the EU and other overseas countries. One approach is to require a certificate of good conduct authenticated by the relevant embassy. The Criminal Records Bureau website (www.crb.gov.uk) gives information about obtaining certificates of good conduct, or similar documents, from a number of countries.
4. It would seem best practice for Criminal Records Bureau disclosures to be sought when a licence is first applied for and then every three years, even if a licence is renewed annually, provided drivers are obliged to report all new convictions and cautions to the licensing authority.

¹ "Regulated Activity" is defined in The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2009

Notifiable Occupations Scheme

1. Under this Scheme, when an individual comes to the notice of the police and identifies their occupation as a taxi or PHV driver, the police are requested to notify the appropriate local licensing authority of convictions and any other relevant information that indicates that a person poses a risk to public safety. Most notifications will be made once an individual is convicted however, if there is a sufficient risk, the police will notify the authority immediately.
2. In the absence of a national licensing body for taxi and PHV drivers, notifications are made to the local licensing authority identified on the licence or following interview. However, it is expected that all licensing authorities work together should they ascertain that an individual is operating under a different authority or with a fraudulent licence.
3. The police may occasionally notify licensing authorities of offences committed abroad by an individual however it may not be possible to provide full information.
4. The Notifiable Occupations Scheme is described in Home Office Circular 6/2006 which is available at

<http://www.basingstoke.gov.uk/CommitteeDocs/Committees/Licensing/20070710/3%20yr%20licences-update%20on%20hants%20constab%20procedures%20re%20Home%20office%20circ%206;2006-%20Appendix%202.pdf>. Further information can also be obtained from the Criminal Records Team, Joint Public Protection Information Unit, Fifth Floor, Fry Building, 2 Marsham Street, London SW1P 4DF; e-mail Samuel.Wray@homeoffice.gsi.gov.uk.

Immigration checks

66. The Department considers it appropriate for licensing authorities to check on an applicant's right to work before granting a taxi or PHV driver's licence. It is important to note that a Criminal Records Bureau check is not a Right to Work check and any enquires about the immigration status of an individual should be addressed to the Border and Immigration Agency. Further information can be found at www.bia.homeoffice.gov.uk/employingmigrants. More generally, the Border and Immigration Agency's Employers' Helpline (0845 010 6677) can be used by licensing staff to obtain general guidance on immigration documentation, although this Helpline is not able to advise on individual cases. The authority can obtain case specific immigration status information, including whether a licensing applicant is permitted to work or details of work restrictions, from the Evidence and Enquiry Unit, Floor 12, Lunar House, Wellesley Road, Croydon CR9 2BY . Further details on the procedures involved can be obtained by contacting the Unit (020 8196 3011).

Medical fitness

It is clearly good practice for medical checks to be made on each driver before the initial grant of a licence and thereafter for each renewal. There is general recognition that it is appropriate for taxi/PHV drivers to have more stringent medical standards than those applicable to normal car drivers because:

□ they carry members of the general public who have expectations of a safe journey; □ they are on the road for longer hours than most car drivers; and □ they may have to assist disabled passengers and handle luggage.

68. It is common for licensing authorities to apply the “Group 2” medical standards – applied by DVLA to the licensing of lorry and bus drivers – to taxi and PHV drivers. This seems best practice. The Group 2 standards preclude the licensing of drivers with insulin treated diabetes. However, exceptional arrangements do exist for drivers with insulin treated diabetes, who can meet a series of medical criteria, to obtain a licence to drive category C1 vehicles (ie 3500-7500 kgs lorries); the position is summarised at Annex C to the Guidance. It is suggested that the best practice is to apply the C1 standards to taxi and PHV drivers with insulin treated diabetes.

Age Limits

69. It does not seem necessary to set a maximum age limit for drivers provided that regular medical checks are made. Nor do minimum age limits, beyond the statutory periods for holding a full driver licence, seem appropriate. Applicants should be assessed on their merits.

Driving Proficiency

70. Many local authorities rely on the standard car driving licence as evidence of driving proficiency. Others require some further driving test to be taken. Local authorities will want to consider carefully whether this produces benefits which are commensurate with the costs involved for would-be drivers, the costs being in terms of both money and broader obstacles to entry to the trade. However, they will note that the Driving Standards Agency provides a driving assessment specifically designed for taxis.

