

REIGATE AND BANSTEAD BOROUGH COUNCIL
OVERVIEW AND SCRUTINY COMMITTEE - 19 FEBRUARY 2003
REPORT OF THE
HACKNEY CARRIAGE RESTRICTED NUMBERS REVIEW PANEL
ON
HACKNEY CARRIAGE RESTRICTED NUMBERS POLICY

**To update the Overview and Scrutiny
Committee and Executive on the progress
on the Hackney Carriage Restricted
Numbers Policy Review and make
recommendations**

1. INTRODUCTION

- 1.1 At its meeting of 12th July 2001 the Executive considered the policy relating to the limitation of hackney carriage numbers. The Executive indicated it was 'of a mind to remove the restricted numbers policy' and instructed Officers to consult as widely as possible, inviting views from any interested parties on the removal of the restriction on numbers and the conditions imposed upon any new additional licences issued, with a view to;
- a. promoting and increasing convenience and amenity to the public, including the needs of the disabled; and
 - b. ensuring by the imposition of reasonable conditions, in respect of the age, type or livery, that any new hackney carriage vehicle licences are issued to proprietors committed to a future in the trade; and
 - c. considering the position of existing members of the trade, including the effect of any new or existing hackney carriage conditions'.
- 1.2 The Overview and Scrutiny Committee agreed their work plan on 6th September, 2001 and established the Hackney Carriage Review Panel (Minute 12, page 154). This was based on proposals following discussions held between the Chairman and Vice-Chairman, Corporate Management Team, the Leader of the Council and the Executive Member for Corporate Resources. The basis of this approach was the need for a cross-party panel to conduct consultation and to arrive at recommendations in an open and transparent manner.

- 1.3 The terms taxi and hackney carriage (HC) have been used throughout this report, modern usage (both within legislation and other Government Documents) has tended toward the use of the word ‘taxi’. References in the report to taxi mean hackney carriage and vice versa.

2. BACKGROUND

- 2.1 Until 1985, section 37 of the Town Police Clauses Act 1847 provided, so far as relevant, that ‘the commissioners’ – now the licensing authority for the area concerned - ‘*may from time to time license to ply for hire ...such number of hackney carriages ...as they think fit*’

- 2.2 Section 16 of the Transport Act 1985 amended section 37 of the Act of 1847 with respect to the hackney carriages. The effect of those amendments is to omit the words ‘*such number of*’ and ‘*as they think fit*’ and added:

‘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 authorized 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.’

- 2.3 Circular 3/85 issued by the Department of Transport in 1985 gave further advice to local authorities on these amendments. In particular paragraphs 27 and 28;

- 2.4 27) *District Councils may wish to review their policy on the control of taxi numbers in the light of this section. Limitation of taxi numbers can have many undesirable effects – an insufficiency of taxis, either generally or at particular times or in particular places; insufficient competition between the providers of taxi services, to the detriment of their customers; and prices for the transfer of taxi licences from one person to another which imply an artificial restriction of supply. Under the section a district council may refuse a licence to restrict numbers only if satisfied that there is not a significant unmet demand for taxis in the relevant area. If there is an appeal it will be for the Council to convince the Court that they had reasonable grounds for being so satisfied. It will not, in general, be sufficient for a district council to rely on the assertion of existing taxi licence holders that the demand is already catered for. They have evidence only of the demand which they satisfy and it will be for the Council themselves to seek for and examine the evidence of unmet demand. There may be those who have given up trying to use taxis because of the inadequacy of the service and there may be latent demand in parts of the district that have not been adequately served – where those who wish to use taxis may not have demonstrated their demand since there had been no opportunity of having it satisfied. Moreover if the applicant for a new taxi proposed to use it – for instance under section 12 – and had reasonable grounds to believe that there would be a demand for this service if he provided it, a Council which wished to refuse a licence would have to satisfy themselves that that demand would not be forthcoming. Overcrowding at taxi*

ranks is not of itself evidence that there is no unmet demand. It may be that the provision of ranks has hitherto been too limited and the Council should look actively for sites for further ranks.

- 2.5 *28) There are a number of district councils which already exercise no control of the number of taxis in their areas without causing problems of oversupply. However, the Department accepts that in some areas the total abandonment of quantity control could lead to an initial over-supply of taxis before market forces could bring about an equilibrium between supply and demand.....'*

2.6 Local picture

- 2.6.1 Since 1985, this authority has elected to restrict the number of hackney carriages licensed by the Borough. The number of licences issued currently stands at 75
- 2.6.2 In order to continue the policy of restricting the numbers the council has in the past relied to a significant extent on independent surveys to assess demand. The cost of the last survey was met by a supplement to the hackney carriage licence fee.
- 2.6.3 The last survey is dated July 1998. That survey considered the area of the Borough which was at that time outside the Metropolitan Police Boundary and concluded there was no significant unmet demand for hackney carriages in the borough
- 2.6.4 In April 2000 the Metropolitan Police boundary changed and for the first time taxi activity in the whole of the Borough became the responsibility of the Council. To reflect this increase in population and geography a Member Panel was established which recommended a further 5 hackney carriage licences be issued, without the benefit of a survey, subject to Council agreement, to bring the total number of licences issued to 75.

2.7 National picture

- 2.7.1 In London the number of hackney carriages is not restricted however strict standards of control in relation to the suitability and type of vehicle and 'knowledge' of the driver effectively limit casual entry to the trade.
- 2.7.2 A number of local authorities outside of London have taken the view that a restricted numbers policy represents an unacceptable restrictive practice. The number of taxi plates is restricted in 45% of local authorities in England and Wales. (Office of Fair Trading p3)(Appendix1)

3. HACKNEY CARRIAGE POLICY STATEMENT

- 3.1 The Council has adopted the following policy statement;

'The Council considers that its overall objective in respect of licensing is the protection of the public, and in relation to hackney carriages to preserve, promote and increase convenience and amenity to the sections of the public who wish to use the services of a hackney carriage'.

4. CONTROLS AVAILABLE

- 4.1 The Council can control the operation of Hackney Carriages by the following:-
- a. Restricting the numbers
 - b. Provision of Conditions to ensure minimum safety & quality standards of vehicles and drivers
 - c. Fixing the fares in relation to time, distance and other charges payable in respect of the hire of a hackney carriage vehicle.

