

APPENDIX A

REGULATORY COMMITTEE MEETING

COMMENTS OF MR JOHN ROBERTS AND OTHERS

COMMENTS

1. Following three decisions to refuse to consider applications for Hackney Carriage Licences Mr Roberts asks that this matter be added to the committee meeting and it has been confirmed that this is the position for October.
2. He argues that a decision to refuse to consider the applications is tantamount to a refusal of them – especially so in circumstances where the Council is operating absolutely no form of waiting list or system for administering them.
3. The defendants rely upon the power contained in the provisions of Section 16 Transport Act 1985 which provides as follows.

'The provisions of the [Town Police Clauses Act 1847](#) with respect to hackney carriages, as incorporated in any enactment (whenever passed), shall [(subject to [section 161](#) of the [Equality Act 2010](#))] have effect— (a) as if in [section 37](#), the words “such number of” and “as they think fit” were omitted; and (b) as if they provided that the grant of a licence may be refused, for the purpose of limiting the number of hackney carriages in respect of which licences are granted, if, but only if, the person authorised to grant licences 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.'

4. The Council can only restrict numbers for Hackney Carriage Licences where it is satisfied that there is no significant unmet demand. It has **no other discretion** to do so under Section 16 of the Transport Act 1985 (*R v Reading Borough Council* (1990) R.T.R 399). The Council does not and never has carried out an unmet demand survey and as such has no authority whatsoever to refuse to consider applications unless of course there is a defect within them which has not been raised. As such any form of restriction without this is unlawful and open to challenge. Mr Roberts is pursuing all avenues to pursue this before legal action begins.
5. It is submitted that section 16 Transport Act 1985 obliges the defendant to ensure that as long as any restriction is in force, that there is no significant unmet demand. The Council is not so doing and therefore cannot arbitrarily select a number in a policy and apply it – it is incorrect and unlawful.

APPENDIX B

Restricting numbers of hackney carriages

1. As originally enacted section 37 of the Town Police Clauses Act 1847 gave the licensing authority the power to restrict the number of hackney carriages as it thought fit.
2. The 1847 Act was amended by section 16 Transport Act 1985. This provision removed the unrestricted power of the licensing authority to restrict the number of hackney carriages by removing the text marked [F1] shown below.
3. The 1985 Act substituted the power to restrict the number of hackney carriages only if the licensing authority is satisfied that there is no significant demand for the services of hackney carriages in the area which is unmet. This is referred to as the unmet demand test.
4. The 1985 Act does not specify how a licensing authority would determine whether or not there was an unmet demand at any particular time. A number of licensing authorities have undertaken unmet demand surveys to advise on the questions. Such surveys are expensive (running into thousands of pounds) and would be paid for by the hackney carriage trade.
5. The 1985 Act has itself been amended by section 161 Equality Act 2010. The 2010 amendments apply to applications for hackney carriage vehicle licenses in respect of fully wheelchair compliant vehicles. In such cases the application must be granted if the proportion of fully wheelchair accessible taxis licensed in the area is less than the proportion that is prescribed by the Secretary of State. The Secretary of State has not prescribed a percentage so the 2010 Act has no effect.

Town Police Clauses Act 1847

37 Hackney carriages to be licensed.

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,) [F1such number of]hackney coaches or carriages of any kind or description adapted to the carriage of persons [F1as they think fit].

Transport Act 1985

16 Taxi licensing: control of numbers.

The provisions of the Town Police Clauses Act 1847 with respect to hackney carriages, as incorporated in any enactment (whenever passed), shall (subject to section 161 of the Equality Act 2010) have effect—

(a) as if in section 37, the words “such number of” and “as they think fit” were omitted; and

(b) as if they provided that the grant of a licence may be refused, for the purpose of limiting the number of hackney carriages in respect of which licenses are granted, if, but only if, the person authorised to grant licenses 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.

Equality Act 2010

161 Control of numbers of licensed taxis: exception

(1) This section applies if—

(a) an application for a licence in respect of a vehicle is made under section 37 of the Town Police Clauses Act 1847,

(b) it is possible for a disabled person—

(i) to get into and out of the vehicle in safety,

(ii) to travel in the vehicle in safety and reasonable comfort, and

(iii) to do the things mentioned in sub-paragraphs (i) and (ii) while in a wheelchair of a size prescribed by the Secretary of State, and

(c) the proportion of taxis licensed in respect of the area to which the licence would (if granted) apply that conform to the requirement in paragraph (b) is less than the proportion that is prescribed by the Secretary of State.

(2) Section 16 of the Transport Act 1985 (which modifies the provisions of the Town Police Clauses Act 1847 about hackney carriages to allow a licence to ply for hire to be refused in order to limit the number of licensed carriages) does not apply in relation to the vehicle; and those provisions of the Town Police Clauses Act 1847 are to have effect subject to this section.

(3) In section 16 of the Transport Act 1985, after “shall” insert “(subject to section 161 of the Equality Act 2010)”.