Language proficiency

71. Authorities may also wish to consider whether an applicant would have any problems in communicating with customers because of language difficulties.

Other training

1. Whilst the Department has no plans to make training courses or qualifications mandatory, there may well be advantage in encouraging drivers to obtain one of the nationally-recognised vocational qualifications for the taxi and PHV trades. These will cover customer care, including how best to meet the needs of people with disabilities. More information about these qualifications can be obtained from *GoSkills*, the Sector Skills Council for Passenger Transport. *GoSkills* is working on a project funded by the Department to raise standards in the industry and *GoSkills* whilst not a direct training provider, can guide and support licensing authorities through its regional network of Regional Managers.

1. Some licensing authorities have already established training initiatives and others are being developed; it is seen as important to do this in consultation with the local taxi and PHV trades. Training can cover customer care, including how best to meet the needs of people with disabilities and other sections of the community, and also topics such as the relevant legislation, road safety, the use of maps and GPS, the handling of emergencies, and how to defuse difficult situations and manage conflict. Training may also be considered for applicants to enable them to reach an appropriate standard of comprehension, literacy and numeracy. Authorities may wish to note that nationally recognised qualifications and training programmes sometimes have advantages over purely local arrangements (for example, in that the qualification will be more widely recognised).

Contact details are: *GoSkills*, Concorde House, Trinity Park, Solihull, Birmingham, B37 7UQ.

Tel: 0121-635-5520 Fax: 0121-635-5521

Website: www.goskills.org

e-mail: info@goskills.org

74. It is also relevant to consider driver training in the context of the 2012 Olympic and Paralympic Games which will take place at a number of venues across the country. One of the key aims of the Games is to “change the experience disabled people have when using public transport during the Games and to leave a legacy of more accessible transport”. The Games provide a unique opportunity for taxi/PHV drivers to demonstrate their disability awareness training, and to ensure all passengers experience the highest quality of service.

Topographical Knowledge

1. Taxi drivers need a good working knowledge of the area for which they are licensed, because taxis can be hired immediately, directly with the driver, at ranks or on the street. So most licensing authorities require would-be taxi-drivers to pass a test of local topographical knowledge as a pre-requisite to the first grant of a licence (though the stringency of the test should reflect the complexity or otherwise of the local geography, in accordance with the principle of ensuring that barriers to entry are not unnecessarily high).
2. However, PHVs are not legally available for immediate hiring in the same way as taxis. To hire a PHV the would-be passenger has to go through an operator, so the driver will have an opportunity to check the details of a route before starting a journey. So it may be unnecessarily burdensome to require a would-be PHV driver to pass the same ‘knowledge’ test as a taxi driver, though it may be thought appropriate to test candidates’ ability to read a map and their knowledge of key places such as main roads and railway stations. The Department is aware of circumstances where, as a result of the repeal of the PHV contract exemption, some people who drive children on school contracts are being deterred from continuing to do so on account of overly burdensome topographical

tests. Local authorities should bear this in mind when assessing applicants' suitability for PHV licences.

PHV OPERATORS

77. The objective in licensing PHV operators is, again, the safety of the public, who will be using operators' premises and vehicles and drivers arranged through them.

Criminal Record Checks

78. PHV operators (as opposed to PHV drivers) are not exceptions to the Rehabilitation of Offenders Act 1974, so Standard or Enhanced disclosures cannot be required as a condition of grant of an operator's licence. But a Basic Disclosure, which will provide details of unspent convictions only, could be seen as appropriate, after such a system has been introduced by the Criminal Records Bureau. No firm date for introduction has yet been set; however, a feasibility study has been completed; the Criminal Records Bureau is undertaking further work in this regard. Overseas applicants may be required to provide a certificate of good conduct from the relevant embassy if they have not been long in this country. Local licensing authorities may want to require a reference, covering for example the applicant's financial record, as well as the checks outlined above.

Record Keeping

79. It is good practice to require operators to keep records of each booking, including the name of the passenger, the destination, the name of the driver, the number of the vehicle and any fare quoted at the time of booking. This information will enable the passenger to be traced if this becomes necessary and should improve driver security and facilitate enforcement. It is suggested that 6 months is generally appropriate as the length of time that records should be kept.