5. HACKNEY CARRIAGE REVIEW PANEL

- 5.1 The Hackney Carriage Review Panel have met on 5 occasions, undertaken consultation and received oral and written representations from interested parties including:
- i) Representatives of Reigate and Banstead Taxi Association
 - ii) Griffith Smith representing Reigate and Banstead Taxi Association
 - iii) Inspector Lesley Blagbrough, Borough Inspector Surrey Police
 - iv) Marc Rankin, Specialist Environmental Health Officer, Environmental Protection
 - v) Mrs Irene Bunce, Chairman Shopmobility, Redhill
 - vi) Mr David Moss, MMA trading as RoadRunners Ltd
 - vii) Mr Chris Butler, Atmos/WS Atkins.
 - viii) Mr David Hurdle, Senior Transportation Office (Policy)
 - ix) Mr David Allen, Principal Engineer (Improvements)
- 5.2 The Review Panel established the method and detail of the consultation, undertaking consultation with users of the service and individual members of the trade using questionnaires and invitations to comment. 873 consultation packs were sent out to interested parties with a further 330 response sheets distributed to members of the public. The results of the consultation with users of the service were presented to the 7th May 2002 meeting of the Panel.
- 5.3 Mrs Bunce, Chair of the Management Committee of Shopmobility kindly agreed to ask users of the Shopmobility to complete a questionnaire. 21 responses were received and the results appear as appendix 2. *Note: A copy of this Appendix was*

circulated to the Panel and a further copy is available for full inspection in the Members Room.

- 5.4 A full set of responses to both consultations with users is available in the Members Room.
- 5.5 A draft copy of this report was issued to the trade for comments. A copy of the response from the R&BTA and officer comment on that response appear as appendix 3 and 4.

6. POINTS TO CONSIDER

- 6.1 Restricted numbers policies have been the subject of considerable litigation on behalf of those aggrieved at being excluded from the market and those aggrieved by the market being delimited. The case of *R v Great Yarmouth Borough Council ex parte Sawyer (1987) [1989] LTR 297 CA* is particularly relevant to the consideration of restricted numbers policies. In that case Bingham LJ stated *'A council does not need a reason under the Act to adopt a policy of derestriction'*
- 6.2 In the same case Dillon LJ stated *'I see no basis on the facts for any conclusion that the Council acted unreasonably in forming the view that they could not be satisfied that there was no unmet demand for hackney carriages in the area, and in consequence deciding to derestrict the number of hackney carriages operating in the borough. They could not decide to restrict the number unless they were satisfied that there was no significant unmet demand. They were not bound to make further inquiries or have surveys conducted in order to see more clearly whether there was or was not unmet demand.'*
- 6.3 Also in the same case Woolf LJ stated *'Clearly the policy of the Transport Act 1985 is to restrict the ability of the licensing authority to refuse a licence for the purposes of limiting the number of hackney carriages, except in circumstances where the authority is satisfied that there is no significant demand for the services of the hackney carriages which is unmet. In the words of the judge, it is to remove restraints and allow market forces to take their course in a way which did not exist before section 16 of the Transport Act 1985 came into effect. It is however, to be noted that notwithstanding the amending provisions of section 16, the licensing authority still retains a discretion. Its discretion is only limited where the refusal is 'for the purpose of limiting the number of hackney carriages.'*
- 6.4 He added;
- 'However, undoubtedly the effect of section 16 is substantially to cut down the discretion which the licensing authority prior thereto enjoyed to restrict the number of hackney carriage licences which the authority granted. It is also to be observed that the authority is required to be satisfied about a negative, which can create evidential difficulties for the authority.'*

- 6.5 Also relevant to this issue is the case of R (on the application of Maud) v Castle Point Borough Council (2002). Mr Justice Wilson in the Administrative Court made the point: *"If the defendants were satisfied of its absence [that is the absence of significant unmet demand], a discretion will arise and require to be exercised. If they were not so satisfied, the defendants were in the realms of obligation rather than of discretion"*. The case of Maud has been appealed to the Court of Appeal, but this point was not commented upon by the Court of Appeal.
- 6.6 While the Panel does not need to consider the demand for hackney carriage services it has considered the following factors relevant throughout their deliberations –(Report of the Interim Head of Legal and Estate Services 12.12.01 Para 2.6)
- 1) the financial impact on existing licence holders, who may have invested in their licence plate
 - 2) the potential reduced custom of existing licence holders
 - 3) potential congestion on hackney carriage stands;
 - 4) potential congestion on the roads generally;
 - 5) potential benefits to the travelling public of additional vehicles;
 - 6) the opportunity for others to become involved in the trade as a means of securing a livelihood;
 - 7) the cost of commissioning a demand survey; and
 - 8) the cost of defending any appeals against refusals to grant licences.

6.7 Relationship with the private hire trade

- 6.7.1 While the Review Panel considered the delimitation of hackney carriage numbers any discussion relating to the hackney carriage trade and the implications of changes will have an impact on the private hire trade. This paper will focus on the effects upon the hackney carriage trade but will also need to consider the other areas of the trade who may be affected by this review
- 6.7.2 There are currently 313 private hire vehicles (PHV) and 50 operators licensed to operate in the Borough. This figure has increased year on year since the requirement to first license in 1987 when 79 private hire vehicles were licensed.

7 DISCUSSION

- 7.1 i) the financial impact on existing licence holders, who may have invested in their licence plate**
- 7.1.1 The Council has elected to restrict the number of licences that it will grant. As with any commodity where supply is restricted, a hackney carriage licence has acquired a value. In order to enter the trade as a vehicle proprietor it is necessary

to purchase a licensed vehicle, paying the vendor an additional premium in respect of the value of the licence. Existing licensees may have invested in a licence at some stage in the past and put some reliance on their ability to sell the licensed vehicle and plate on to secure their financial future. This investment is a commercial decision which has not been based on any guarantee issued by the Council or any other body that the value will continue in existence. This point was considered in detail in the recent case of R (on the application of Royden) v Metropolitan Borough of Wirral (2002). In that case, Sir Christopher Bellamy QC stated, referring to the 'premium' attaching Mr Roydens licence, '.....*unlike the normal case of "goodwill" as a business asset, this 'premium' does not arise out of the fact that Mr Royden has built up a reputation or has an established clientele, as might be the case of a business such as a restaurant. The 'premium' arises simply because of the restriction on the number of hackney carriages authorised to ply for hire in the Wirral area. In other words, it is simply the reflection of the value of the local monopoly enjoyed by the existing hackney carriage proprietors and drivers. Presumably, the transferee's willingness to pay such a premium results from his estimation of the future profits he hopes to be able to make from the business thus protected.*'

7.1.2 There is no reliable information to Officers as to the current value of a licence but the last estimate indicated a premium in the region of £17000 - £20000 for a saloon car licence, less for a wheelchair accessible vehicle, this figure has continued to rise year on year. The 'premium' at the time of the last survey in 1997/8 was estimated at £8000 - £10000.

