

CITY OF EDINBURGH COUNCIL

Item No 3

REGULATORY COMMITTEE

21 NOVEMBER 2022

LATE DEPUTATION REQUESTS

Subject	Deputation
3.2 In relation to Item 8.2 on the agenda – Age Limitation and Emissions Standards for Taxis and Private Hire Cars - Update	Nisbets Solicitors Limited

SUBMISSIONS BY NISBETS SOLICITORS LIMITED IN RESPECT OF AGENDA ITEM 8.2

EXECUTIVE SUMMARY

- A. The Age Limitation Condition was, from its inception, not supported by statutory consultees and in any event was never intended to improve air quality despite that policy goal being the reason for its being considered.
- B. The information provided to Committee on the age of taxi vehicles is disappointingly summary in nature, and does not allow a proper consideration of the impacts of the age limitation or its removal.
- C. The introduction of a bi-annual requirement for vehicles over 10 years of age shall likely increase standards and serve to achieve the very same policy goal which the age limitation is presently said to achieve.
- D. The condition is arbitrary in its effect and its goal can be achieved with less impactful means.
- E. The age condition is causing harm to the trade which is disproportionate to any benefit. Its effect is dovetailing with serious structural issues in the supply of compliant vehicles, which may lead to the destruction of business and real harm to the ability of the Licensing Authority to maintain a fleet of wheelchair accessible taxi vehicles
- F. Removal of the Age Condition, or considerable amendments to it to allow otherwise compliant vehicles to be used for longer, is the only manner in which the fleet can be maintained to a high standard as WAV.

1. HISTORY OF THE AGE LIMITATION POLICY

- 1.1. Motion from Councillor Burgess in June '16 to consider introducing an Age limit to improve air quality.
- 1.2. Feasibility study report to Committee on 21 Nov 2016 recommending the committee consider improving air quality by adopting **EITHER:**
 - a) Introducing an age limitation in respect of taxis and PHC; OR
 - b) Increasing incrementally the minimum emission standard

- 1.3. The Minutes of the meeting of 21 Nov 2016 record the decision of Committee was to require the executive director of place to consult on the introduction of either of these options.
- 1.4. Next Report to Committee was for the hearing on 24 Oct 2017. The Executive Summary of the Report records the decision of the 21 Nov 2016 Committee to be that the Executive Director of place to consult to “explore options” for improving air quality. That subtly misrepresents the decision of Committee of Nov 2016 as recorded in the Minutes. No one on Committee picks this up.
- 1.5. The Officer’s report to the Committee in Oct 2017 recommends that the Committee resolves to introduce both age limitation and emissions conditions.
- 1.6. The introduction of an age limitation was overwhelmingly NOT supported by the consultation responses, whilst there was support for the introduction of an emissions condition. Indeed, in addition to negative answers to individual questions directed at determining support for an age limitation, the officers themselves record at para 3.35 of their report that there was limited support for an age limitation, but more support for incremental requirements for incrementally increasing the emissions standard.
- 1.7. The only argument made for introducing an age condition in the 2017 report was that other licensing authorities have them. However, the officers authoring the report do not report to Committee whether those authorities which they identified as using the age condition as a means to control air quality, i.e. the Officers do not also state to Committee whether those same authorities that have chosen to opt for age have done so in preference to an emissions standard. Accordingly, Committee members were not informed if other authorities had opted for one or the other (or both). This choice, of course, was the very direction given by Committee to those officers in 2016.
- 1.8. With little or no analysis of the report’s data being discussed at Committee, the Committee adopted the recommendations of the Officers to move to impose BOTH an age condition and an emissions standard. All of this was done under the guise of a policy objective of improving air quality. There was no analysis or scientific data

presented which showed that the imposition of an age condition would enhance air quality above and beyond the improvements expected from the imposition of an emissions standard.

1.9. The Age Policy thus came into being without there being a specific policy goal for it which was supported by consultees or discussed in any detail in Committee.

1.10. Convenor Fullerton was later to accept in a later committee hearing in 2019 that the purpose of the age limitation is not to improve air quality but to ensure the fleet is maintained in good condition; a policy goal which was never subjected to proper consultation and certainly not one whose efficacy was explored in any depth at committee or with consultees. Importantly, no proper consideration was given to whether the policy goal could be maintained by less restrictive measures.

2. REPORT TO THIS COMMITTEE

2.1. The Officer's report for this Committee (21/11/2022) advances several propositions in relation to the age of taxis. These deserve to be scrutinised.