Insurance

80 It is appropriate for a licensing authority to check that appropriate public liability insurance has been taken out for premises that are open to the public.

Licence Duration

81. A requirement for annual licence renewal does not seem necessary or appropriate for PHV operators, whose involvement with the public is less direct than a driver (who will be alone with passengers). Indeed, a licence period of five years may well be appropriate in the average case. Although the authority may wish to offer operators the option of a licence for a shorter period if requested.

Repeal of the PHV contract exemption

1. Section 53 of the Road Safety Act 2006 repealed the exemption from PHV licensing for vehicles which were used on contracts lasting not less than seven days. The change came into effect in January 2008. A similar change was introduced in respect of London in March 2008. As a result of this change, local licensing authorities are considering a range of vehicles and services in the context of PHV licensing which they had not previously licensed because of the contract exemption.
2. The Department produced a guidance note in November 2007 to assist local licensing authorities, and other stakeholders, in deciding which vehicles should be licensed in the PHV regime and which vehicles fell outside the PHV definition. The note stressed that it was a matter for local licensing authorities to make decisions in the first instance and that, ultimately, the courts were responsible for interpreting the law. However, the guidance was published as a way of assisting people who needed to consider these issues. A copy of the guidance note can be found on the Department's web-site at: <http://www.dft.gov.uk/pgr/regional/taxis/rsa06privatehirevehicles> As a result of a recent report on the impact of the repeal of the PHV contract exemption, the Department will be revising its guidance note to offer a more definite view about which vehicles should be licensed as PHVs. The report is also on the Department's web-site at: <http://www.dft.gov.uk/pgr/regional/taxis/phvcontractexemption/>.

ENFORCEMENT

1. Well-directed enforcement activity by the local licensing authority benefits not only the public but also the responsible people in the taxi and PHV trades. Indeed, it could be argued that the safety of the public depends upon licensing authorities having an effective enforcement mechanism in place. This includes actively seeking out those operators who are evading the licensing system, not just licensing those who come forward seeking the appropriate licences. The resources devoted by licensing authorities to enforcement will vary according to local circumstances, including for example any difficulties with touting by unlicensed drivers and vehicles (a problem in some urban areas). Local authorities will also wish to liaise closely with the police. Multi-agency enforcement exercises (involving, for example, the Benefits Agency) have proved beneficial in some areas.
2. Local licensing authorities often use enforcement staff to check a range of licensed activities (such as market traders) as well as the taxi and PHV trades, to make the best use of staff time. But it is desirable to ensure that taxi and PHV enforcement effort is at least partly directed to the late-night period, when problems such as touting tend most often to arise. In formulating policies to deal with taxi touts, local licensing authorities might wish to be aware that the Sentencing Guidelines Council have, for the first time, included guidance about taxi touting in their latest Guidelines for Magistrates. The Guidelines, which came into effect in August 2008, can be accessed through the SGC's web-site -www.sentencing-guidelines.gov.uk.
3. Some local licensing authorities employ taxi marshals in busy city centres where there are lots of hirings, again perhaps late at night, to help taxi drivers picking up, and would-be passengers queuing for taxis.

1. As part of enforcement, local licensing authorities will often make spot checks, which can lead to their suspending or revoking licences. They will wish to consider carefully which power should best be used for this purpose. They will note, among other things, that section 60 of the Local Government (Miscellaneous Provisions) Act 1976 provides a right of appeal for the licence-holder, whereas section 68, which is also sometimes used, does not; this can complicate any challenge by the licence-holder.
2. Section 52 of the Road Safety Act 2006 amended the Local Government (Miscellaneous Provisions) Act 1976 such that local authorities can now suspend or revoke a taxi or PHV driver's licence with immediate effect on safety grounds. It should be stressed that this power can only be used where safety is the principal reason for suspending or revoking and where the risk justifies such an approach. It is expected that in the majority of cases drivers will continue to work pending appeal and that this power will be used in one-off cases. But the key point is that the law says that the power must be used in cases which can be justified in terms of safety. The Department is not proposing to issue any specific guidance on this issue, preferring to leave it to the discretion of licensing authorities as to when the power should be used.