7.1.3 It is often argued that to remove the limit on numbers of licensed vehicles would lead to congestion and an unacceptably high number of hackney carriage proprietors suffering a reduction in their earnings. It is easy to see why existing proprietors hold such concerns as many of them have invested considerable sums and see that value being eroded by a decision of a local authority to remove the limit on numbers. The hackney carriage trade is a business, and as with all businesses there are commercial risks to be balanced against the potential profits.

7.1.4 In R –v- Great Yarmouth BC ex parte Sawyer, Woolf LJ stated;

'The other matter which I would mention is clearly on the material put before this Court, the individual taxi drivers may suffer material hardship as a result of the change of policy. With regard to their problems, the Court has in mind the evidence, but because of the role of the Courts to which I have already made reference, there is no basis for intervening on the grounds of the individual hardship of individual drivers.'

7.2 Costs

7.2.1 The cost of licensing a hackney carriage vehicle is similar to the cost of licensing a private hire vehicle – see table 1 and 2 below.

HACKNEY CARRIAGE - LICENCE FEES	
Driver Licence (first application) (renewable three- yearly)	£140*
Driver licence (Renewal) (renewable three yearly)	£106
Vehicle under 4 years (annual licence)	£140
Vehicle over 4 years (annual licence)	£168

*Table 1 * the additional cost of this licence reflects the knowledge test required*

PRIVATE HIRE – LICENCE FEES	
Driver licence (renewable three yearly)	£106
Vehicle under 4 years old (annual licence)	£140
Vehicle over 4 years old (annual licence)	£168

Table 2

- 7.2.2 A survey of 5 specialist taxi insurance companies and discussions with the local trade indicate the cost of insuring a HC vehicle is comparable to a PHV of similar model and age etc. A meter costs between £300-500. Other ongoing costs such as tax and fuel would be similar for both services.
- 7.2.3 A PH driver can only operate through a PH Operator, the weekly cost to a driver of hiring a radio and being on the circuit is in the region of £110 per week, an annual cost of £5720. The local authority is not involved in setting these costs which are a commercial contract between the driver and operator. Based on this information it could be argued that the premium paid by a hackney carriage proprietor for the vehicle plate would be recovered within less than 4 years, compared to a similar private hire vehicle which would require a continued cost to operate. A number of local hackney carriages chose to operate using a radio circuit with the consequent expenses.
- 7.2.4 Hackney carriages 54-60 and 71-75 are required, by condition, to be wheelchair accessible. Such vehicles represent an additional cost to these licence holders with similar vehicles currently costing in the region of £28000 for a new vehicle.
- 7.2.5 The Disability Discrimination Act 1995 contains provisions to enable regulations to require all hackney carriages to be accessible for disabled persons, including those in wheelchairs. These requirements will have consequent costs for hackney carriage proprietors. There is no indication as to when these regulations are likely to be introduced however the Department of Transport wrote (September 2002) to remind local authorities they can set their own wheelchair accessibility policies. It is open to the Council to apply this condition to all hackney carriage licences which currently do not have the condition attached. The advantages of this approach are two fold:
- i. It increases the provisions of wheelchair accessible vehicles for disabled citizens within the district and

- ii. It prevents the hackney carriage licences that do not have this condition attached continuing to be traded at a premium over the licences which do have the condition attached.

7.2.6 In the event of number delimitation a similar condition could be included in any additional hackney carriage licences issued.

7.2.7 When the additional 5 licences were released following the changes in the Metropolitan Police Boundary there was considerable interest both within the trade and by those wishing to enter the trade. However the majority of applications were not pursued once it was known that conditions would be applied to these additional licences in respect of the nature of the vehicle and the restriction against plying for hire from specified ranks in Redhill. The restrictive condition preventing hackney carriage vehicles 61 –75 from plying for hire from the ranks at Redhill Queensway and Redhill Railway Station has since been removed (3rd September 2001).

7.2.8 While there is no waiting list for hackney carriage licences a number of enquiries have been received from potential licence holders as a result of this review of numbers. It is the practice of the Licensing Section to advise prospective proprietors/licensees that the policy relating to limitation of numbers is subject to regular review and that the Council could, at any time, elect to change the policy.

7.3 Trade perspective

7.3.1 The Reigate and Banstead Taxi Association in their presentation to Members of the Review Panel asserted that '*Hackney Carriage proprietors have invested considerable sums into their vehicles*'

7.3.2 The Association further suggest that '*If there is a free for all and the ability to earn a living diminishes, it is our view that the standard of vehicles on the road will suffer*' with speculation that there will be changes in the current arrangements for checking mechanical suitability.

7.4 Comment

7.4.1 There is no doubt that members of the Association have invested in their vehicles and as with any other business expense has been undertaken in the light of their anticipated returns.

7.4.2 The issue of vehicle standards is entirely separate from that of numbers. The Council has adopted Hackney Carriage Vehicle Conditions which establish the quality standards expected of hackney carriages operating in the Borough. Any vehicle presented for licence as a hackney carriage is required to meet those standards. Scheduled and unscheduled checks of vehicles are undertaken by

Officers to ensure compliance. Failure to achieve the necessary standards could result in the licence being suspended or even revoked.

- 7.4.3 It is current policy that licences are only issued for vehicles less than 4 years of age at first licence, unless they are prestigious vehicles.
- 7.4.4 Mr Price, Secretary of the Reigate and Banstead Taxi Association, has offered to meet with officers to present evidence of the investment involved to his members. A letter, 14 December 2002, has been submitted by the R&BTA outlining financial matters. (Appendix 5)
- 7.4.5 Of the 75 licences issued, 12 are restricted to vehicles which are suitable to carry passengers seated in wheelchairs. In the event of any release of additional licences, the Panel will need to consider if this restriction should remain. As with any restriction, in a free market, there is likely to be a drift away from this standard of vehicle without conditions being set by the Council to maintain or enhance current vehicle standards.

