

CANNOCK CHASE COUNCIL

LICENSING & PUBLIC PROTECTION COMMITTEE

6 DECEMBER, 2007

REPORT OF THE DIRECTOR OF SERVICE IMPROVEMENT

HACKNEY CARRIAGE & PRIVATE VEHICLES: PRIVACY GLASS POLICY

1. Purpose of Report

- 1.1 To seek approval for the proposed amended Policy relating the licensing of Hackney Carriage and Private Hire Vehicles fitted with 'privacy glass' and for the Director of Service Improvement to have authority to determine applications to which the amended Policy applies.

2. Recommendation

- 2.1 That the amended Policy relating to the licensing of Hackney Carriage and Private Hire Vehicles fitted with Privacy Glass set out in Annex 1 to this report be approved.
- 2.2 That the Director of Service Improvement (or any person authorised by him) be authorised to determine any application received by the Council's Licensing Unit to which the Policy set out in Annex 1 applies.

3. Key Issues

- 3.1 The current policy on Privacy Glass could be challenged by applicants on the basis that it purports to fetter the Council's discretion.
- 3.2 Members have indicated that it would be more appropriate for officers to have delegated powers to determine applications involving privacy glass unless deemed appropriate for referral to Committee.

REPORT INDEX

Background	Section 1
Consultation	Section 2
Current Policy and Arrangements	Section 3
Details of Matters to be Considered	Section 4
Contributions to CHASE	Section 5
Section 17 Implications	Section 6
Human Rights Act Implications	Section 7
Data Protection Act Implications	Section 8
Risk Management Implications	Section 9
Legal Implications	Section 10
Financial Implications	Section 11
Human Resource Implications	Section 12
Conclusions	Section 13
Background Papers	Section 14
Annexes	
Annex 1: Privacy Glass Policy	Annex 1

Section 1

Background

- 1.1 The Council's Licensing Unit throughout any given year receives several applications for Hackney Carriage Proprietor or Private Hire Vehicle Licences where the vehicles in question have windows and windscreens fitted with dark tint glass, commonly referred to as 'privacy glass'.
- 1.2 Some vehicles have 'privacy glass' factory fitted by the manufacturer and others either by the proprietor him/herself or through a specialist company/business providing vehicle tinting services.
- 1.3 The Road Vehicles (Construction and Use) Regulations prevents 'privacy glass' being fitted to the front windscreen and front passenger and driver windows and no vehicles are, or will be licensed which do not comply with the Regulations.
- 1.4 However, where vehicle windows and windscreens have been fitted with 'privacy glass' with less than 70% light transmission, the Council's Licensing Unit has raised concerns over the adverse implications/affects on public safety, namely;
 - reduced visibility for the driver;
 - incidents that could compromise the safety of the driver;
 - passengers safety being compromised if they cannot be seen from outside;
 - enforcement implications, such as officers not being able to see if the maximum number of passengers was being exceeded.
- 1.5 Currently, any Hackney Carriage Proprietor and/or Private Hire Vehicle applications involving vehicles fitted with 'privacy glass' are determined by the Licensing and Public Protection Committee.
- 1.6 Members of Licensing and Public Protection Committee have indicated that it would be more appropriate that the determination of an application to which the proposed amended policy applies, ought to be determined by suitably qualified and experienced officers unless such officers deem it appropriate to refer the application to the Committee for determination.

Section 2

2. Consultation

- 2.1 The views of the Cannock Chase Hackney Carriage Association have previously been sought and their response was that;

"We have no problem in the future with restriction of Hackney Carriage/Private Hire licences being refused on the grounds that obscured glass is unacceptable but would not support any restriction being placed on existing licensed vehicles and an exception being made in the case of stretched limos".

Section 3

3. Current Policy and arrangements

- 3.1 The Council proceeded to introduce measures to address the concerns raised by vehicles fitted with 'privacy glass' and on 1 December 2005 Council adopted the policy set out in paragraphs 3.2 and 3.3 below.
- 3.2 It is proposed that, with the exception of stretch limousines, applications for vehicles with any glass that has less than 70% light transmission will not be accepted for either Hackney Carriage Proprietor or Private Hire Vehicle Licences, with effect from 1 January 2006.
- 3.3 It is further proposed that this policy will not apply to those vehicles with any glass with less than 70% light transmission currently licensed by the Council.

Section 4

4. Details of Matters to be Considered

- 4.1 The existing policy could be challenged on the basis that it purports to fetter the Council's discretion in determining Hackney Carriage and/or Private Hire vehicle applications where the vehicle in question is fitted with glass that has less than 70% light transmission.
- 4.2 The current policy states that the Council will NOT accept applications for licences in respect of vehicles fitted with glass that has less than 70% light transmission. The Council is under a legal duty to consider every application and cannot simply refuse to consider an application made in respect of a Hackney Carriage/Private Hire vehicle on the basis that the vehicle is fitted with glass that has less than 70% light transmission. Each application must be considered on its own merits unless there is a legal basis upon which the Council can refuse to consider it. For example, the application is incomplete, the vehicle has failed to meet other legal requirements relating to vehicle safety/roadworthiness etc.
- 4.3 The Council's existing policy relating to vehicles fitted with glass that has less than 70% light transmission could be challenged by the applicant and/or the hackney carriage/private hire trade organisations/bodies on the basis that the Council has failed to discharge its duty as mentioned above and there has been a potential breach of the applicant's human rights. Such action could result in unnecessary litigation and in turn adverse financial implications to the Council.
- 4.4 Transitional arrangements for vehicles fitted with 'privacy glass' and currently licensed prior to the policy coming into force are necessary in the interests of safety, consistency and fairness.
- 4.5 In view of the indication given by members of the Licensing and Public Protection Committee, a more efficient and effective process for the determination of Hackney Carriage Proprietor and/or Private Hire Vehicle applications where the vehicle in question is fitted with glass that has less than 70% light transmission should be devised and implemented.
- 4.6 The amended policy set out Annex 1 seeks to address the above issues.