2.2. The proposition that prior to lockdown pass rates for taxis were 49%. This is contrasted with the UK MOT average, which is claimed to be 70%. One may be forgiven for assuming this means that 49% of taxis failed their MOT and were not roadworthy. However, the author does not make clear that the failure could actually have been a small tear in a seat or a sticker not in the right place, nothing substantively impacting on safety or roadworthiness and NOT an MOT fail. This information is available to officers, but has not been detailed leaving committee somewhat unclear of the conclusions to be drawn from the Data presented.

2.3. The proposition that since 2018 the pass rate has improved is stated. Unlike the prior statistic, this is said to have occurred since the introduction of age and emission policy in 2018. The use of different time frames, the latter being quite vague, makes it very difficult to draw conclusions on a compare and contract basis. It is frustrating that Committee are not being given consistent and detailed bases for comparison.

- 2.4. The report's detail then descends into the use data presented with greater vagueness. It is said that the pass rate for vehicles over 10 years old is 23%, but there is no time frame specified for this figure. Again, no detail is given to allow an understanding of the basis of failure. Is this MOT, or aesthetic. While not seeking to reduce the importance of a well presented fleet, vehicles in an unroadworthy state are certainly to be prioritised in terms of policy decisions.
- 2.5. The time frame is important as officers have mid way throughout 2022 introduced a bi-annual test requirements for vehicles over 10 years of age. One suspects that the 23% figure is drawn from Covid, when people were not using their vehicles as much, were in the midst of real financial struggles and were perhaps not able to access garage services in the manner they ordinarily would. However, officers do not specify any time frame and ask members to be take policy decisions based on a percentage figure with no real context. We stress, Officers have the data to hand to be able to present a complete picture. It is a matter of some regret that the decision has been taken that members do not require it.
- 2.6. We then have an unfortunately meaningless statement about LPG converted vehicles, stating that they are "struggling" to pass their compliance test. What is intended by the adjective struggling is not clear? Is this a failure to pass or simply the issuance of advisories? If so, how many are failing and over what time period, or what are the advisories? This important information is not detailed in this review. It is important and again is information which officer have readily to hand. This is disappointing as it leads to decisions requiring to be taken without the full and necessary detail.
- 2.7. One would expect newer vehicles to perform better, but that otiose proposition does not add any substantive detail to the information required by members to properly assess the impact of the age condition. This is disappointing, as it has been known for some time that the trade would be seeking a full review of its operation. The report omits the truly useful information which would allow Committee to decide whether the age condition is in fact serving a proper policy purpose in a manner which cannot be achieved through less impactful means.

2.8. The view of our clients and shared by senior management in holders of booking offices, is that the new regime of bi-annual testing, which is designed to assist in the maintenance of mechanical and aesthetic standards for older vehicles – the only reason for age restriction – is sufficient to achieve that intended purpose. The age condition is arbitrary and, indeed, is the cause of considerable present and impending harm to the trade.

3 - IMPACTS OF AGE RESTRICTION

3.1 While the proposition that a newer vehicle is likely to be nicer in appearance and in better mechanical shape than an older is, while not universally true, likely to be more likely than not. Nevertheless, the imposition of a period of years for licensing is obvious in its arbitrariness.

3.2 There will (and have been prior to 2018) vehicles of 15 years in better shape than those aged 7. Until 2018, the mechanical operation and aesthetic appearance and comfort of taxi vehicles was determined by Edinburgh's famously rigorous testing standards.

3.3 The arbitrariness of an age limitation leads to a number of issues:

- i. It creates a scrappage market, as vehicles approaching their 10 years have no intrinsic value for the purposes for which they were designed. This leads to perfectly good vehicles and resources being discarded in an age of reuse and recycle.
- ii. It destroys value, including trade-in value, which operators can use to part finance replacement vehicles making it harder for operators to finance replacement.
- iii. It distorts the second-hand market, imposing imbalances on supply as against higher demand, pushing up prices to levels which financiers are not prepared to lend at (as objectively, a 5 year old Euro 6 is not worth £23k in security to a lender).
- iv. An arbitrary age limit may also encourage operators to spend less on maintenance on their vehicles if they are coming to the end of their valuable life.