7.5 ii) the potential reduced custom of existing licence holders

- 7.5.1 Should there be an increase in hackney carriage numbers then it may be that the number of customers for each vehicle will reduce. Should this occur then there would be a decrease in earnings for existing licensees. This assumes there are a finite number of customers which will not increase even if more vehicles are available.

7.5.2 Alternatively –

An increase in hackney carriage numbers may increase demand for their services e.g. people living in certain parts of the borough would not at present expect to flag down a hackney carriage as they are rarely seen, they will instead rely on other forms of transport. If more vehicles are available then these areas may be better serviced and the public become more likely to use those services. More hackney carriages may operate on radio circuits or by other pre booking arrangements thereby capturing a part of the prebooked trade.

- 7.5.3 If any release of additional licences were restricted to a high specification of vehicle e.g. wheelchair accessible, the investment costs, in the region of £28000, could be a factor in deterring large numbers entering the trade.
- 7.5.4 The majority of the travelling public does not make a distinction between the hackney carriage and the private hire trade. There is very little hailing activity in the Borough. Hackney carriage vehicles are mainly hired from ranks but are available for telephone bookings, effectively operating as private hire vehicles for a proportion of their business.

7.6 Consultation

7.6.1 The survey commissioned by the Review Panel received responses from 263 local businesses and users of hackney carriages. Respondents indicated they would improve hackney carriage services by;

i)	Lower fares	83
ii)	More hackney carriages	48
iii)	More ranks	41
iv)	Better vehicles	39
v)	Clearer identification of hackney carriages	37
vi)	Wheelchair accessible vehicles	28
Vii)	More helpful drivers	49

Table 3 Improvements to hackney carriage services identified by respondents

7.7 Trade perspective

7.7.1 In their submission to the panel the Reigate and Banstead Taxi Association submit that the ‘*there is no evidence at present of any demand for taxis which is not being met by the existing trade*’ and ‘*the public require high specification vehicles at the minimum cost in terms of fares. There is no evidence that de-limitation would further these two objectives*’.

7.8 Comment

7.8.1 There is no evidence to suggest a free market will not meet the demands of users

7.9 Trade perspective

7.9.1 Further ‘*There is no evidence that an increase in the supply of hackney carriages will increase public demand. In fact the only real evidence on demand for hackney carriages is that it is likely to diminish as a consequence of proposed reduction in the number of hackney carriages used to carry out school work.*’

7.10 Comment

7.10.1 The Panel heard from Mr Butcher of Atmos Transport of a proposal by Surrey County Council to reduce the arrangements for school work whereby hackney carriages are used to transport children with special needs to and from school. This practice currently results in reduced hackney carriage availability for rank work.

7.11 iii) potential congestion on hackney carriage stands;

- 7.11.1 There are currently 7 ranks in the Borough, excluding the rank at Redhill Station, providing spaces for 16 hackney carriages. The rank at Redhill Station is a private rank, provided by Connex, with space for approximately 12 vehicles. Access to this rank is restricted to members of the Reigate and Banstead Taxi Association, who have entered into a private arrangement with Connex. While all drivers are permitted to pick up from the railway station only those with permits are permitted to wait at the rank.
- 7.11.2 Hackney carriages are required by Bye Law to return to a rank when available for hire.
- 7.11.3 The consultation exercise showed that local travellers favour the use of ranks to obtain their taxi. Telephone bookings are also a popular choice with flag down activity being particularly low in the Borough.
- 7.11.4 At any one time it is unlikely that all 75 licensed vehicles would be endeavoring to use the ranks as they will be either carrying passengers, operating as private hire vehicles or resting, it is unlikely they would all be available at the ranks at the same time.
- 7.11.5 The ranks within the borough are oversubscribed at certain times, particularly the ranks at Redhill Station and Redhill Sainsburys. It is clear that even with the existing arrangements there is insufficient rank space and a review of provision is required which should include all interested parties, including the trade and Highway Authority.
- 7.11.6 To encourage greater flag down activity it could be possible to consider the provision of 'hailing points'. These are identified points where customers can wait for a hackney carriage, as opposed to the stand where the hackney carriage effectively waits for the public. Such a system enables hackney carriages to 'cruise' past to see if anyone is waiting and is relatively cheap and easy to establish. Such a development of the service would need to be the subject of detailed discussion with the trade and SCC Highways.

7.12 Representations

- 7.12.1 David Hurdle, Senior Transportation Officer (Policy), Reigate & Banstead Borough Council advised the panel;

Ranks at stations should have shelter and seating. The one outside Redhill is all a rank should not be – open, no seating, narrow queuing area, no phone, no phone numbers, no raised kerbs for more level access.

It should be possible to get a HC at the platform 3 exit at Redhill station. This has level access. But there is no means of summoning one!

'The rank outside Sainsburys, Redhill is not large enough, so that HCs block back into the traffic lane'.

7.13 Trade perspective and response

7.13.1 The Reigate and Banstead Taxi Association submit that 'the question of delimitation is inextricably linked with the provision of taxi ranks throughout the area'.

7.14 Comment

7.14.1 A review of existing rank provision, including the identification of suitable locations for further ranks or hailing points and discussions with the Highway Authority should be a recommended outcome of this review.

7.15 iv) potential congestion on the roads generally;

7.15.1 The Panel did not accept that should there be an increase in hackney carriages operating in the Borough there could be a significant increase in traffic congestion, particularly in Redhill Town Centre.

7.15.2 Alternatively:

An increase in the number of hackney carriages may result in a reduction in the number of private hire vehicles as any additional licences may be taken up by the private hire trade.

7.15.3 Greater availability of hackney carriage vehicles could provide the travelling public with an alternative to private cars possibly reducing congestion to roads and popular car parks.

7.16 Representations

7.16.1 The panel heard from David Allen, Senior Traffic Engineer with the Council. He advised of the projected traffic levels in the Redhill area.