TAXI ZONES

1. The areas of some local licensing authorities are divided into two or more zones for taxi licensing purposes. Drivers may be licensed to ply for hire in one zone only. Zones may exist for historical reasons, perhaps because of local authority boundary changes.
2. The Department recommends the abolition of zones. That is chiefly for the benefit of the travelling public. Zoning tends to diminish the supply of taxis and the scope for customer choice - for example, if fifty taxis were licensed overall by a local authority, but with only twenty five of them entitled to ply for hire in each of two zones. It can be confusing and frustrating for people wishing to hire a taxi to find that a vehicle licensed by the relevant local authority is nonetheless unable to pick them up (unless pre-booked) because they are in the wrong part of the local authority area. Abolition of zones can also reduce costs for the local authority, for example through simpler administration and enforcement. It can also promote fuel efficiency, because taxis can pick up a passenger anywhere in the local authority area, rather than having to return empty to their licensed zone after dropping a passenger in another zone.
3. It should be noted that the Government has now made a Legislative Reform Order which removed the need for the Secretary of State to approve amalgamation resolutions made by local licensing authorities. The Legislative Reform (Local Authority Consent Requirements)(England and Wales) Order 2008 came into force in October 2008. Although these resolutions no longer require the approval of the Secretary of State, the statutory procedure for making them – in paragraph 25 of schedule 14 to the Local Government Act 1972- remains the same.

FLEXIBLE TRANSPORT SERVICES

It is possible for taxis and PHVs to provide flexible transport services in a number of different ways. Such services can play a valuable role in meeting a range of transport

needs, especially in rural areas – though potentially in many other places as well. In recent years there has been a significant increase in the provision of flexible services, due partly to the availability of Rural Bus Subsidy Grant and Rural Bus Challenge Support from the Department.

93. The Department encourages local licensing authorities, as a matter of best practice, to play their part in promoting flexible services, so as to increase the availability of transport to the travelling public. This can be done partly by drawing the possibilities to the attention of taxi and PHV trade. It also should be borne in mind that vehicles with a higher seating capacity than the vehicles typically licensed as taxis (for example those with 6, 7 or 8 passenger seats) may be used for flexible services and should be considered for licensing in this context.

94. The main legal provisions under which flexible services can be operated are:

- **Shared taxis and PHVs – advance bookings (section 11, Transport Act 1985):** licensed taxis and PHVs can provide a service at separate fares for up to eight passengers sharing the vehicle. The operator takes the initiative to match up passengers who book in advance and agree to share the vehicle at separate fares (lower than for a single hiring). An example could be passengers being picked up at home to go to a shopping centre, or returning from the shops to their homes. The operator benefits through increased passenger loadings and total revenues.
- **Shared taxis – immediate hirings (section 10, Transport Act 1985):** such a scheme is at the initiative of the local licensing authority, which can set up schemes whereby licensed taxis (not PHVs) can be hired at separate fares by up to eight people from ranks or other places that have been designated by the authority. (The authority is required to set up such a scheme if holders of 10% or more of the taxi licences in the area ask for one.) The passengers pay only part of the metered fare, for example in going home after a trip to the local town, and without pre-booking, but the driver receives more than the metered fare.
- **Taxibuses (section 12, Transport Act 1985):** owners of licensed taxis can apply to the Traffic Commissioner for a ‘restricted public service vehicle (PSV) operator licence’. The taxi owner can then use the vehicle to run a bus service for up to eight passengers. The route must be registered with the Traffic Commissioner and must have at least one stopping place in the area of the local authority that licensed the taxi, though it can go beyond it. The bus service will be eligible for Bus Service Operators Grant (subject to certain conditions) and taxibuses can be used for local authority subsidised bus services. The travelling public have another transport opportunity opened for them, and taxi owners have another business opportunity. The Local Transport Act 2008 contains a provision which allows the owners of PHVs to acquire a special PSV operator licence and register a route with the traffic commissioner. A dedicated leaflet has been sent to licensing authorities to distribute to PHV owners in their area alerting them to this new provision.