Section 5

5. Contributions to CHASE

- 5.1 The Licensing Authority through the licensing function ensures public protection. This policy will contribute to the health of the public in the widest sense by maintaining public safety.

Section 6

6. Section 17 Implications

- 6.1 By ensuring that there is adequate visibility of the interior from the outside of the vehicle the safety of the passengers and the driver is strengthened.

Section 7

7. Human Rights Act Implications

- 7.1 Anyone aggrieved by the Council's decision not to allow the licensing of a vehicle can challenge that decision at Magistrates' Court. Article 6 of the Act in respect of issues determined by an independent tribunal is therefore fulfilled.

Section 8

8. Data Protection Act Implications

- 8.1 There are no Data Protection Act implications identified in this Report.

Section 9

9. Risk Management Implications

- 9.1 The Policy seeks to streamline the process of determining licensing matters with regards to privacy glass. Only applications that Officers are unable to grant will be referred to the Licensing & Public Protection Committee. The same rights of appeal will apply and therefore the potential will remain for decisions to be challenged and costs awarded against the Council.

Section 10

10. Legal Implications

- 10.1 The Council has a statutory duty to ensure that any vehicle licensed as a hackney carriage and/or for private hire under the Local Government (Miscellaneous Provisions) Act 1976 is suitable and does not compromise the safety of the driver, passenger or other road users. Moreover, nor should any such licensed vehicle prevent or hinder the Council's Licensing Unit discharging its obligations and duties.
- 10.2 Whilst 'privacy glass' raises health and safety issues and concerns, the Council must consider each case on its own merit. The Council cannot fetter its discretion by adopting a rigid policy of refusal when required to deal with applications for licences for vehicles fitted with 'privacy glass'. Unfortunately, the current policy could be challenged on the ground that it fetters the Council's discretion when dealing with such applications.

- 10.3 To avoid any such challenge, it is necessary to revise the Council's current policy in relation to the licensing of vehicles fitted with 'privacy glass' and adopt a new policy which does not fetter the Council's discretion.

Section 11

11. Financial Implications

- 11.1 There are no direct financial implications for this report. However, if a refusal is appealed, costs may be awarded against us.

Section 12

12. Human Resource Implications

- 12.1 There are no human resources implications identified in this report.

Section 13

13. Conclusions

- 13.1 The existing policy on privacy glass could be challenged as it is rigid and therefore fetters the Council's discretion. The proposed revised policy seeks to address this. Further, it is expected to reduce Member involvement in the majority of the decision making in respect of vehicles fitted with privacy glass.

Section 14

14. Background Papers

Road Vehicles (Construction and Use) Regulations 1986

Annexes

Annex 1 – Privacy Glass Policy

Cannock Chase District Council Policy - Use of Privacy Glass in Licensed Vehicles

1. With regards any new hackney carriage proprietor or private hire licence application received by the Council in respect of any vehicle fitted with Privacy Glass (as defined in paragraph 7 below), it shall be the responsibility of the applicant, subject to paragraph 3 below, to satisfy the Director of Service Improvement (or anyone duly authorised by him), that the use of the proposed vehicle fitted with Privacy Glass is suitable and will not compromise or undermine safety by, inter alia:
 - a. Obscuring the visibility of the driver;
 - b. Exposing the driver to unacceptable risk in relation to injury, attack, threatening behaviour or the like;
 - c. Exposing passengers to unacceptable risk in relation to injury, attack, threatening behaviour or the like;
 - d. Preventing or hindering the Council's Licensing Unit discharging its enforcement duties and obligations.
2. Should the applicant fail to satisfy the obligation imposed under paragraph 1 above, no licence shall be granted by the Director of Service Improvement (or any person authorised by him) in relation of the vehicle in question.
3. The Director of Service Improvement (or any person authorised by him) may, at his/her discretion, refer any hackney carriage proprietor or private hire licence application to which this Policy relates to the Council's Licensing and Public Protection Committee for determination. Upon such occurrence, the applicant shall be required to satisfy the Committee that the use of the proposed vehicle fitted with Privacy Glass is suitable and will not compromise or undermine safety.
4. This Policy shall not apply to:
 - (a) Stretch limousines;
 - (b) Renewal applications for hackney carriage proprietor and/or private hire vehicle licences relating to vehicles fitted with Privacy Glass received prior to 1 January 2010.
5. Any hackney carriage proprietors/private hire vehicle licence holder relying upon any exemption set out in paragraph 4 shall, whilst on duty/working, use all reasonable endeavours to not to compromise or undermine their own safety or that of the public.
6. This Policy shall take effect from **1 January 2008**.
7. 'Privacy Glass' for the purposes of this policy means windows and windscreens of vehicles that allow less than 70% light transmission, measured with suitable calibrated equipment as part of the vehicle test and inspection.