Table 4 Projected 2002 A25 Station Road traffic volumes

A25 STATION ROAD (St Matthews Rd – Oxford Rd)	Flows based on Mon-Fri 5 day average (factored increase at 1%/year on base 1995 data)	Flows based on Mon-Sun 7 day average (factored increase at 1%/year on base 1995 data)
12 hr traffic flows 07:00 – 19:00	11,635 (10,851 in 1995)	10,580 (9,866 in 1995)
16 hr traffic flows 06:00 – 22:00	13,205 (12,317 in 1995)	12,007 (11,199 in 1995)
18 hr traffic flows 06:00 – 24:00	13,624 (12,707 in 1995)	12,396 (11,562 in 1995)

24 hr traffic flows 00:00 – 24:00	13,829 (12,898 in 1995)	12,626 (11,777 in 1995)
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Table 5 Projected 2002 A23 London Road traffic volumes

A23 LONDON ROAD (Lynwood Rd – Gloucester Rd)	Flows based on Mon-Fri 5 day average (factored increase at 1%/year on base 1995 data)	Flows based on Mon-Sun 7 day average (factored increase at 1%/year on base 1995 data)
12 hr traffic flows 07:00 – 19:00	18,494 (17,250 in 1995)	17,006 (15,862 in 1995)
16 hr traffic flows 06:00 – 22:00	21,680 (20,221 in 1995)	19,912 (18,573 in 1995)
18 hr traffic flows 06:00 – 24:00	22,528 (21,013 in 1995)	20,723 (19,329 in 1995)
24 hr traffic flows 00:00 – 24:00	23,012 (21,464 in 1995)	21,299 (19,866 in 1995)

7.16.2 He advised the panel *'it is expected that any increase in HC traffic is likely to be minimal in proportion to the total volumes of traffic moving around the town centre location'*.

'The Local Transport Plan seeks to reduce the reliance on the private car by supporting alternative travel modes e.g. improving walking provision, cycling, public transport etc. In part this aim is to reduce congestion and accidents on local roads and to reduce pollution from vehicle emissions. Increased use of HC's may contribute to these aims if occupants may otherwise have used more than one vehicle to make their journey'.

7.16.3 Marc Rankin, Specialist Environmental Health Officer, Environmental Protection, gave oral evidence to the panel on how air quality levels could be affected by a significant increase of petrol or diesel vehicles. He further advised the panel if there were concerns in relation to pollution levels from a possible increase in hackney carriage numbers it would be possible to require vehicles to operate on cleaner fuel i.e. LPG by a condition on any new licences.

7.17 Trade perspective

7.17.1 In their submission to the panel the Reigate and Banstead Taxi Association submit that *The Council has so far failed to produce any meaningful evidence of the likely impact of increasing the number of taxis on the road. From our experience, we can say that accommodation on the existing ranks is already limited causing vehicles to circulate around Warwick Road and between Lidl and Sainsburys. At peak times congestion at the station causes tailbacks on to Princess Way.'* Evidence was provided in the form of press cuttings.

7.17.2 *'If more taxis are licensed, it is our submission that the additional taxis will be forced to use the already overburdened ranks at the Station and Sainsburys. The*

likely resulting impact on traffic congestion is a serious problem, which the Council should address before making a decision on de-limiting numbers.'

7.17.2 *'The environmental damage caused by extra cars circulating on the roads is yet another issue of concern.'*

7.18 Comment

7.18.1 The argument in relation to overcrowding and congestion are difficult to translate into reality. A vast increase in numbers is rare among those authorities which have delimited numbers. Even an increase of some two – three hundred vehicles in terms of traffic flow would represent a small percentage increase in overall traffic flows.

7.19 vi) potential benefits to the travelling public of additional vehicles;

7.19.1 Hackney carriage vehicles are an important part of an integrated public transport system, particularly for people who do not have access to a car. Together with private hire vehicles they provide a service when most buses and trains have stopped for the night and, particularly in rural areas can provide a service where local bus services are infrequent or non-existent. Outside London, taxis tend to be used more by people in lower income groups, and more by women (especially young women) than men (Department of Transport Statistics 2000)

7.19.2 Department of Transport Statistics show taxi use nationally has increased steadily over recent decades. Levels of taxi use are now twice as high as in the mid 1980s. 32 per cent of people use a taxi at least once a month compared with only 16 per cent in the mid 1980s. Taxis (rather than PHV's) account for 72% of taxi and PHV trips. PHV use is more common in London and rural areas, where taxis were used for only 52% of all trips. People in low income groups make the most taxi trips. On average consumers outside London spent £3.49 per taxi ride in 1999, with the busiest demand time for taxis being Saturday night.

7.19.3 The Office of Fair Trading is currently conducting an investigation into UK taxi services. The investigation will examine whether consumers are best served by the regulations which restrict the number of taxi licences available in 45% of the local authorities in England and Wales. A copy of the Issues Paper produced as part of this investigation is produced as Appendix 1.

7.20 Representations

7.20.1 The panel heard oral representations from Inspector Blagbrough who advised of the difficulties encountered in clearing Redhill town centre of late night revellers and consequent public order problems. The Panel consider this to be a Police problem and not related to hackney carriage provision.

7.21 Comment

- 7.21.1 It is clear from observation of the ranks by officers that at busy times the demand for taxis cannot be met. It would not be appropriate to expect the hackney carriage trade to meet such a peak demand on its services. Any survey as to unmet demand would balance the demands upon the service throughout the 24 hour period and would not consider peaks in demand.
- 7.21.2 The number of hackney carriages available for hire at any one time is outside of the control of this council and can possibly be influenced by an increase in the number of vehicles and/or an increase in fares for peak times occurring during unsocial hours to encourage the existing trade to operate during these periods.
- 7.21.3 Provided that vehicle and driver standards are maintained, or improved, the travelling public will have access to more licensed vehicles which can legally be flagged down.
- 7.21.4 The main distinction between a HC and a PHV is a HC can ply for hire on the highway or at ranks, PHV must be prebooked through an operator. There is no doubt that the travelling public do not understand the distinction between a hackney carriage and a private hire vehicle and will often approach private hire vehicles on the highway only to be advised to contact the operator to arrange a booking.