95. The Department is very keen to encourage the use of these types of services. More details can be found in the Department’s publication ‘Flexible Transport Services’ which can be accessed at:

<http://www.dft.gov.uk/pgr/regional/buses/bol/flexibletransportservices>

LOCAL TRANSPORT PLANS

1. The Transport Act 2000 as amended by the Transport Act 2008, requires local transport authorities in England outside London to produce and maintain a Local Transport Plan (LTP), having regard to any guidance issued by the Secretary of State. The latest guidance published in July 2009 will cover the next round of LTPs from 2011. LTPs set out the authority's local transport strategies and policies for transport in their area, and an implementation programme. 82 LTPs covering all of England outside London have been produced and cover the period up to 2011. From 2011 local authorities will have greater freedom to prepare their LTPs to align with wider local objectives.
2. All modes of transport including taxi and PHV services have a valuable part to play in overall transport provision, and so local licensing authorities have an input to delivering the LTPs. The key policy themes for such services could be availability and accessibility. LTPs can cover:
 - quantity controls, if any, and plans for their review; licensing conditions, with a view to safety but also to good supply of taxi and PHV services; fares; on-street availability, especially through provision of taxi ranks; vehicle accessibility for people with disabilities; encouragement of flexible services.

Annex A

TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

Useful questions when assessing quantity controls of taxi licences

- Have you considered the Government's view that quantity controls should be removed unless a specific case that such controls benefit the consumer can be made?

Questions relating to the policy of controlling numbers

- Have you recently reviewed the need for your policy of quantity controls? What form did the review of your policy of quantity controls take? Who was involved in the review? What decision was reached about retaining or removing quantity controls? Are you satisfied that your policy justifies restricting entry to the trade? Are you satisfied that quantity controls do not:
- reduce the availability of taxis;
 - increase waiting times for consumers;
 - reduce choice and safety for consumers?
- What special circumstances justify retention of quantity controls? How does your policy benefit consumers, particularly in remote rural areas? How does your policy benefit the trade? If you have a local accessibility policy, how does this fit with restricting taxi licences?

Questions relating to setting the number of taxi licences

- When last did you assess unmet demand? How is your taxi limit assessed? Have you considered latent demand, i.e. potential consumers who would use taxis if more were available, but currently do not? Are you satisfied that your limit is set at the correct level? How does the need for adequate taxi ranks affect your policy of quantity controls?

Questions relating to consultation and other public transport service provision

- When consulting, have you included etc.
- all those working in the market;
 - consumer and passenger (including disabled) groups;
 - groups which represent those passengers with special needs;
 - local interest groups, e.g. hospitals or visitor attractions;
 - the police;
 - a wide range of transport stakeholders e.g. rail/bus/coach providers and traffic managers?
- Do you receive representations about taxi availability?

What is the level of service currently available to consumers (including other public transport modes)?

TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

Notice for taxi passengers - what you can expect from the taxi trade and what the taxi trade can expect from you

The driver will:

- Drive with due care and courtesy towards the passenger and other road users.***
- Use the meter within the licensed area, unless the passenger has agreed to hire by time.***
- If using the meter, not start the meter until the passenger is seated in the vehicle.***
- If travelling outside the licensed area, agree the fare in advance. If no fare has been negotiated in advance for a journey going beyond the licensing area then the driver must adhere to the meter.***
- Take the most time-efficient route, bearing in mind likely traffic problems and known diversions, and explain any diversion from the most direct route.***

The passenger will:

- Treat the vehicle and driver with respect and obey any notices (e.g. in relation to eating in the vehicle).***
 - Ensure they have enough money to pay the fare before travelling. If wishing to pay by credit card or to stop on route to use a cash machine, check with the driver before setting off.***
 - Be aware of the fare on the meter and make the driver aware if it is approaching the limit of their financial resources.***
- Be aware that the driver is likely to be restricted by traffic regulations in relation to where s/he can stop the vehicle.***

Notice for PHV passengers - what you can expect from the PHV trade and what the PHV trade can expect from you

The driver will:

- Ensure that the passenger has pre-booked and agrees the fare before setting off.***
- Drive with due care and courtesy towards the passenger and other road users.***
- Take the most time-efficient route, bearing in mind likely traffic problems and known diversions, and explain any diversion from the most direct route.***