4 - REPLACEMENT VEHICLES

- 4.1 These impacts now dovetail with problems in the supply chain of new, approved Wheelchair accessible vehicles.
- 4.2 In 2018 when the policy was adopted, there were 5 models of vehicle approved to be used as wheelchair accessible taxis in Edinburgh. Now, if an operator wishes to purchase a brand new approved vehicle as a replacement, they have one option, the LEVC TXE. Recently LEVC announced 140 redundancies. There is concern over the future for the company. There is no question that the company's issues have led to a significant slowdown in the production line, with many months now being required for delivery of ordered vehicles.
- 4.3 The TXE is a hybrid purpose built taxi, which costs circa £70,000. This price is a stretch for many, including older drivers for whom an expensive finance agreement is beyond their reach (not least due to tightening lending criteria and long standing lenders leaving the market due to the massive over exposure to bad debt during COVID). Those who drive part time are unlikely to be able to replace with this vehicle as their income does not support repayments. Also, the many operators in the city who have multiple licensed vehicles. For the latter, the TXE is not an economically viable vehicle. Such operators at best drive only one vehicle and rely on rental to licensed drivers for income from the others. Rental income in good times would be unlikely to render much in the way of profit, but it is particularly suppressed in these times; there is a shortage of drivers. This is due in part to COVID and persons leaving the trade and not returning, but also the Council's issuance of taxi driver licences was effectively frozen from March 2020 until Spring this year.
- 4.4 Many licence holders need a cheaper option. There are no purpose built WAVs coming through. There is a possibility of some more Mercedes Vito (Euro 6 diesel) conversions sometime after summer next year, but that is largely rumour at present. There is no clarity on if and when a Mercedes Electric taxi conversion will come to market and its price point if it does. That leaves a second hand market for Euro 6 or Hybrid vehicles, which is hugely distorted with restricted supply and outsized

demand. Vehicles which would ordinarily be selling for £14k (5 years old) are demanding prices of £22k or £23k.

- 4.5 Many licence holders need a cheaper option. There are no purpose built WAVs coming through. There is a possibility of some more Mercedes Vito (Euro 6 diesel) conversions sometime after summer next year, but that is largely rumour at present. There is no clarity on if and when a Mercedes Electric taxi conversion will come to market and its price point if it does. That leaves a second hand market for Euro 6 or Hybrid vehicles, which is hugely distorted with restricted supply and outsized demand. Vehicles which would ordinarily be selling for £14k (5 years old) are demanding prices of £22k or £23k

5 - REMOVING THE AGE CONDITION

- 5.1 What would happen if this condition were removed? There would still, as was originally envisaged, be a policy mechanism serving to ensure that the original policy goal of improving air quality was met. Taxis would require to qualify as Euro 6, at the very latest by 1 June 2024 in line with the LEZ.
- 5.2 Paragraph 4.2 of the Officer's Report indicates that there are over 300 taxi vehicles which will require to be replaced (or upgraded) within the next 18 months. I venture that since 2018, no 18-month period has seen such volume of replacement. Maintenance of the policy would demand that this number be replaced, within the context of heavily restricted supply. We cannot see how that can be achieved in practical terms, leaving aside questions of individual affordability.
- 5.3 There are presently 259 Euro 5 vehicles which will range in age from 11 year old to 7 year old. Some of these will have exemption from policy until 2024, up to 31 May of that year in some cases. Allowing these to continue to operate beyond 10 years would be subject to the bi-annual inspection which serves to ensure the policy goal for the age condition, but would also leave another option for operators of such vehicles to then comply with the emissions standard: the exhaust retrofit.
- 5.4 At present, an operator with a Euro 5 at (say) 9 years old may balk at the proposition of retrofitting the vehicle to Euro 6 emissions, as that would involve cost for a very

limited period of use of the then uprated capital asset. If the Age restriction was removed, the viability of retrofit increases markedly. These owners could convert, be subject to bi-annual tests to meet policy goals, qualify for use in the LEZ and release the pressures on the second-hand market.

- 5.5 Members will note that LPG conversions are given 14 years, as are electric vehicles – there are no electric vehicles in the taxi fleet. The TXE is a hybrid contrary to the Officer's report. There is no such dispensation for exhaust retrofits.
- 5.6 Like the LPG conversions, the exhaust retrofit is also part funded by public money through the issuance of grants by Energy Savings Trust. To use such monies for such limited gain would appear to be irresponsible.
- 5.7 Dispensing with the age requirement would also assist Euro 6 owners, who themselves will require to consider replacement in 2-3 years' time. It appears unlikely that supply side distortions will ease in that period.

CONCLUSION

1. The main point for policy makers must surely be whether the laudable aim of ensuring well maintained and mechanically sound vehicles can be achieved without the age condition and its damaging effects? The objective answer is that of course it can.
2. The harm being done by the age condition vastly outweighs what good one can discern from the limited data and explanation provided. There is a major problem with the supply of appropriate and affordable wheelchair accessible vehicles in the City (and nationwide). The age condition is exacerbating that. Its removal will serve to give the trade the options for compliance which are not presently available. It is no exaggeration to state that this is an existential crisis for many operators. However, it serves also as a problem for policy makers wishing to continue to have a taxi fleet which is fit for the nation's capital. The removal of the condition will go a long way to ensuring that position can be maintained.