7.22 vi) the opportunity for others to become involved in the trade as a means of securing a livelihood;

- 7.22.1 Due to the limitation on licences and the consequent value that licences have acquired, it is very difficult to enter the trade. A prospective hackney carriage proprietor has to find an existing licensee who is prepared to sell the licensed vehicle to them along with the price of the vehicle and the purchase premium. No licences have been returned to the Council for many years. However one licence, number 60, has recently been returned, with consequent difficulties of establishing the selection criteria and process for determining who should be allocated the licence, with the possibility of appeals from individuals not selected. 6 declarations of interest have been received in respect of this licence. The release of the additional 5 licences in April 2000 did generate considerable interest, however the majority of applicants withdrew once they became aware of the restrictions on the licence.
- 7.22.2 The Governments Action Plan for Regulatory Reform proposes to remove local authority powers to restrict taxi licence numbers in their area. The purpose of the removal of this restriction *is 'would be taxi drivers would benefit from removal of*

the barrier to entering the trade and passengers from (presumed) greater number of taxis'. The aimed completion date is 2003/4.

7.22.3 The Office of Fair Trading has announced an investigation into taxi services. The investigation will *'examine whether consumers are best served by the regulations that restrict the number of taxi licences available in half of the local authorities in England and Wales and will aim to identify any other competition or consumer welfare issues'*. The investigation is expected to be completed by summer 2003. A copy of the Issues paper in relation to this investigation appears as Appendix 1. Officers are advised there is no link between this initiative and the Governments Action Plan for Regulatory Reform (paragraph 7.22.2).

7.23 Trade perspective and response

7.23.1 The Reigate and Banstead Taxi Association contend that *'If our worst fears are confirmed and the increase in the number of hackney carriages undermines our ability to earn a living, it is likely that all drivers will be forced to join a private hire circuit. In order to make ends meet. This will inevitably move hackney carriages away from servicing ranks and into the hands of private hire radio controllers.*

7.23.2 *This will also have the potential to create a monopolistic situation with regard to private hire companies in the area.....The hackney carriage trade provides the necessary competition within the overall taxi market.'*

7.24 Comment

7.24.1 Hackney carriage vehicles have the opportunity to respond to the needs of their customers through plying for hire or pre booking. Any release of additional licences provides users of the service with the choice of how they obtain their transport. If users demand a rank service or prebooking arrangement then the trade can respond accordingly. There is no reason to suspect that any increase in hackney carriages would remove public choice.

7.24.2 The most likely sources of new drivers wishing to enter the hackney carriage trade are those currently involved, or those considering entering, the private hire trade. The private hire trade already experiences difficulties of recruitment and retention and are likely to be affected by any changes to the existing arrangements. In the event of a delimitation of numbers it is anticipated that initially there could be considerable movement between the two trades to response to user demands. It is expected that this would settle down after an initial flurry of activity.

7.25 vii) the cost of commissioning a demand survey;

- 7.25.1 Until the introduction of the Transport Act 1985, local authorities had an unrestricted discretion to limit the number of hackney carriages they would license. The effect of this legislation is that a local authority can only refuse to grant a hackney carriage licence if they are satisfied there is *'no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet'*. The rationale behind the introduction of this legislation being that local authorities would no longer be able to control the numbers of hackney carriages (Button1999). Some people take the view that the only effect of this legislation has been to create a new industry in the form of bodies who conduct surveys for local authorities to establish whether or not there is an unmet demand for hackney carriage services.
- 7.25.2 It is a difficult task to properly assess the actual demand for the services of hackney carriages. One area which is particularly difficult to assess is the level of latent demand e.g. those that have stopped trying to obtain hackney carriage services because experience has shown that either they have not been able to obtain one, have had to wait an unacceptable time or rarely see hackney carriages in the area where they would wish to see one.
- 7.25.3 A further complication is the lack of any definition of 'significant'. While case law clearly shows that the view of the Courts is that long queues at taxi ranks at certain times is not 'significant' at some stage the periods during which queues do form at ranks and the amount of time spent waiting for a taxi will become 'significant'. The point at which this is reached is a matter of opinion not fact.
- 7.25.4 Demand surveys have a limited life of between 2- 3 years before a fresh survey is required. If there are any significant changes to the area during the lifetime of the survey i.e. an increase in population or changes to entertainment or shopping facilities the survey could be considered flawed and is open to challenge in the Courts.
- 7.25.5 The current survey was undertaken in 1997 and has reached the end of its useful life. The changes to the Metropolitan Police Boundary resulted in a significant increase in the population of the area the council is responsible for. The release of an additional 5 licences in respect of this population increase was without benefit of survey. Enhancements to town centres, improvements to entertainment facilities or large scale development resulting in increases to population levels such as the Horley Master Plan will result in a further significant increase in the population of the Borough further compromising any survey.
- 7.25.6 It is estimated that the current cost of a survey of unmet demand is £ 14000 - £18000 which includes a contribution toward the Councils costs. If this cost is recovered by a supplement to the licence fee, with the cost spread over the life of the survey of three years, the cost per vehicle would be approximately £ 80 per annum.

7.25.7 The last survey was paid for by the trade through a supplement of £37 to the licence fee over the life time of the survey paid for as an annual cost for 3 years.

7.26 Trade perspective

7.26.1 The Reigate and Banstead Taxi Association have offered to cover the cost of any further survey.

7.27 Comment

7.27.1 The trade has invested considerable sums in the premiums associated with their licence and will be loath to see that value wiped out by a decision of the local authority to delimit numbers.

7.27.2 Should a survey be undertaken and paid for by the trade through a supplement to the licence fee this would only cover the cost of the survey and a contribution toward the Councils` administrative costs. It would not cover the cost of defending any appeals against refusals to grant licences.

7.28 viii) The cost of defending any appeals against refusals to grant licences.

7.28.1 Any person aggrieved by a decision to refuse a hackney carriage vehicle licence has the right to appeal to the Crown Court. The Council incurs costs in defending any such appeal. Should the Council lose an appeal then it is likely to be that the Court was not satisfied that the Council had properly satisfied itself with regard to the matter of 'significant unmet demand' – in these circumstances it is likely that the Council would also be ordered to pay the complainants costs. Should the Council win the appeal then experience shows that the Courts are reluctant to order that the Councils costs are met by the complainant.

7.28.2 Experience elsewhere in the country indicates that local authorities can become enmeshed in a series of legal actions starting with a challenge to the restricted numbers policy. Subsequent decisions of a Court that there should be an increase in numbers has then led to a challenge by those who did not receive the additional licences etc .