The passenger will:

- Treat the vehicle and driver with respect and obey any notices (eg. in relation to eating in the vehicle).***
 - Ensure they have enough money to pay the fare before travelling. If wishing to pay by credit card or to stop on route to use a cash machine, check with the driver before setting off.***
- Be aware that the driver is likely to be restricted by traffic regulations in relation to where s/he can stop the vehicle.***

Annex C

TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

Assessing applicants for a taxi or PHV driver licence in accordance with C1 standard

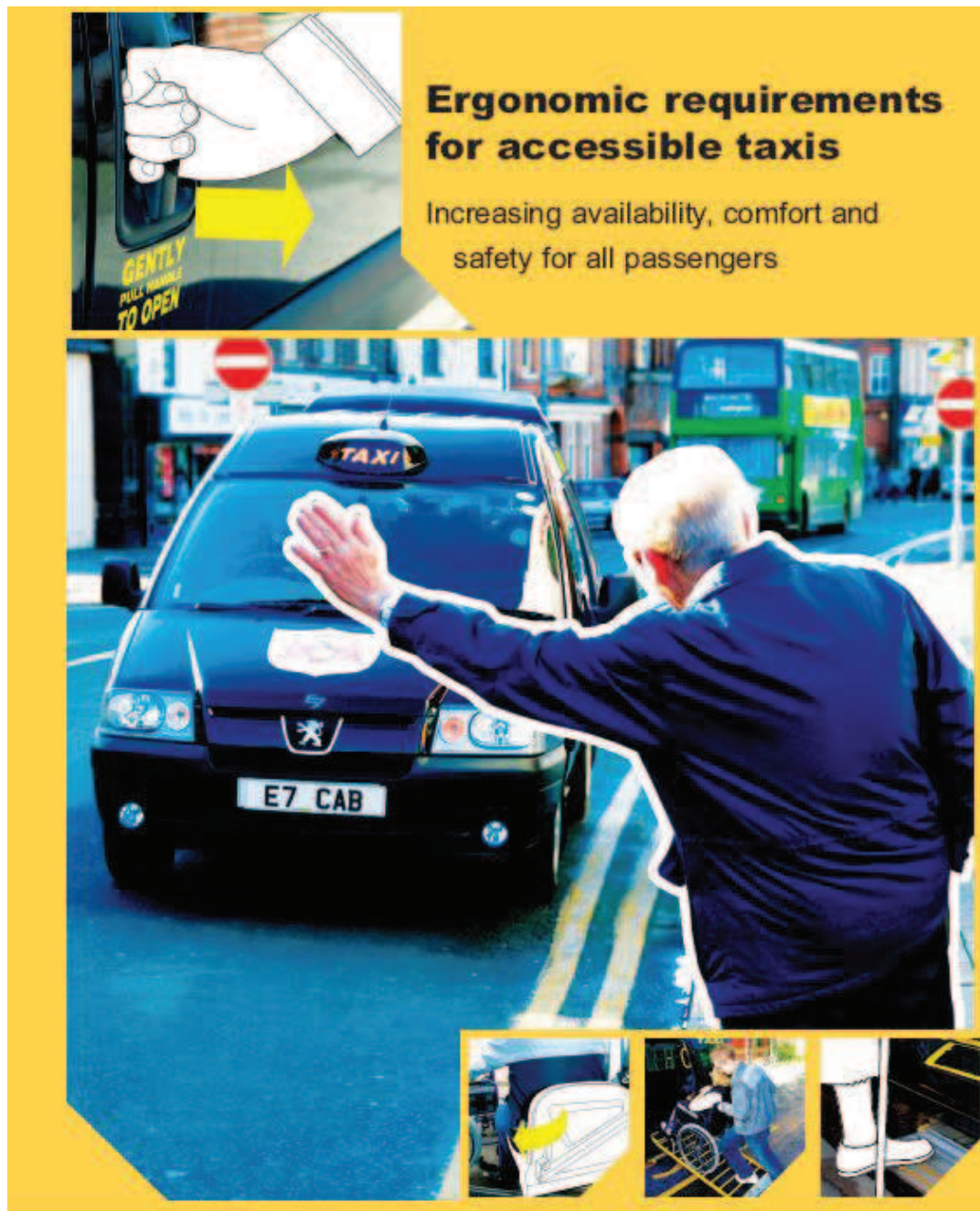
Exceptional circumstances under which DVLA will consider granting licences for vehicles over 3.5 tonnes or with more than 8 passenger seats.