7.28.3 While the Council has not as yet had to defend an appeal against a refusal to grant a licence, it has been put on notice of a potential application. It has also been involved in an Appeal linked to the restriction in numbers which involved a dispute between co proprietors of a licence. The restricted numbers policy contributed to the dispute which could have been resolved by the issue of two separate licences.

7.29 Trade perspective

- 7.29.1 The Reigate and Banstead Taxi Association have offered to cover the cost of any further survey.

7.30 Comment

- 7.30.1 While the trade is prepared to contribute toward the cost of any survey they would not be directly liable to contribute toward defending the policy or any costs incurred or imposed by the courts.

8. LINKS TO OTHER POLICIES

- 8.1 The Councils` Transport Policy states;

'Taxis and private hire cars provide an important 'private bus' service for some people. There are taxi ranks in most town centres and at main railway stations. However, the largest town centre (Redhill) has very limited rank space other than within the station forecourt, which is not convenient for those with heavy shopping. This results in taxis cruising the town centres roads in the hope of finding rank space, thereby adding to congestion and pollution unnecessarily. As with car sharing, taxi sharing could reduce parking pressures and pollution.

- 8.2 The action point arising from this statement is: *Review and investigate opportunities for additional taxi rank space in town centres.*

9. LEGAL AND HUMAN RIGHTS IMPLICATIONS

- 9.1 It has been established through case law that a local authority considering delimiting the number of hackney carriage licences issued does not have to undertake a survey or consider the level of demand at all. (R v. Great Yarmouth Borough Council *ex parte* Sawyer). This decision has been supported by the only case to have considered the Human Rights implications of delimitation, namely R (on the application of Royden) v Metropolitan Borough of Wirral, where Sir Christopher Bellamy QC approved the decision and the absence of any requirement for a survey to be undertaken before a decision to delimit the number of hackney carriages that would be licensed was taken. Sir Christopher Bellamy QC stated: *"It seems to me to follow from the wording of section 37 itself that, in principle and absent any special circumstances which might lead to irrationality or unfairness, the legal position under the Act of 1847 is as Hodgson J put it at first instance in the Great Yarmouth case, cited by Woolf LJ at p.300H: 'It follows that, in my judgement, an authority which was exercising a restriction policy prior to 1986 could rescind that policy and adopt in its place a policy with no numerical ceiling to the number of licences issued. A policy, in other words, of allowing market forces to take their course. It could adopt such a policy whether or not there was unmet demand, so that there was no obligation on an authority to consider the question of demand at all."*

9.2 The question of whether the removal of a limitation (which has the effect of adding a premium to licence transfers) is contrary to Article 1 of the First Protocol to the European Convention on Human Rights was considered in the case of R (on the application of Royden) v Metropolitan Borough of Wirral.

9.3 Article 1 provides:

"Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

9.4 Sir Christopher Bellamy QC stated in his judgement in the Wirral case that the value attached to a hackney carriage licence is not property or possession within the ambit of Article 1 of the First Protocol, and accordingly a decision to delimit the number of hackney carriages does not amount to a deprivation of property or possessions leading to a potential claim under the Human Rights Act. The court took the view that the value of the hackney carriage licence plate was an artificial value which existed solely as a result of the monopoly situation, and that although it was recognised that delimitation would eradicate that value, the purpose of the licence, which was to enable the licensee to engage in the hackney carriage trade, was not affected in any way, it was simply his anticipated profit on the sale of the licence that was affected.

9.5 The Court concluded that the removal of a limitation on numbers of licences issued did not constitute a breach of Article 1 so far as the existing licence holders (or any other persons) were concerned. This means that there is no requirement for the hackney carriage legislation to be construed differently from its normal meaning so as not to offend the provisions of Article 1 in accordance with Section 3 of the Human Rights Act 1998.

9.6 There is nothing in the considerations outlined in this report which would legally inhibit members coming to the conclusion that the limitation on hackney carriage licences should be removed.

9.8 The Council has no power to restrict the number of hackney carriage licences issued unless it is satisfied that there is no significant unmet demand for the services of hackney carriages. The existence of significant unmet demand can only be established by the Council commissioning an independent survey.

- 9.9 This means that the Council may not restrict the numbers for other reasons such as to preserve the premium on licence transfer for existing licence holders, to protect the living of existing licence holders, or to avoid congestion on the ranks or in the town centres, or for any other reason put forward and considered in this report, unless it is also satisfied that there is no significant unmet demand.

10. FINANCIAL IMPLICATIONS

- 10.1 The Reigate and Banstead Taxi Association have offered to cover the cost of any further survey, including a contribution to the Councils costs.
- 10.2 While the trade is prepared to contribute toward the cost of any survey they would not be directly liable to contribute to toward defending the policy or any fines imposed by the courts. Should the restriction remain, an increase in licence fees would be required to cover the cost of defending the policy against any appeals.

11. OTHER IMPLICATIONS

- 11.1 A review of existing rank provision, including the identification of suitable locations for further ranks or hailing points and discussions with the Highway Authority is a recommended outcome of this review.

12. CONCLUSION

- 12.1 Where a local authority maintains quality controls, delimitation of numbers need not become a problem. Combining delimitation of numbers with age policies, liveries and/ or the nature of the vehicles licensed can have the effect of improving the quality of the fleet. At the same time an increase in the outlay required for a person to enter the trade will deter casual entry to the trade, tempering significant increases in numbers with any consequent congestion difficulties and unacceptable losses for existing trade members.
- 12.2 It is clear that to do nothing is not an option. If members are minded to retain the restriction it will be necessary to increase licence fees to cover the costs of litigation that could ensue and regular surveys, which will be necessary to justify the limitation policy. Any survey as to unmet demand could recommend maintenance of the existing numbers of licences issued or an increase in the number of licences issued.
- 12.3 There are benefits arising from the removal of the Restricted Numbers Policy for current and potential users of hackney carriages and for those who wish to enter the hackney carriage trade. Allowing additional proprietors to enter the market would let market forces find equilibrium, based on demand, subject to the continued controls on safety, quality and fares. The development of suitable conditions for any new licences issued would facilitate this change in the market and ensure the commitment of any new entrants.

- 12.4 Any new entrant to the HC market would need to not only comply with the Council's requirements but also satisfy themselves that there is sufficient trade to sustain the initial investment and provide a satisfactory income. This may well lead to new markets opening up with proprietors operating in new services, areas or times responding to the demands of users.
- 12.5 On balance the Panel consider there is insufficient reason to justify the maintenance of the Restricted Numbers Policy. However any proposal to change the existing policy should be kept under review. It would be open to Members to re-impose a numerical limit on the number of hackney carriage vehicle licences if the evidence indicated this was appropriate.
- 12.6 The Panel had a number of options available to it:-
1. Recommend delimiting the Hackney Carriage numbers
 2. Recommend maintaining the current restrictive numbers policy

13. DETERMINATION OF THE REPORT

- 13.1 In reaching the recommendation that appears at paragraph 14.1 the members of the Panel took into account the oral and written representations they had received from the trade and other interested parties.
- 13.2 In their deliberations the Panel took particular regard of the following relevant factors:
- i) the financial impact on existing licence holders, who may have invested in their licence plate
 - ii) the potential reduced custom of existing licence holders
 - iii) potential congestion on hackney carriage stands
 - iv) potential congestion on the roads generally;
 - v) potential benefits to the travelling public of additional vehicles;
 - vi) the opportunity for others to become involved in the trade as a means of securing a livelihood;
 - vii) the cost of commissioning a demand survey; and
 - viii) the cost of defending any appeals against refusals to grant licences.

- 13.3 During their discussions the Panel also considered;
- i) the benefit to hackney carriage users of allowing market forces to find equilibrium, based on demand.
 - ii) if a delimitation of the number of licences issued would be in the public interest.
- 13.4 In reaching their decision the Panel recognised the existing trade had made a considerable investment in their vehicles and noted the effect of R (on the application of Royden) v Metropolitan Borough of Wirral (2002). In particular the Panel noted that the ‘premium’ attached to a licensed vehicle is not property or possession within the ambit of Article 1 of the First Protocol to the European Convention on Human Rights. The Panel noted the decision to invest in a hackney carriage vehicle was a commercial decision not based on any guarantee by the Council that the restriction would continue. The Panel further noted it has been the practice of the Licensing Section for some years, to advise prospective proprietors/licensees that the policy relating to limitation of numbers is subject to regular review and that the Council could at any time, elect to change the policy.
- 13.5 The Panel also took note of Rv- Great Yarmouth BC ex parte Sawyer (1987) [1989] LTR 297 CA and what was said in that case about the individual hardship of individual taxi drivers and that a local authority can at any time decide to delimit the number of hackney carriages for which it will grant licences, subject to the proviso that the decision must not, of itself, be *Wednesbury* unreasonable.
- 13.6 The Panel took the view that a review of the conditions to be attached to any new licences granted, in consultation with the existing trade, accorded with the Councils hackney carriage policy statement, whilst helping to ensure the commitment of any new entrants to the trade.
- 13.7 The Panel considered a review of existing hackney carriage rank provision, including the identification of suitable locations for further ranks or hailing points, in consultation with the trade and the Highway Authority, should be carried out. The Panel stressed that any review should include the number of ranks along with the number of spaces on each rank and should consider the possibility of feeder ranks.
- 13.8 The Panel also considered the age and effectiveness of the last survey undertaken by the Council in 1998 as to any significant unmet demand. The Panel considered the implications of the change in the Metropolitan Police boundary in 2000 and the issue of a further 5 licences at that time without benefit of survey. The Panel considered the number of expressions of interest received in respect of a licence, plate 60, recently returned the Council

- 13.9 In their deliberations the panel also considered the option of releasing a further tranche of licences, as had been issued following the change in the Metropolitan Police boundary. However having regard to implications of this option e.g. the continued need to undertake a survey and the potential for challenge from those whose applications could be refused, the Panel dismissed this option.
- 13.10 The Panel considered the effect of the Governments Action Plan for Regulatory Reform and the Office of Fair Trading's investigation into taxi services. The Panel noted the Governments proposals included the removal of local authority powers to restrict taxi licence numbers in their area. The OFT's investigation would examine whether consumers are best served by the regulations that restrict the number of hackney carriages. The Panel noted that these initiatives were not linked.

14. RECOMMENDATION

14.1 It is the RECOMMENDATION of this Panel that :

- i) The restriction on the number of hackney carriages permitted to operate in the Borough be removed subject to;**
 - a. Vehicle licences 1-75 continuing to be issued in respect of any suitable vehicle meeting Council's Hackney Carriage Licensing Conditions in place on 24 April 2003.**
 - b. Vehicle licences in respect of licences 54 – 60 and 70 –75 continuing to be issued only to vehicle licences in respect of licences which are suitable for passengers to travel in their wheelchairs should they so wish.**
 - c. The Hackney Carriage Review Panel undertake a review of Hackney Carriage Conditions, including consultation with the trade, to consider the conditions to be imposed in respect of any additional vehicle licences issued i.e. vehicle 76 or higher.**
 - d. The Hackney Carriage Review Panel undertake a review of hackney carriage rank provision.**
- ii) The reviews referred to in (c) and (d) above be undertaken prior to any change to the Council's policy.**

Councillor J.H.Prevett (Chairman)
Hackney Carriage Restricted Numbers Policy Review Panel

Background documents:

Griffith Smith Solicitors - Written submissions on behalf of the Reigate and Banstead Taxi Association.
Reigate and Banstead Taxi Association – Submission for Panel Meeting.
Responses to Hackney Carriage Review Panel Survey 2002.
Responses to Shopmobility Survey 2002

Copies of all background documents are available in the Members Room.

Reference was also made to:

Button (1999)- Taxis Licensing Law and Practice
Department of Transport Statistics 2000 and 2001
Department of the Environment, Transport and the Regions – Taxi and PHV use in the GB – Personal Travel Factsheet 9 – March 2001.
Draft Judgement - R -v- Metropolitan Borough of Wirral ex parte Royden
Disability Discrimination Act 1995
Office of Fair Trading – Investigations -Taxi Services
Regulatory Reform, The Governments Action Plan 2002
Regulatory Reform Act 2001 and Explanatory Notes
Town Police Clauses Act 1847
Transport Act 1985

Contact Officers: Linda Pickerill Extn 6410
Alice Maddison Extn 6057