Insulin treated diabetes is a legal bar to driving these vehicles. The exceptional arrangements that were introduced in September 1998 were only in respect of drivers who were employed to drive small lorries between 3.5 tonnes and 7.5 tonnes (category C1). The arrangements mean that those with good diabetic control and who have no significant complications can be treated as "exceptional cases" and may have their application for a licence for category C1 considered. The criteria are

- To have been taking insulin for at least 4 weeks;
- Not to have suffered an episode of hypoglycaemia requiring the assistance of another person whilst driving in the last 12 months;
- To attend an examination by a hospital consultant specialising in the treatment of diabetes at intervals of not more than 12 months and to provide a report from such a consultant in support of the application which confirms a history of responsible diabetic control with a minimal risk of incapacity due to hypoglycaemia;
- To provide evidence of at least twice daily blood glucose monitoring at times when C1 vehicles are being driven (those that have not held C1 entitlement in the preceding 12 months may provide evidence of blood glucose monitoring while driving other vehicles);
- To have no other condition which would render the driver a danger when driving C1 vehicles; and
- To sign an undertaking to comply with the directions of the doctor(s) treating the diabetes and to report immediately to DVLA any significant change in condition.

Appendix B

Ergonomic Requirements DfT





introduction

By 2020 close to half the adult population of the UK will be over 50 years old and the majority of Europeans can now look forward to 30 years of active life after 50. However, one in five of the adult population has a disability and nearly half (48%) of the disabled population is aged 65 or older with some 29% of the disabled population being aged 75 or more.

Almost all of us will suffer some disabling mobility impairment at some time in our lives and transport related regulations introduced under the DDA(1995) are intended to ensure that safe and convenient mobility is available to as many people as possible. Taxis play a critical role in the transport chain. They often provide the links between other forms of transport (rail, air, coach etc); modes which may now be accessible for those with mobility impairments. In many cases they may represent the only form of transport that can provide a door to door service. An improvement in the accessibility of taxis can therefore be expected to offer significant benefit to disabled travellers making a wide range of journey types.

The principal barriers to using taxis for many people with mobility impairments are connected with the need to step up to and into the passenger compartment, negotiate a door with low head clearance and then access a seat which may be either low or set some distance back from the door. Physical frailty and stiff or painful joints may make all of these formidable challenges. Wheelchair users face a different set of challenges associated with the widespread use of ramps.

The recommendations summarised in this leaflet are intended to lead to taxi designs which are more accessible by reducing the difficulties of getting in and out and using the seats comfortably and conveniently.

The advice provided in this guide is based on a programme of ergonomic research undertaken to provide a definition of the requirements of a taxi designed to be fully accessible.



passenger compartment

An interior roof height of at least 1625mm (ideally 1825) is required. If internal space is limited then it is important that passengers can access seats as directly as possible from an entrance. If there is a more generous provision (as when wheelchairs can also be accommodated in front of the passenger seats) it is important that there is sufficient internal height to prevent the need to stoop. Adequate provision of grab handles is an important requirement in either case.

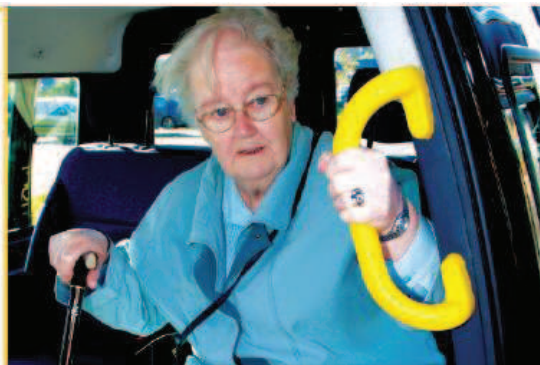
Manoeuvring space measuring to identify that this research is referring to manoeuvring space only and has not

considered the kinematics of a wheelchair occupant during a vehicle impact at least 1300mm by 1340mm is required. This assumes that the wheelchair will be carried facing backwards and there is a side entrance. If the wheelchair is to face forwards then a slightly larger manoeuvring space is required. The position of the side door affects the manoeuvring space required and for forward facing carriage the manoeuvring space is minimised if the door way is set back from the main bulkhead.

seating

As low seats can be difficult for passengers with stiff or painful joints to use seat heights need to be between 430mm - 460mm from the floor and the squab should not have a pronounced angle. In order to accommodate passengers with limited leg flexibility a space of at least 1175mm between the seat back and any forward obstruction is required. A swivel seat (preferably powered) can provide a valuable

alternate means of entry for passengers who find even a low single step difficult to negotiate. It is important that such seats provide a sense of security for the passenger while they are in operation and that they are large enough to provide a secure and comfortable ride.



handles and grab handles

Door handles that allow the passenger to use their whole hand to exert leverage and a range of opening strategies are preferable. Handle operation and latching efforts should be minimised to assist passengers who have limited upper body strength.

Grab handles play an important role in supporting a cross and providing stability support whilst passengers are inside a vehicle. The precise location will be dependent on the design of the vehicle and, in particular, the means of entry (i.e. step, ramp, swivel seat etc). Handles should have a diameter of 40mm and surface clearance of 45mm. For standing passengers (travelling in other modes of public transport) a height of around 900mm is recommended. However, lower positioning is more appropriate for handles in taxis intended to assist passengers getting up from seats or children climbing into a vehicle. Horizontal handles are more helpful inside a vehicle but vertical handles are recommended for doorways.





ramps

A steep ramp can make accessing a taxi difficult for wheelchair users, it may also represent a hazard for their assistants and taxi drivers. An ideal design would involve level entry from the kerb. If a gradient is required it should be less than 7°. Ramps should not provide an obstacle for pedestrians on the pavement and their length should be restricted to 1000mm. It is also important that ramps have a safety lip (50mm), are the same width as the door opening and comprise a single non-slip surface. Their edges should be highlighted to reduce the risk of trips.



steps

Some people cannot manage even a single step and may need a ramp with a gentle gradient if level entry isn't possible. If steps are necessary they should be restricted to a single step that is 100mm high. The steps should be the width of the door entry and be closed at the back without an overhang to reduce the risk of tripping.



doors and door apertures

Narrow doors and a low head clearance can cause significant difficulties for ambulant passengers and wheelchair users. A door width of at least 850mm will provide adequate clearance for wider wheelchairs and walking frames. A door height of 1595mm is required to prevent painful stooping and to minimise the risk of a head strike for passengers with visual impairments.

While hinged doors can provide a valuable form of support for passengers entering or leaving a vehicle, opening and closing them from the inside can be difficult for seated passengers and larger doors become a potential hazard for pedestrians on the pavement. Sliding doors can provide a large opening but secure latching must be ensured. Powered closure is now available in some vehicles and, if under the driver's supervision, this may provide an effective solution. Sliding doors are often associated with more

generous door apertures but care must be taken to ensure that opening and closing efforts are kept below 70N. Again, powered closure may provide an effective solution.

There are advantages and disadvantages associated with wheelchair access from the side and rear of a vehicle. Side access does not require wheelchairs to negotiate a kerb or enter the cartage way and enables shallower ramp angles from the pavement. Rear access may be the most practicable means of access in non-urban environments. It may also enable simpler manoeuvres to a secure travelling position inside the vehicle but may not be possible from a taxi rank or kerbside. The requirements outlined above (ramps and door size) are applicable in both cases.



visibility and lighting

For passengers with impaired vision feature and edge high-lighting can provide important assistance. The following features should be visually emphasised: exterior and interior door handles, step and ramp edges, door edges and door apertures, grab handles, seat edges and facilities provided to allow communication with the driver.



Ambient lighting within the passenger compartment should be at least 150lux but higher levels of illumination may cause distraction for the driver and adaptation problems for some passengers alighting into a dark street. Brighter feature lighting (>200lux) is recommended for steps, the meter display and the communication window. In all cases lighting sources should be positioned so as to prevent shadowing.

For further information please contact:

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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